

SECURE HANDLING OF AMMONIUM NITRATE ACT OF 2007

OCTOBER 2, 2007.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland
Security, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1680]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1680) to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

Purpose and Summary	Page 7
Background and Need for Legislation	7
Hearings	7
Committee Consideration	8
Committee Votes	8
Committee Oversight Findings	9
New Budget Authority, Entitlement Authority, and Tax Expenditures	9
Congressional Budget Office Estimate	9
Statement of General Performance Goals and Objectives	12
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	13
Federal Mandates Statement	13
Advisory Committee Statement	13
Constitutional Authority Statement	13
Applicability to Legislative Branch	13
Section-by-Section Analysis of the Legislation	13
Changes in Existing Law Made by the Bill, as Reported	18

Minority Views	27
----------------------	----

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure Handling of Ammonium Nitrate Act of 2007”.

SEC. 2. SECURE HANDLING OF AMMONIUM NITRATE.

(a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by adding at the end the following new subtitle:

“Subtitle J—Secure Handling of Ammonium Nitrate

“SEC. 899A. DEFINITIONS.

“In this subtitle, the following definitions apply:

“(1) The term ‘ammonium nitrate’ means—

“(A) solid ammonium nitrate that is chiefly the ammonium salt of nitric acid and contains not less than 33 percent nitrogen by weight; and

“(B) any mixture containing a percentage of ammonium nitrate that is equal to or greater than the percentage determined by the Secretary under section 899B(b).

“(2) The term ‘ammonium nitrate facility’ means any entity that produces, sells, or otherwise transfers ownership of, or provides application services for, ammonium nitrate.

“(3) The term ‘ammonium nitrate purchaser’ means any person who buys and takes possession of ammonium nitrate from an ammonium nitrate facility.

“SEC. 899B. REGULATION OF THE SALE AND TRANSFER OF AMMONIUM NITRATE.

“(a) IN GENERAL.—The Secretary shall regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility in accordance with this subtitle to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

“(b) AMMONIUM NITRATE MIXTURES.—The Secretary, in consultation with the heads of appropriate Federal departments and agencies, including the Secretary of Agriculture, shall, through notice and comment and by no later than 90 days after the date of the enactment of this subtitle, establish a threshold percentage for ammonium nitrate in a substance. If a substance contains a percentage of ammonium nitrate that is equal to or greater than the percentage established by the Secretary, the substance shall be treated as ammonium nitrate for the purposes of this subtitle.

“(c) REGISTRATION OF OWNERS OF AMMONIUM NITRATE FACILITIES.—

“(1) REGISTRATION.—The Secretary shall establish a process by which—

“(A) any person who is the owner of an ammonium nitrate facility is required to register with the Department; and

“(B) upon such registration, such person is issued a registration number for purposes of this subtitle.

“(2) REGISTRATION INFORMATION.—The Secretary shall require that each applicant for registration as the owner of an ammonium nitrate facility must submit to the Secretary—

“(A) the name, address, and telephone number of each ammonium nitrate facility owned by the applicant;

“(B) the name of the person designated by the owner of the ammonium nitrate facility as the point of contact of such facility, for purposes of this subtitle;

“(C) for each such facility, the amount of ammonium nitrate that is sold or transferred during each year; and

“(D) such other information as the Secretary may determine is appropriate.

“(d) REGISTRATION OF AMMONIUM NITRATE PURCHASERS.—

“(1) REGISTRATION.—The Secretary shall establish a process by which—

“(A) any person who seeks to be an ammonium nitrate purchaser is required to register with the Department; and

“(B) upon such registration, such person is issued a registration number for purposes of this subtitle.

“(2) REGISTRATION INFORMATION.—The Secretary shall require that each applicant for registration under this subsection as a prospective ammonium ni-

trate purchaser must submit to the Secretary the name, address, and telephone number of the applicant and the intended use of ammonium nitrate to be purchased by the applicant.

“(e) RECORDS.—

“(1) MAINTENANCE OF RECORDS.—The Secretary shall require the owner of an ammonium nitrate facility engaged in selling or transferring ammonium nitrate to—

“(A) maintain a record of each sale or transfer of ammonium nitrate, during the two-year period beginning on the date of such sale or transfer; and

“(B) include in such record the information described in paragraph (2).

“(2) SPECIFIC INFORMATION REQUIRED.—For each such sale or transfer, the Secretary shall require the owner of an ammonium nitrate facility to—

“(A) record the name, address, telephone number, and registration number issued under subsection (c) or (d) of each person that takes possession of ammonium nitrate from the owner of an ammonium nitrate facility, in a manner prescribed by the Secretary;

“(B) if applicable, record the name, address, and telephone number of each individual who takes possession of the ammonium nitrate on behalf of the person referred to in subparagraph (A), at the point of sale;

“(C) record the date and quantity of ammonium nitrate sold or transferred; and

“(D) verify the identity of the persons referred to in subparagraphs (A) and (B), as applicable, in accordance with a procedure established by the Secretary.

“(3) PROTECTION OF INFORMATION.—In maintaining records in accordance with paragraph (1), the owner of an ammonium nitrate facility shall take reasonable actions to ensure the protection of the information included in such records.

“(f) EXEMPTION FOR EXPLOSIVE PURPOSES.—The Secretary may exempt from this subtitle a person producing, selling, or purchasing ammonium nitrate exclusively for use as an explosive material under a license issued under chapter 40 of title 18, United States Code.

“(g) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Secretary of Agriculture, States, and appropriate private sector entities, to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

“(h) DATA CONFIDENTIALITY.—

“(1) IN GENERAL.—Notwithstanding section 552 of title 5, United States Code, or the USA PATRIOT ACT (Public Law 107–56; 115 Stat. 272), and except as provided in paragraph (2), the Secretary may not disclose to any person any information obtained under this subtitle.

“(2) EXCEPTION.—The Secretary may disclose any information obtained by the Secretary under this subtitle to an officer or employee of the United States, or a person that has entered into a contract with the United States, who has a need to know the information to perform the duties of the officer, employee, or person, or to a State agency pursuant to section 899D, under appropriate arrangements to ensure the protection of the information.

“(i) REGISTRATION PROCEDURES AND CHECK OF TERRORIST WATCH LIST.—

“(1) REGISTRATION PROCEDURES.—

“(A) GENERALLY.—The Secretary shall establish procedures to efficiently receive applications for registration numbers under this subtitle, conduct the checks required under paragraph (2), and promptly issue or deny a registration number.

“(B) INITIAL SIX-MONTH REGISTRATION PERIOD.—The Secretary shall take steps to maximize the number of registration applications that are submitted and processed during the six-month period provided for in section 899F(e).

“(2) CHECK OF TERRORIST WATCH LIST.—

“(A) CHECK REQUIRED.—The Secretary shall conduct a check of appropriate identifying information of any person seeking to register with the Department under subsection (c) or (d) against identifying information that appears on the terrorist watch list.

“(B) AUTHORITY TO DENY REGISTRATION NUMBER.—If the person’s identifying information appears on the terrorist watch list and the Secretary determines such person may pose a threat to national security, the Secretary may deny issuance of a registration number under this subtitle.

“(3) EXPEDITED REVIEW OF APPLICATIONS.—

“(A) IN GENERAL.—Following the six-month period provided for in section 899F(e), the Secretary shall, to the extent practicable, issue or deny registration numbers under this subtitle not later than 72 hours after the time

the Secretary receives a complete registration application, unless the Secretary determines, in the interest of national security, that additional time is necessary to review an application.

“(B) NOTICE OF APPLICATION STATUS.—In all cases, the Secretary shall notify persons of the status of their application not later than 72 hours after the time the Secretary receives a complete registration application.

“(4) EXPEDITED APPEALS PROCESS.—

“(A) REQUIREMENT.—

“(i) APPEALS PROCESS.—The Secretary shall establish an expedited appeals process for persons denied a registration number under this subtitle.

“(ii) TIME PERIOD FOR RESOLUTION.—The Secretary shall, to the extent practicable, resolve appeals not later than 72 hours after receiving a complete request for appeal unless the Secretary determines, in the interest of national security, that additional time is necessary to resolve an appeal.

“(B) CONSULTATION.—The Secretary, in developing the appeals process under subparagraph (A), shall consult with appropriate stakeholders.

“(C) GUIDANCE.—The Secretary shall provide guidance regarding the procedures and information required for an appeal under subparagraph (A) to persons denied registration numbers under this subtitle.

“(5) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

“(A) IN GENERAL.—Information obtained by the Secretary under this section may not be made available to the public.

“(B) USE OF CERTAIN INFORMATION.—Any information constituting grounds for denial of a registration number under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. Notwithstanding any other provision of this subtitle, the Secretary may share any such information with Federal, State, local, and tribal law enforcement agencies, as appropriate.

“(6) REGISTRATION INFORMATION.—

“(A) AUTHORITY TO REQUIRE INFORMATION.—The Secretary may require a person applying for a registration number under this subtitle to submit such information as may be necessary to carry out the requirements of this section.

“(B) REQUIREMENT TO UPDATE INFORMATION.—The Secretary may require persons issued a registration under this subtitle to update registration information submitted to the Secretary under this subtitle, as appropriate.

“(7) RE-CHECKS AGAINST TERRORIST WATCH LIST.—

“(A) RE-CHECKS.—The Secretary shall, as appropriate, re-check persons provided a registration number pursuant to this subtitle against the terrorist watch list, and may revoke such registration number if the Secretary determines such person may pose a threat to national security.

“(B) NOTICE OF REVOCATION.—The Secretary shall, as appropriate, provide prior notice to a person whose registration number is revoked under this section and such person shall have an opportunity to appeal, as provided in paragraph (4).

“SEC. 899C. INSPECTION AND AUDITING OF RECORDS.

“The Secretary shall establish a process for the periodic inspection and auditing of the records maintained by owners of ammonium nitrate facilities for the purpose of monitoring compliance with such section or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

“SEC. 899D. ADMINISTRATIVE PROVISIONS.

“(a) COOPERATIVE AGREEMENTS.—The Secretary—

“(1) may enter into a cooperative agreement with the Secretary of Agriculture, or the head of any State department of agriculture or its designee involved in agricultural regulation, in consultation with the State agency responsible for homeland security, to carry out the provisions of this subtitle; and

“(2) wherever possible, shall seek to cooperate with State agencies or their designees that oversee ammonium nitrate facility operations when seeking cooperative agreements to implement the registration and enforcement provisions of this subtitle.

“(b) DELEGATION.—

“(1) AUTHORITY.—The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this subtitle.

“(2) DELEGATION REQUIRED.—At the request of a Governor of a State, the Secretary shall delegate to the State the authority to carry out functions under sec-

tions 899B and 899C, if the Secretary determines that the State is capable of satisfactorily carrying out such functions.

“(3) FUNDING.—Subject to the availability of appropriations, if the Secretary enters into an agreement with a State under this subsection to delegate functions to the State, the Secretary shall provide to the State sufficient funds to carry out the delegated functions.

“(c) PROVISION OF GUIDANCE AND NOTIFICATION MATERIALS TO AMMONIUM NITRATE FACILITIES.—

“(1) GUIDANCE.—The Secretary shall make available to each owner of an ammonium nitrate facility registered under section 899B(c)(1) guidance on—

“(A) the identification of suspicious ammonium nitrate purchases or transfers or attempted purchases or transfers;

“(B) the appropriate course of action to be taken by the ammonium nitrate facility owner with respect to such a purchase or transfer or attempted purchase or transfer, including—

“(i) exercising the right of the owner of the ammonium nitrate facility to decline sale of ammonium nitrate; and

“(ii) notifying appropriate law enforcement entities; and

“(C) any such additional subjects as the Secretary determines are appropriate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

“(2) USE OF MATERIALS AND PROGRAMS.—In providing guidance under this subsection, the Secretary shall, to the extent practicable, leverage any relevant materials and programs.

“(3) NOTIFICATION MATERIALS.—

“(A) IN GENERAL.—The Secretary shall make available materials suitable for posting at ammonium nitrate facilities where ammonium nitrate is sold.

“(B) DESIGN OF MATERIALS.—Such materials shall be designed to notify prospective ammonium nitrate purchasers of—

“(i) the record-keeping requirements under section 899B; and

“(ii) the penalties for violating such requirements.

“SEC. 899E. THEFT REPORTING REQUIREMENT.

“Any person who is required to comply with section 899B(e) who has knowledge of the theft or unexplained loss of ammonium nitrate shall report such theft or loss to the appropriate Federal law enforcement authorities within one calendar day of the date on which the person becomes aware of such theft or loss. Upon receipt of such report, the relevant Federal authorities shall inform State, local, and tribal law enforcement entities as appropriate.

“SEC. 899F. PROHIBITIONS AND PENALTY.

“(a) PROHIBITIONS.—

“(1) TAKING POSSESSION.—No person shall take possession of ammonium nitrate from an ammonium nitrate facility unless such person is registered under subsection (c) or (d) of section 899B, or is an agent of a person registered under subsection (c) or (d) of that section.

“(2) TRANSFERRING POSSESSION.—An owner of an ammonium nitrate facility shall not transfer possession of ammonium nitrate from the ammonium nitrate facility to any person who is not registered under subsection (c) or (d) of section 899B, unless such person is an agent of a person registered under subsection (c) or (d) of that section.

“(3) OTHER PROHIBITIONS.—No person shall—

“(A) buy and take possession of ammonium nitrate without a registration number required under subsection (c) or (d) of section 899B;

“(B) own or operate an ammonium nitrate facility without a registration number required under section 899B(c); or

“(C) fail to comply with any requirement or violate any other prohibition under this subtitle.

“(b) PROHIBITIONS.—No person shall—

“(1) buy and take possession of ammonium nitrate without a registration number required under subsection (c) or (d) of section 899B;

“(2) own or operate an ammonium nitrate facility without a registration number required under section 899B(c); or

“(3) fail to comply with any requirement or violate any other prohibition under this subtitle.

“(c) CIVIL PENALTY.—A person that violates this subtitle may be assessed a civil penalty by the Secretary of not more than \$50,000 per violation.

“(d) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

“(1) the nature and circumstances of the violation;

“(2) with respect to the person who commits the violation, any history of prior violations, the ability to pay the penalty, and any effect the penalty is likely to have on the ability of such person to do business; and

“(3) any other matter that the Secretary determines that justice requires.

“(e) NOTICE AND OPPORTUNITY FOR A HEARING.—No civil penalty may be assessed under this subtitle unless the person liable for the penalty has been given notice and an opportunity for a hearing on the violation for which the penalty is to be assessed in the county, parish, or incorporated city of residence of that person.

“(f) DELAY IN APPLICATION OF PROHIBITION.—Paragraphs (1) and (2) of subsection (a) shall apply beginning 6 months after the issuance by the Secretary of a final rule implementing this subtitle.

“SEC. 899G. PROTECTION FROM CIVIL LIABILITY.

“(a) IN GENERAL.—Notwithstanding any other provision of law, an owner of an ammonium nitrate facility who in good faith refuses to sell or transfer ammonium nitrate to any person, or who in good faith discloses to the Department or to appropriate law enforcement authorities an actual or attempted purchase or transfer, based upon a reasonable belief that the person seeking purchase or transfer of ammonium nitrate may use the ammonium nitrate to create an explosive device to be employed in an act of terrorism (as defined in section 3077 of title 18, United States Code), or to use ammonium nitrate for any other unlawful purpose, shall be immune from civil liability arising from that refusal to sell ammonium nitrate or from making that disclosure.

“(b) LIMITATION.—Subsection (a) shall not be construed to apply with respect to any refusal to sell or disclosure—

“(1) that violates—

“(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq); or

“(B) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq);

or

“(2) made on the basis that the person seeking purchase or transfer of ammonium nitrate is a veteran or member of the armed forces of the United States.

“SEC. 899H. PREEMPTION OF OTHER LAWS.

“(a) OTHER FEDERAL REGULATIONS.—Except as provided in section 899G, nothing in this subtitle affects any regulation issued by any agency other than an agency of the Department.

“(b) STATE LAW.—Subject to section 899G, this subtitle preempts the laws of any State to the extent that such laws are inconsistent with this subtitle, except that this subtitle shall not preempt any State law that provides additional protection against the acquisition of ammonium nitrate by terrorists or the use of ammonium nitrate in explosives in acts of terrorism or for other illicit purposes, as determined by the Secretary.

“SEC. 899I. DEADLINES FOR REGULATIONS.

“The Secretary—

“(1) shall issue a proposed rule implementing this subtitle within six months after the date of the enactment of this subtitle; and

“(2) issue a final rule implementing this subtitle within one year after such date of enactment.

“SEC. 899J. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle for fiscal years 2007 through 2011.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to title VIII the following new items:

“Subtitle J—Secure Handling of Ammonium Nitrate

“Sec. 899A. Definitions.

“Sec. 899B. Regulation of the sale and transfer of ammonium nitrate.

“Sec. 899C. Inspection and auditing of records.

“Sec. 899D. Administrative provisions.

“Sec. 899E. Theft reporting requirement.

“Sec. 899F. Prohibitions and penalty.

“Sec. 899G. Protection from civil liability.

“Sec. 899H. Preemption of other laws.

“Sec. 899I. Deadlines for regulations.

“Sec. 899J. Authorization of appropriations.”.

Amend the title so as to read:

A bill to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes.

PURPOSE AND SUMMARY

The purpose of H.R. 1680 is to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists.

BACKGROUND AND NEED FOR LEGISLATION

Ammonium nitrate is a highly effective and widely used agricultural fertilizer, but may also be utilized to create explosives employed in carrying out deadly terrorist attacks. Ammonium nitrate fertilizer is widely available, inexpensive, and relatively easy to manipulate into explosive form. It has been the explosive material of choice in a number of acts and attempted acts of terrorism. These include: the 1995 bombing of the Alfred P. Murrah building in Oklahoma City, Oklahoma; the 1998 United States embassy bombings in United Republic of Tanzania and Republic of Kenya; the November 2003 bombings in Istanbul, Republic of Turkey; planned attacks on the United States embassy in the Republic of Singapore and the United States consulate in Karachi, the Islamic Republic of Pakistan, which were foiled by law enforcement authorities; and most recently, the suspected Toronto, Canada-based bomb plot thwarted by the Royal Canadian Mounted Police in June 2006.

While the sale of ammonium nitrate based explosives are regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, the sale of ammonium nitrate based fertilizers is not currently subject to Federal regulations. A handful of States, including New York, California, New Jersey, Nevada, Oklahoma, Missouri, South Carolina, Maryland, Michigan and Iowa, have enacted laws regulating the sale of ammonium nitrate based fertilizers, but there is currently no Federal nationwide requirement to record or monitor such transactions.

This legislation is needed to create a nationwide, minimum standard for regulating the sale of ammonium nitrate based fertilizers nationwide that could be used in terrorist acts, without unduly burdening the agricultural sector's access to ammonium nitrate fertilizer for farming and other legitimate agricultural purposes. This legislation will aid law enforcement counterterrorism efforts by creating a paper trail for crimes involving purchases of ammonium nitrate and will also support honest retailers in their efforts to prevent terrorism.

HEARINGS

No hearings were held in the 110th Congress.

On December 14, 2005, the Subcommittee on Prevention of Nuclear and Biological Attack held a legislative hearing on H.R. 3197. The Subcommittee received testimony from Dr. Jimmie C. Oxley, Professor of Chemistry, University of Rhode Island; Mr. James W. McMahon, Director, New York State Office of Homeland Security; Mr. Gary W. Black, President, Georgia Agribusiness Council, Inc.; Mr. William Paul O'Neill, Jr., President, International Raw Materials, testifying on behalf of Agricultural Retailers Association; and Mr. Carl Wallace, Plant Manager, Terra Mississippi Nitrogen, Inc., testifying on behalf of The Fertilizer Institute.

COMMITTEE CONSIDERATION

H.R. 1680 was introduced by Mr. Thompson of Mississippi, Mr. King of New York, Mr. Langevin, Mr. McCaul of Texas, Mr. Etheridge, Mr. Dent, Ms. Loretta Sanchez of California, and Ms. Jackson-Lee of Texas on March 26, 2007, and referred to the Committee on Homeland Security. Within the Committee on Homeland Security, H.R. 1680 was referred to the Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology.

On March 28, 2007, the Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology considered H.R. 1680, and ordered the measure forwarded to the Full Committee for consideration with a favorable recommendation, without amendment.

On April 17 and 26, 2007, the Full Committee on Homeland Security considered H.R. 1680 and on April 26, 2007, ordered the measure favorably reported to the House, amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security met, pursuant to notice, in open markup session, a quorum being present, on April 17 and 26, 2007, to consider H.R. 1680. The Committee favorably ordered H.R. 1680 to be reported to the House, as amended, by voice vote.

A unanimous consent request by Mr. Thompson to amend the title so as to read: "H.R. 1680, to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes."; was not objected to.

The Committee adopted the bill, as amended, by voice vote.

The following amendments were offered:

An amendment offered by Mr. Thompson (#1), page 2, strike lines 18 through 20 and insert a new subsection (2); page 2, strike lines 21 through 23 and insert a new section (3); page 3, strike lines 1 through 4 and insert a new section entitled "Sec. 899B. Regulation of the Sale and Transfer of Ammonium Nitrate."; page 5, line 16, strike "of ownership"; page 5, line 23 strike "that"; page 5, line 24, strike "shall" and insert "to"; page 5, strike lines 3 through 6 and insert the following "subsection (c) or (d) of each person that takes possession of ammonium nitrate from the owner of an ammonium nitrate facility, in a manner prescribed by the Secretary."; page 9, line 18, strike "purchases" both places it occurs and insert "purchases or transfers"; page 9, lines 21 and 22, strike "purchase or attempted purchase" and insert "purchase or transfer or attempted purchase or transfer"; Page 11, at the end of line 4, add the following: "Upon receipt of such report, the relevant Federal authorities shall inform State, local, and tribal law enforcement entities as appropriate."; Page 11, strike lines 5 through 14 and insert a new section "Sec. 899F. Prohibitions and Penalty."; Page 12, line 25, after "terrorism" insert "or for other illicit purposes"; and to make corrections to the table of contents; was AGREED TO by voice vote.

An amendment offered by Mrs. Christensen (#2), on page 5, line 9, before the period insert "and the intended use of ammonium ni-

trate to be purchased by the applicant.”; was AGREED TO by voice vote.

An amendment offered by Ms. Brown-Waite (#3), on page 5, line 17, strike “three-year period” and insert “two year period”; was AGREED TO by voice vote.

An amendment offered by Mr. King (#4), Page 12, after line 14, insert a new subsection entitled “Sec. 899G. Protection from Civil Liability.” Page 12, line 16, strike “Nothing” and insert “Except as provided in section 899G, nothing”. And to make additional confirming changes. was AGREED TO by voice vote.

An amendment offered by Mr. Lungren (#5), to insert at the end of the proposed section 899B new subsections entitled “(g) Check of Terrorist Watch Lists.”; was WITHDRAWN by unanimous consent. A unanimous consent request by Mr. Lungren to withdraw his amendment, was not objected to.

An amendment offered by Mr. Lungren (#6), on page 3, line 8, insert after “The Secretary” the following: “, in consultation with the heads of appropriate Federal departments and agencies, including the Secretary of Agriculture,”. Insert at the end of the proposed section 899B a new subsection “(g) Registration Procedures and Check of Terrorist Watch List.”; on page 12, lines 11 through 12, strike “ON OWNER OF FACILITIES”; and on page 12, line 12, strike “Subsection (a)(2)” and insert “Paragraphs (1) and (2) of subsection (a)”; was AGREED TO by voice vote.

A motion by Mr. Thompson to authorized Staff to make any technical and conforming changes, was not objected to.

A motion by Ms. Sanchez to authorize the Chairman to offer such motions as may be necessary in the House to go to Conference with the Senate on the bill just ordered reported by this Committee, or on a similar Senate bill; was not objected to.

The Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology met, pursuant to notice, in open markup session, a quorum being present, on Thursday, March 29, 2007, to consider H.R. 1680, and ordered the measure forwarded to the Full Committee for consideration, without amendment, by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1680, the Secure Handling of Ammonium Nitrate Act of 2007, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 21, 2007.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1680, the Secure Handling of Ammonium Nitrate Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), and Melissa Merrell (for the impact on state, local, and tribal governments), and Amy Petz (for the impact on the private sector).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1680—Secure Handling of Ammonium Nitrate Act of 2007

Summary: H.R. 1680 would authorize the Department of Homeland Security (DHS) to regulate the handling and purchase of ammonium nitrate. CBO estimates that implementing H.R. 1680 would cost \$45 million over the 2008–2012 period, assuming appropriation of the necessary amounts. Enacting the bill could affect revenues, but we estimate that any such effects would not be significant. Enacting H.R. 1680 would not affect direct spending.

H.R. 1680 contains an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA), because it would preempt the authority of states to regulate the sale of ammonium nitrate in a manner that is less stringent than the requirements of this bill. However, CBO estimates that states would incur little, if any, direct costs as a result of that preemption; therefore, the annual threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation) would not be exceeded.

H.R. 1680 would impose private-sector mandates, as defined in UMRA, on owners of ammonium nitrate facilities and purchasers of ammonium nitrate. CBO expects that the aggregate direct cost of those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1680 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	6	10	10	10	11
Estimated Outlays	5	9	10	10	11

Basis of estimate: CBO estimates that implementing H.R. 1680 would have discretionary costs of \$45 million over the 2008–2012 period. For this estimate, CBO assumes that the necessary

amounts will be appropriated by the start of each fiscal year and that spending will follow historical patterns for similar activities. In addition, CBO estimates that the bill would have an insignificant effect on revenues.

Spending subject to appropriation

H.R. 1680 would authorize DHS to regulate the handling and purchase of ammonium nitrate. The bill would require producers, sellers, and certain purchasers of ammonium nitrate to register with DHS and would make producers and sellers maintain certain sales records. H.R. 1680 would direct DHS to periodically inspect and audit those records.

Using information from industry associations, CBO estimates that there are about 2,000 producers and sellers of ammonium nitrate in the United States. Based on the number of personnel employed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to inspect handlers of firearms and explosives, CBO expects that DHS would need to hire about 60 people to carry out field inspections and audits of ammonium nitrate producers and sellers. Once fully phased in, CBO estimates that the costs of those additional employees would reach \$8 million annually, including salaries, benefits, training, and support costs. For this estimate, we assume that the new positions would be fully staffed by fiscal year 2009.

In addition, we estimate that DHS would need to hire about 20 people to register and communicate with producers, sellers, and purchasers of ammonium nitrate, write regulations, and administer this new program. We estimate that costs for those personnel would total \$2 million annually.

H.R. 1680 would permit DHS to enter into agreements with states to register and inspect producers, sellers, and purchasers of ammonium nitrate. Under the bill, DHS would reimburse states for their costs to carry out those responsibilities if states chose to enter into such agreements with DHS. CBO expects that the cost to carry out those registrations and inspections would be similar whether conducted by states or DHS.

Revenues

Enacting H.R. 1680 could increase collections of civil fines for violations of the bill's provisions for the handling and purchase of ammonium nitrate. CBO estimates that any additional collections would not be significant because of the small number of cases likely to be affected. Civil fines are recorded as revenues in the federal budget.

Estimated impact on state, local, and tribal governments: H.R. 1680 contains an intergovernmental mandate, as defined in UMRA, because it would preempt the authority of states to regulate the sale of ammonium nitrate in a manner that is less stringent than the requirements of this bill. Currently, nine states regulate the sale of ammonium nitrate, though none of those regulations are the same as the provisions of this bill, and all of those regulations would be preempted. This bill would not require states to upgrade those regulations; rather, the states could choose to stop regulating such sales and allow the federal government to do so. CBO estimates the states would incur little, if any, direct costs as a result of that preemption; therefore, the annual threshold established in

UMRA (\$66 million in 2007, adjusted annually for inflation) would not be exceeded.

The bill would allow states to enter into cooperative agreements with the federal government to implement the requirements of the bill, and would authorize the Secretary of DHS to provide those states with sufficient funds to carry out such duties. CBO cannot estimate how many states may opt to implement those regulations, but assuming appropriation of the necessary funds, any costs incurred by those states would be paid for by the federal government.

Estimated impact on the private sector: H.R. 1680 would impose private-sector mandates, as defined in UMRA, on owners of ammonium nitrate facilities and purchasers of ammonium nitrate. CBO expects that the aggregate direct cost of those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

The bill would direct the Department of Homeland Security (DHS) to regulate the sale and transfer of ammonium nitrate, which is commonly used in agriculture fertilizer. The bill would require owners of ammonium nitrate facilities and purchasers of ammonium nitrate to register with DHS. In addition, those owners would be required to maintain a record of each sale or transfer of ammonium nitrate for two years. Further, any facility owner with knowledge of any theft or unexplained loss of ammonium nitrate would be required to report it to law enforcement authorities within one day of the date on which the owner becomes aware of such an event.

The direct cost of the mandates on owners would be the cost of registering with DHS, maintaining additional records for sales, and filing a report in the case of theft or an unexplained loss of ammonium nitrate. For purchasers, the direct cost would be the cost of registering with DHS. Based on information from industry sources, CBO expects that those administrative costs would be small relative to the annual threshold.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1680, contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The purpose of this legislation is to authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists. Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1680 contains the following general performance goals and objectives, including outcome-related goals and objectives authorized: H.R. 1680 adds a new section 899I to the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.), which requires the Secretary of Homeland Security to issue regulations within six months after the date of enactment of the Act, and to issue a final rule within one year of the date of enactment.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states the short title of the measure as the “Secure Handling of Ammonium Nitrate Act of 2007.”

Section 2. Secure handling of ammonium nitrate

This section amends Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) by inserting a new Subtitle J—Secure Handling of Ammonium Nitrate:

Section 899A. Definitions

This section defines the terms “ammonium nitrate,” “ammonium nitrate facility,” and “ammonium nitrate purchaser.”

Section 899B. Regulation of handling and purchase of ammonium nitrate

This section requires the Secretary of Homeland Security (Secretary) to regulate the purchase and sale of ammonium nitrate. It requires the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, to establish a threshold percentage of ammonium nitrate in a substance for purposes of the regulations through rulemaking. Moreover, this provision requires the Secretary to establish a process to issue registration numbers to own-

ers of ammonium nitrate facilities. This section requires collected registration information to include: (1) the name, address, and telephone number of each facility owned by that registrant; (2) as the name and contact information of the person designated as the point of contact by the owner of the facility; (3) the amount of ammonium nitrate that is sold or transferred each year at each facility; and (4) any other information that the Secretary deems appropriate.

This section requires the Secretary to establish a process to issue registration numbers to ammonium nitrate purchasers; the registration information to be collected shall include the name, address, and telephone number of the registrant.

In addition, this section requires each owner of an ammonium nitrate facility to maintain records of sales or transfers of ammonium nitrate for up to two years that include the name, address, telephone number, registration number, and intended use of each person taking ownership of ammonium nitrate on their own behalf or as the stated agent of another, as well as the date and quantity of the ammonium nitrate sold or transferred. This provision also requires the owner of the facility to verify the identity of the ammonium nitrate purchaser or the purchaser's agent, in accordance with procedures established by the Secretary.

This section allows the Secretary to exempt owners of ammonium nitrate facilities and ammonium nitrate purchasers from the registration requirement if they are regulated by the Department of Justice for use of ammonium nitrate exclusively for explosive purposes. It also requires the Secretary of Homeland Security to consult with the Secretary of Agriculture, States, and the appropriate private sector entities to ensure that those who need to access ammonium nitrate are not unduly burdened.

This provision generally prohibits the disclosure of registration information; however, it allows disclosure to an officer or individual with a need to know to perform the duties of the officer or individual. Moreover, this section requires the Secretary to process registration and check registrants against the terrorist watch list and notify applicant of issuance or denial not later than 72 hours after the Secretary receives a completed application when practicable and unless the Secretary decides more time is needed in the interest of national security. It also requires the Secretary to establish an expedited appeals process whereby—when practicable—appeals are resolved not later than 72 hours after the Secretary receives a complete request for appeal, unless the Secretary determines, in the interest of national security, additional time is necessary to resolve an appeal.

The Committee believes it is necessary to provide measures to secure the transfer and purchase of ammonium nitrate fertilizer while maintaining its availability and not unduly burdening its legitimate use by agricultural professionals, farmers, miners, quarry workers, and others that need access to ammonium nitrate. This legislation tightens controls on access to ammonium nitrate and strengthens the ability of the United States to keep ammonium nitrate out of the hands of terrorists. The Committee notes that terrorists find new and innovative ways to circumvent security measures and to construct explosive devices, and believes that the best way to adapt our security policies to counteract the terrorists' ef-

forts is to provide the Secretary with the discretion to determine which ammonium nitrate mixtures are subject to this legislation.

The Committee intends that the Secretary establish web-based, toll-free telephone, and mail-in formats for registration and appeal. Prospective ammonium nitrate facilities and purchasers should be able to register and file their appeals online, via telephone, or through the U.S. postal system. The Committee understands that the 72 hours for response begins tolling only from the time the Department of Homeland Security receives the info via internet, telephone, or mail.

Moreover, the Committee emphasizes that not only must an owner verify the identity of a purchaser in a manner determined appropriate by the Secretary, but that such identity verification shall include confirmation of the agency relationship where an agent takes possession of ammonium nitrate for the buyer. The Committee also believes it is important that the Department set out clear guidelines for ammonium nitrate facilities and purchasers to facilitate a clear understanding of what constitutes proper identification for matching with registration numbers.

The Committee believes it in the interest of national security to check the names and identifying information of persons who sell, produce, purchase or otherwise take ownership of (and possess) ammonium nitrate against those of persons listed on the terrorist watch list. By referring to "the terrorist watch list," the Committee intends to provide the Secretary with the discretion to utilize the Terrorist Screening Database (TSDB) and any other terrorist watch list derivative of TSDB that is most appropriate for carrying out the Secretary's obligation under this section to prevent potential terrorists from obtaining access to ammonium nitrate.

The Committee notes that the Department's experience in checking aviation passengers and against terrorist watch lists shows that vast majority of checks can be completed quickly and without imposing unnecessary delays on the traveling public. The Committee recognizes that additional time may be necessary where paper applications are submitted and sent through the U.S. postal system.

The Committee wishes to emphasize that the Secretary is directed to take steps to maximize the number of registration applications processed during the 6-month period following the issuance of the final regulations, when the 72-hour processing requirements do not apply. The Committee believes that encouraging registration during this period will serve to minimize the burden on the private sector and will reduce the impact on the Department in processing the vast majority of applications.

Section 899C. Inspection and auditing of records

This section requires the Secretary of Homeland Security to establish a process for periodic inspection and auditing of records of the sales and transfers of ammonium nitrate.

Section 899D. Administrative provisions

This section gives the Secretary of Homeland Security the discretion to enter into a cooperative agreement with the Secretary of Agriculture or the head of a State department of agriculture, in consultation with the State agency responsible for homeland security,

and directs the Secretary to cooperate with the State agencies or their designees, wherever possible, in enforcing this law.

This provision allows the Secretary to delegate authority to the States to assist in the administration and enforcement of this law. It requires the Secretary to delegate this authority to a State where the Governor requests that it be delegated and the Secretary determines that the State is capable of satisfactorily carrying out administration and enforcement. This section requires the Secretary to provide sufficient funds to each State that accepts the delegation of these functions, subject to the availability of appropriations.

This section requires the Secretary to make guidance available to each owner of an ammonium nitrate facility that covers how to identify suspicious or attempted suspicious purchases and what steps to take to in such cases, including the exercise of the right to decline a sale. This section also directs the Secretary to leverage any relevant materials and programs to disseminate this guidance, to the extent practicable. This section requires the Secretary to make materials available for display at sales outlets that inform prospective purchasers about the recordkeeping requirement and the penalties for violations.

The Committee observes that each State, through the Department of Agriculture or a Land Grant University, maintains a plant food office with a plant food control official whose primary responsibility is to register fertilizer products that are to be sold in that State. The plant food control official has responsibility for inspecting facilities that sell fertilizer in order to ensure the efficacy of the products sold. A similar official exists in each State through the Department of Agriculture for pesticide sales. The Environmental Protection Agency (EPA) has delegated authority to the state Departments of Agriculture for implementation of Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA) (7 U.S.C. 136 et seq.) regulations for restricted-use pesticides. It is in this spirit that the Committee encourages the Department to enter into cooperative agreements with State agricultural departments.

In addition, the Committee strongly suggests that the Department coordinate with the Department of Agriculture and agriculture stakeholders to develop clear, informative materials to publicize the new registration process and requirements. The fertilizer industry, in partnership with the Department, State departments of agriculture, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, has a public awareness campaign entitled, "Be Aware for America." These brochures and posters have been widely distributed to agricultural retailers and law enforcement agencies. The Committee intends that the Department also work with the fertilizer industry and State departments of agriculture to update such materials to include the relevant requirements established in this legislation.

Section 899E. Theft reporting requirement

This section requires owners of ammonium nitrate facilities and their staff to report all thefts and unexplained losses of ammonium nitrate to the appropriate Federal law enforcement authorities within one calendar day.

Section 899F. Prohibitions and penalty

This section prohibits the purchase, sale, or transfer of ammonium nitrate without registration and provides for the assessment of a civil penalty of up to \$50,000 per violation. In determining the amount of the civil penalty, this provision directs the Secretary to consider the nature and circumstances of the violation, including any history of prior violations. This section also prohibits the assessment of a civil penalty unless the person charged with the violation has been given notice and an opportunity for a hearing in the community where the person lives.

The Committee intends that only purchasers who actually take physical possession of ammonium nitrate or purchasers who deploy an agent to take possession of ammonium nitrate on their behalf are required to register with the Department. In many instances, the ammonium nitrate facility provides agricultural services whereby the facility applies or spreads ammonium nitrate. The Committee intends that purchasers who use the services of a registered ammonium nitrate facility to custom-apply ammonium nitrate do not require registration.

Section 899G. Protection from civil liability

This section provides for immunity from civil liability arising from the refusal to sell ammonium nitrate for an owner of an ammonium nitrate facility who refuses to sell or transfer ammonium nitrate based upon a reasonable belief that the person is seeking purchase or transfer of ammonium nitrate to be employed in an act of terrorism. This subsection does not apply to refusals to sell that violate the Civil Rights Act (P.L. 88-352, 78 Stat. 241, July 2, 1964) or the Americans with Disabilities Act (42 U.S.C. § 12101), nor does it apply to refusals made on the basis that a person seeking purchase or transfer is a veteran or member of the armed forces of the United States.

The Committee desires to change the culture surrounding the sale and purchase of ammonium nitrate so that sellers and purchasers alike understand that they are handling a product that can be used as a weapon of terror. In creating this heightened sense of awareness about the danger posed by ammonium nitrate in the hands of terrorists, we thought it prudent to protect sellers of ammonium nitrate from civil liability when they in good faith: (1) refuse to sell or transfer ammonium nitrate to a potential purchaser; or (2) disclose ammonium nitrate purchasing activity to the Department of Homeland Security or appropriate law enforcement entities. This civil liability protection is needed to enable ammonium nitrate sellers and transferors to feel confident there will be no legal ramifications should they refuse to sell ammonium nitrate when they see red flags, such as when a customer attempts to purchase ammonium nitrate out of season. It also encourages retailers to disclose suspect purchases or attempted purchases without fear of civil liability. To qualify for the civil liability protection, such refusal and disclosure must be made in good faith and be based upon a reasonable belief that the subject person may use ammonium nitrate to engage in terrorist activity or may otherwise utilize ammonium nitrate for unlawful purposes. This provision encourages the “if you see something, say something” approach to securing the homeland.

Section 899H. Preemption of other laws

This section clarifies that the regulations required under this law will not affect any other regulations issued by any other agency of the Federal government. Moreover, this provision clarifies that the regulations required under this law preempt State laws that are inconsistent, except where a State law provides additional protections against the acquisition of ammonium nitrate by terrorists.

Section 899I. Deadlines for regulations

This section requires the Secretary to issue proposed regulations within six months after the date of enactment of this Act and to issue a final rule within one year of the date of enactment.

Section 899J. Authorization of appropriations

This section authorizes for appropriation such funds as may be necessary to carry out this subsection for the years 2007 through 2011.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.

* * * * *

Subtitle J—Secure Handling of Ammonium Nitrate

Sec. 899A. Definitions.

Sec. 899B. Regulation of the sale and transfer of ammonium nitrate.

Sec. 899C. Inspection and auditing of records.

Sec. 899D. Administrative provisions.

Sec. 899E. Theft reporting requirement.

Sec. 899F. Prohibitions and penalty.

Sec. 899G. Protection from civil liability.

Sec. 899H. Preemption of other laws.

Sec. 899I. Deadlines for regulations.

Sec. 899J. Authorization of appropriations.

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

* * * * *

Subtitle J—Secure Handling of Ammonium Nitrate

SEC. 899A. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) *The term “ammonium nitrate” means—*

(A) solid ammonium nitrate that is chiefly the ammonium salt of nitric acid and contains not less than 33 percent nitrogen by weight; and

(B) any mixture containing a percentage of ammonium nitrate that is equal to or greater than the percentage determined by the Secretary under section 899B(b).

(2) *The term “ammonium nitrate facility” means any entity that produces, sells, or otherwise transfers ownership of, or provides application services for, ammonium nitrate.*

(3) *The term “ammonium nitrate purchaser” means any person who buys and takes possession of ammonium nitrate from an ammonium nitrate facility.*

SEC. 899B. REGULATION OF THE SALE AND TRANSFER OF AMMONIUM NITRATE.

(a) *IN GENERAL.—The Secretary shall regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility in accordance with this subtitle to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.*

(b) *AMMONIUM NITRATE MIXTURES.—The Secretary, in consultation with the heads of appropriate Federal departments and agencies, including the Secretary of Agriculture, shall, through notice and comment and by no later than 90 days after the date of the enactment of this subtitle, establish a threshold percentage for ammonium nitrate in a substance. If a substance contains a percentage of ammonium nitrate that is equal to or greater than the percentage established by the Secretary, the substance shall be treated as ammonium nitrate for the purposes of this subtitle.*

(c) *REGISTRATION OF OWNERS OF AMMONIUM NITRATE FACILITIES.—*

(1) *REGISTRATION.—The Secretary shall establish a process by which—*

(A) any person who is the owner of an ammonium nitrate facility is required to register with the Department; and

(B) upon such registration, such person is issued a registration number for purposes of this subtitle.

(2) *REGISTRATION INFORMATION.—The Secretary shall require that each applicant for registration as the owner of an ammonium nitrate facility must submit to the Secretary—*

(A) the name, address, and telephone number of each ammonium nitrate facility owned by the applicant;

(B) the name of the person designated by the owner of the ammonium nitrate facility as the point of contact of such facility, for purposes of this subtitle;

(C) for each such facility, the amount of ammonium nitrate that is sold or transferred during each year; and

(D) such other information as the Secretary may determine is appropriate.

(d) *REGISTRATION OF AMMONIUM NITRATE PURCHASERS.*—

(1) *REGISTRATION.*—The Secretary shall establish a process by which—

(A) any person who seeks to be an ammonium nitrate purchaser is required to register with the Department; and

(B) upon such registration, such person is issued a registration number for purposes of this subtitle.

(2) *REGISTRATION INFORMATION.*—The Secretary shall require that each applicant for registration under this subsection as a prospective ammonium nitrate purchaser must submit to the Secretary the name, address, and telephone number of the applicant and the intended use of ammonium nitrate to be purchased by the applicant.

(e) *RECORDS.*—

(1) *MAINTENANCE OF RECORDS.*—The Secretary shall require the owner of an ammonium nitrate facility engaged in selling or transferring ammonium nitrate to—

(A) maintain a record of each sale or transfer of ammonium nitrate, during the two-year period beginning on the date of such sale or transfer; and

(B) include in such record the information described in paragraph (2).

(2) *SPECIFIC INFORMATION REQUIRED.*—For each such sale or transfer, the Secretary shall require the owner of an ammonium nitrate facility to—

(A) record the name, address, telephone number, and registration number issued under subsection (c) or (d) of each person that takes possession of ammonium nitrate from the owner of an ammonium nitrate facility, in a manner prescribed by the Secretary;

(B) if applicable, record the name, address, and telephone number of each individual who takes possession of the ammonium nitrate on behalf of the person referred to in subparagraph (A), at the point of sale;

(C) record the date and quantity of ammonium nitrate sold or transferred; and

(D) verify the identity of the persons referred to in subparagraphs (A) and (B), as applicable, in accordance with a procedure established by the Secretary.

(3) *PROTECTION OF INFORMATION.*—In maintaining records in accordance with paragraph (1), the owner of an ammonium nitrate facility shall take reasonable actions to ensure the protection of the information included in such records.

(f) *EXEMPTION FOR EXPLOSIVE PURPOSES.*—The Secretary may exempt from this subtitle a person producing, selling, or purchasing ammonium nitrate exclusively for use as an explosive material

under a license issued under chapter 40 of title 18, United States Code.

(g) *CONSULTATION.*—In carrying out this section, the Secretary shall consult with the Secretary of Agriculture, States, and appropriate private sector entities, to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

(h) *DATA CONFIDENTIALITY.*—

(1) *IN GENERAL.*—Notwithstanding section 552 of title 5, United States Code, or the USA PATRIOT ACT (Public Law 107–56; 115 Stat. 272), and except as provided in paragraph (2), the Secretary may not disclose to any person any information obtained under this subtitle.

(2) *EXCEPTION.*—The Secretary may disclose any information obtained by the Secretary under this subtitle to an officer or employee of the United States, or a person that has entered into a contract with the United States, who has a need to know the information to perform the duties of the officer, employee, or person, or to a State agency pursuant to section 899D, under appropriate arrangements to ensure the protection of the information.

(i) *REGISTRATION PROCEDURES AND CHECK OF TERRORIST WATCH LIST.*—

(1) *REGISTRATION PROCEDURES.*—

(A) *GENERALLY.*—The Secretary shall establish procedures to efficiently receive applications for registration numbers under this subtitle, conduct the checks required under paragraph (2), and promptly issue or deny a registration number.

(B) *INITIAL SIX-MONTH REGISTRATION PERIOD.*—The Secretary shall take steps to maximize the number of registration applications that are submitted and processed during the six-month period provided for in section 899F(e).

(2) *CHECK OF TERRORIST WATCH LIST.*—

(A) *CHECK REQUIRED.*—The Secretary shall conduct a check of appropriate identifying information of any person seeking to register with the Department under subsection (c) or (d) against identifying information that appears on the terrorist watch list.

(B) *AUTHORITY TO DENY REGISTRATION NUMBER.*—If the person's identifying information appears on the terrorist watch list and the Secretary determines such person may pose a threat to national security, the Secretary may deny issuance of a registration number under this subtitle.

(3) *EXPEDITED REVIEW OF APPLICATIONS.*—

(A) *IN GENERAL.*—Following the six-month period provided for in section 899F(e), the Secretary shall, to the extent practicable, issue or deny registration numbers under this subtitle not later than 72 hours after the time the Secretary receives a complete registration application, unless the Secretary determines, in the interest of national security, that additional time is necessary to review an application.

(B) *NOTICE OF APPLICATION STATUS.*—In all cases, the Secretary shall notify persons of the status of their applica-

tion not later than 72 hours after the time the Secretary receives a complete registration application.

(4) *EXPEDITED APPEALS PROCESS.*—

(A) *REQUIREMENT.*—

(i) *APPEALS PROCESS.*—*The Secretary shall establish an expedited appeals process for persons denied a registration number under this subtitle.*

(ii) *TIME PERIOD FOR RESOLUTION.*—*The Secretary shall, to the extent practicable, resolve appeals not later than 72 hours after receiving a complete request for appeal unless the Secretary determines, in the interest of national security, that additional time is necessary to resolve an appeal.*

(B) *CONSULTATION.*—*The Secretary, in developing the appeals process under subparagraph (A), shall consult with appropriate stakeholders.*

(C) *GUIDANCE.*—*The Secretary shall provide guidance regarding the procedures and information required for an appeal under subparagraph (A) to persons denied registration numbers under this subtitle.*

(5) *RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.*—

(A) *IN GENERAL.*—*Information obtained by the Secretary under this section may not be made available to the public.*

(B) *USE OF CERTAIN INFORMATION.*—*Any information constituting grounds for denial of a registration number under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. Notwithstanding any other provision of this subtitle, the Secretary may share any such information with Federal, State, local, and tribal law enforcement agencies, as appropriate.*

(6) *REGISTRATION INFORMATION.*—

(A) *AUTHORITY TO REQUIRE INFORMATION.*—*The Secretary may require a person applying for a registration number under this subtitle to submit such information as may be necessary to carry out the requirements of this section.*

(B) *REQUIREMENT TO UPDATE INFORMATION.*—*The Secretary may require persons issued a registration under this subtitle to update registration information submitted to the Secretary under this subtitle, as appropriate.*

(7) *RE-CHECKS AGAINST TERRORIST WATCH LIST.*—

(A) *RE-CHECKS.*—*The Secretary shall, as appropriate, re-check persons provided a registration number pursuant to this subtitle against the terrorist watch list, and may revoke such registration number if the Secretary determines such person may pose a threat to national security.*

(B) *NOTICE OF REVOCATION.*—*The Secretary shall, as appropriate, provide prior notice to a person whose registration number is revoked under this section and such person shall have an opportunity to appeal, as provided in paragraph (4).*

SEC. 899C. INSPECTION AND AUDITING OF RECORDS.

The Secretary shall establish a process for the periodic inspection and auditing of the records maintained by owners of ammonium nitrate facilities for the purpose of monitoring compliance with such section or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

SEC. 899D. ADMINISTRATIVE PROVISIONS.**(a) COOPERATIVE AGREEMENTS.—***The Secretary—*

(1) may enter into a cooperative agreement with the Secretary of Agriculture, or the head of any State department of agriculture or its designee involved in agricultural regulation, in consultation with the State agency responsible for homeland security, to carry out the provisions of this subtitle; and

(2) wherever possible, shall seek to cooperate with State agencies or their designees that oversee ammonium nitrate facility operations when seeking cooperative agreements to implement the registration and enforcement provisions of this subtitle.

(b) DELEGATION.—

(1) AUTHORITY.—The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this subtitle.

(2) DELEGATION REQUIRED.—At the request of a Governor of a State, the Secretary shall delegate to the State the authority to carry out functions under sections 899B and 899C, if the Secretary determines that the State is capable of satisfactorily carrying out such functions.

(3) FUNDING.—Subject to the availability of appropriations, if the Secretary enters into an agreement with a State under this subsection to delegate functions to the State, the Secretary shall provide to the State sufficient funds to carry out the delegated functions.

(c) PROVISION OF GUIDANCE AND NOTIFICATION MATERIALS TO AMMONIUM NITRATE FACILITIES.—

(1) GUIDANCE.—The Secretary shall make available to each owner of an ammonium nitrate facility registered under section 899B(c)(1) guidance on—

(A) the identification of suspicious ammonium nitrate purchases or transfers or attempted purchases or transfers;

(B) the appropriate course of action to be taken by the ammonium nitrate facility owner with respect to such a purchase or transfer or attempted purchase or transfer, including—

(i) exercising the right of the owner of the ammonium nitrate facility to decline sale of ammonium nitrate; and

(ii) notifying appropriate law enforcement entities; and

(C) any such additional subjects as the Secretary determines are appropriate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

(2) USE OF MATERIALS AND PROGRAMS.—In providing guidance under this subsection, the Secretary shall, to the extent practicable, leverage any relevant materials and programs.

(3) NOTIFICATION MATERIALS.—

(A) *IN GENERAL.*—The Secretary shall make available materials suitable for posting at ammonium nitrate facilities where ammonium nitrate is sold.

(B) *DESIGN OF MATERIALS.*—Such materials shall be designed to notify prospective ammonium nitrate purchasers of—

(i) the record-keeping requirements under section 899B; and

(ii) the penalties for violating such requirements.

SEC. 899E. THEFT REPORTING REQUIREMENT.

Any person who is required to comply with section 899B(e) who has knowledge of the theft or unexplained loss of ammonium nitrate shall report such theft or loss to the appropriate Federal law enforcement authorities within one calendar day of the date on which the person becomes aware of such theft or loss. Upon receipt of such report, the relevant Federal authorities shall inform State, local, and tribal law enforcement entities as appropriate.

SEC. 899F. PROHIBITIONS AND PENALTY.

(a) *PROHIBITIONS.*—

(1) *TAKING POSSESSION.*—No person shall take possession of ammonium nitrate from an ammonium nitrate facility unless such person is registered under subsection (c) or (d) of section 899B, or is an agent of a person registered under subsection (c) or (d) of that section.

(2) *TRANSFERRING POSSESSION.*—An owner of an ammonium nitrate facility shall not transfer possession of ammonium nitrate from the ammonium nitrate facility to any person who is not registered under subsection (c) or (d) of section 899B, unless such person is an agent of a person registered under subsection (c) or (d) of that section.

(3) *OTHER PROHIBITIONS.*—No person shall—

(A) buy and take possession of ammonium nitrate without a registration number required under subsection (c) or (d) of section 899B;

(B) own or operate an ammonium nitrate facility without a registration number required under section 899B(c); or

(C) fail to comply with any requirement or violate any other prohibition under this subtitle.

(b) *PROHIBITIONS.*—No person shall—

(1) buy and take possession of ammonium nitrate without a registration number required under subsection (c) or (d) of section 899B;

(2) own or operate an ammonium nitrate facility without a registration number required under section 899B(c); or

(3) fail to comply with any requirement or violate any other prohibition under this subtitle.

(c) *CIVIL PENALTY.*—A person that violates this subtitle may be assessed a civil penalty by the Secretary of not more than \$50,000 per violation.

(d) *PENALTY CONSIDERATIONS.*—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature and circumstances of the violation;

(2) with respect to the person who commits the violation, any history of prior violations, the ability to pay the penalty, and

any effect the penalty is likely to have on the ability of such person to do business; and

(3) any other matter that the Secretary determines that justice requires.

(e) **NOTICE AND OPPORTUNITY FOR A HEARING.**—No civil penalty may be assessed under this subtitle unless the person liable for the penalty has been given notice and an opportunity for a hearing on the violation for which the penalty is to be assessed in the county, parish, or incorporated city of residence of that person.

(f) **DELAY IN APPLICATION OF PROHIBITION.**—Paragraphs (1) and (2) of subsection (a) shall apply beginning 6 months after the issuance by the Secretary of a final rule implementing this subtitle.

SEC. 899G. PROTECTION FROM CIVIL LIABILITY.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, an owner of an ammonium nitrate facility who in good faith refuses to sell or transfer ammonium nitrate to any person, or who in good faith discloses to the Department or to appropriate law enforcement authorities an actual or attempted purchase or transfer, based upon a reasonable belief that the person seeking purchase or transfer of ammonium nitrate may use the ammonium nitrate to create an explosive device to be employed in an act of terrorism (as defined in section 3077 of title 18, United States Code), or to use ammonium nitrate for any other unlawful purpose, shall be immune from civil liability arising from that refusal to sell ammonium nitrate or from making that disclosure.

(b) **LIMITATION.**—Subsection (a) shall not be construed to apply with respect to any refusal to sell or disclosure—

(1) that violates—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); or

(2) made on the basis that the person seeking purchase or transfer of ammonium nitrate is a veteran or member of the armed forces of the United States.

SEC. 899H. PREEMPTION OF OTHER LAWS.

(a) **OTHER FEDERAL REGULATIONS.**—Except as provided in section 899G, nothing in this subtitle affects any regulation issued by any agency other than an agency of the Department.

(b) **STATE LAW.**—Subject to section 899G, this subtitle preempts the laws of any State to the extent that such laws are inconsistent with this subtitle, except that this subtitle shall not preempt any State law that provides additional protection against the acquisition of ammonium nitrate by terrorists or the use of ammonium nitrate in explosives in acts of terrorism or for other illicit purposes, as determined by the Secretary.

SEC. 899I. DEADLINES FOR REGULATIONS.

The Secretary—

(1) shall issue a proposed rule implementing this subtitle within six months after the date of the enactment of this subtitle; and

(2) issue a final rule implementing this subtitle within one year after such date of enactment.

SEC. 899J. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle for fiscal years 2007 through 2011.

* * * * *

MINORITY VIEWS

Preventing the acquisition of ammonium nitrate for use as an explosive in carrying out terrorist attacks has long been a shared priority for the Committee on Homeland Security. While ammonium nitrate is a widely used and highly effective agricultural fertilizer, it can also be utilized to create high yield explosives, and as a result, its acquisition by terrorists poses a serious threat to homeland security. H.R. 1680, which is modeled on legislation originally considered during the 109th Congress, creates a legal framework that prevents terrorists from acquiring this dangerous material, provides law enforcement with the requisite tools for investigating ammonium nitrate incidents, and supports honest retailers in their efforts to prevent terrorism without unduly burdening the legitimate user's ability to access ammonium nitrate.

The need for this legislation is clear. Ammonium nitrate has been the explosive material of choice in a number of acts and attempted acts of terrorism, including the 1995 bombing of the Alfred P. Murrah Federal building in Oklahoma City, Oklahoma; the 1998 United States embassy bombings in Tanzania and Kenya; the Toronto, Canada-based bomb plot thwarted by the Royal Canadian Mounted Police in June 2006; and, most recently, the conspiracy of a London based-terrorist group to engage in acts of terrorism using ammonium nitrate explosive devices throughout the United Kingdom.

While the sale of ammonium nitrate based explosives is regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, the sale of ammonium nitrate based fertilizers is not currently subject to Federal regulations. A handful of States, including New York, California, New Jersey, Nevada, Oklahoma, Missouri, South Carolina, Maryland, and Iowa, have enacted laws regulating the sale ammonium nitrate based fertilizers, but there is currently no Federal nationwide requirement to record or monitor such transactions. This legislation is needed to create a nationwide standard for regulating the sale and transfer of ammonium nitrate based fertilizers.

The text of H.R. 1680 is derived from H.R. 3197, a bipartisan bill which was introduced during the 109th Congress. The Subcommittee on Prevention of Nuclear and Biological Attack held a hearing during the 109th Congress to consider H.R. 3197, discuss security measures appropriate for selling and purchasing ammonium nitrate, and receive testimony on the legislation from homeland security officials, as well as affected industry and agricultural groups. The bill was later marked up by the Subcommittee and the full Committee and reported favorably to the House. Unfortunately, the session ended before H.R. 3197 could be enacted.

We are pleased to see the Committee return to this important issue early in this Congress, given the threat posed by the unregu-

lated accessibility to ammonium nitrate and its history of use as a weapon of terror. During the months since the Committee originally reported the measure, Members have worked on a bipartisan basis to improve and strengthen the bill, and to further our dialogue on the threat that the unregulated sale and transfer of ammonium nitrate poses to homeland security. In crafting the text of H.R. 1680, we worked extensively with our Democrat colleagues to strike a balance between the cost and burden upon industry, agriculture and the consumer, and the enormous price to be paid in terms of lives lost, property damage, and the diminished security of U.S. citizens that could result from terrorist exploitation of uncontrolled access to ammonium nitrate.

Overview and need for an ammonium nitrate purchaser registration requirement

During negotiations with the Majority, Republican Members insisted on a change to the bill requiring those who buy (or otherwise take ownership interest in) and take possession of ammonium nitrate (rather than just sellers and producers of ammonium nitrate), to register with the Secretary of Homeland Security. This provision enables the Department to track not only those who sell ammonium nitrate, but anyone who buys and possesses ammonium nitrate, so that the Department can recognize suspect purchase patterns and readily locate those responsible for such purchases. By tracking all transfers of ammonium nitrate through use of a unique registration number, H.R. 1680 now addresses the issue of a potential terrorist buying limited amounts of ammonium nitrate from multiple retail sources, as opposed to buying a large quantity from one retail outlet, so as not to arouse suspicion. The result of adding the purchaser registration requirement is that such purchases would no longer go unnoticed. This change, insisted on by Republican Members, is a substantial improvement to effectiveness of the bill.

Registration number applicant check against the terrorist watch list

During consideration of H.R. 1680, we were pleased with the Committee's adoption of three Republican amendments to further strengthen the legislation and add an important prevention element to the bill. Most notably, the Committee accepted an amendment offered by Representative Daniel E. Lungren, which requires the Secretary to run checks of applicants for registration numbers required under this Act against the terrorist watch list. Such a check is crucial to the legislation's goal of preventing terrorist acts involving ammonium nitrate. This proposal was initially resisted by many Majority Members of the Committee who sought to delay the implementation of such checks and instead request a study of the issue. Given the immediacy of the threat posed by uncontrolled access to ammonium nitrate, Republican Members succeeded in convincing the Majority that waiting for a study was imprudent and would not provide the terrorism prevention element the bill lacked.

While considering this terrorist watch list amendment, some Members of the Committee also voiced concerns about the potential for mistaken matches or "false hits" against the terrorists watch

lists and the need for an expedited appeals process for applicants for registration numbers who trigger a watchlist match. The Majority's concern over false hits indicates a fundamental misunderstanding of how such terror watch lists check work. The Democrats repeatedly cited the difficulty airline passengers face when their names are mistakenly matched to names on the terrorist watch list, and the difficulties those travelers faced in "removing" their names from the terrorist watch list. Mistaken matches or false hits against the terrorist watch list for air travel passengers is not uncommon because third parties (airlines) run those checks using only a person's first initial and last name. By contrast, checks for applicants for ammonium nitrate registration numbers would be conducted by the Department, which would process checks for applicants using full names and dates of birth or other appropriate identifying information. Because the Lungren amendment would authorize the Department to use additional identifying information, the chances of a mistaken or false hit is extremely small. To put the number of people who will be affected by such false hits in perspective, we can look to the Department's experience in 2005 when it checked HAZMAT endorsement applicants against the terrorist watch list. Out of 2.7 million truck drivers screened against the terrorist watch list, approximately 100 people were flagged as hits against the list. Of those 100 people flagged, only about two dozen people were withheld credentialing (many of those people had already been arrested or deported due to terrorist ties), and the vast majority of those 100 flagged were cleared. Since *far fewer* than 2.7 million will be applying for DHS ammonium nitrate registration numbers, the number of people who will be impacted by false hits against the terrorist watch list will be extremely small, and in fact it could affect no one at all.

The Democrats also articulated concerns that terrorist watch list checks could slow the Department's issuance of registration numbers to applicants and that this could prevent farmers, especially small farmers, from immediately accessing ammonium nitrate for their crops. These concerns are unfounded, as the requirement for a registration number already slightly delays farmers from accessing ammonium nitrate on a moment's notice and because checks against the terrorist watch lists would be conducted by the Department instantaneously as a matter of normal application processing.

During the full Committee markup, when it became clear that there was sufficient support in the Committee for Representative Lungren's terrorist watch list amendment on both sides of the aisle, the Majority abruptly adjourned the markup over concerns about terrorist watch list checks slowing the issuance of registration numbers and the appeals process. When the Committee reconvened the markup nine days later, Representative Lungren withdrew his original amendment and offered a revised amendment, which the Committee adopted by voice vote. This revised amendment maintains the same requirement for the Secretary to perform terrorist watch list checks before issuing a registration number, but imposes general deadlines for the Secretary to process applications and requires an expedited appeals process in the unlikely event there is a mistaken hit against the terrorist watch list. The deadlines are not absolute. The amendment provides the Secretary with

flexibility where such requirements may impact national security or where meeting such deadlines are not practicable given the sensitive nature of the required security checks. The amendment also directs the Secretary to conduct periodic rechecks of registrants against the terrorist watch list and requires registration holders to update their identifying information as appropriate.

H.R. 1680 provides that the requirement for ammonium nitrate purchasers and handlers to hold registration numbers does not take effect for six months after the issuance of final regulations. To minimize the burdens on both the Department and the private sector, the Lungren amendment directs the Secretary to take steps to ensure the maximum number of registrations are processed during this 6-month delay period when processing and appeals deadlines are not applicable.

Civil liability protections for ammonium nitrate sellers

The Committee adopted an amendment offered by Ranking Member Peter T. King to provide sellers of ammonium nitrate immunity from civil liability when they in good faith: (1) refuse to sell or transfer ammonium nitrate to a potential purchaser; or (2) disclose ammonium nitrate purchasing activity to the Department or appropriate law enforcement entities. This civil liability protection is needed to enable ammonium nitrate sellers and transferors to feel comfortable refusing the to sell ammonium nitrate when they see red flags, such as when a purchaser attempts to buy excessive quantities of ammonium nitrate or buys ammonium nitrate out of season. It also encourages retailers to disclose suspect purchases without fear of civil liability. To qualify for the civil liability protection, such refusal and disclosure must be made in good faith and be based upon a reasonable belief that the subject person may use ammonium nitrate to engage in terrorist activity or may otherwise utilize ammonium nitrate for unlawful purposes. This provision encourages the “if you see something, say something” approach necessary to effectively engage the private sector in securing the homeland.

Record-keeping requirement

The Committee adopted an amendment offered by Representative Ginny Brown-Waite during the full Committee markup, which changed the ammonium nitrate record keeping requirement from three years to two years. This amendment helps streamline record-keeping requirements for agricultural retail outlets. Many ammonium nitrate sellers are also in the business of selling restricted use pesticides, and, in many states, such transactions are subject to a two-year, rather than three-year, record-keeping requirement. This amendment is in keeping with our intent for the legislation to minimize impact on the agricultural sector where appropriate.

En bloc amendment

In addition to the three Republican amendments, we are pleased that the Committee adopted the en bloc amendment offered by Chairman Thompson. This amendment makes necessary technical changes to the bill and includes important provisions which make clear that regulations under this legislation would apply to non-

money ammonium nitrate transactions, and not just to buy-sell transactions.

PETER T. KING.
CHRISTOPHER SHAYS.
TOM DAVIS.
CHARLES W. DENT.
GUS M. BILIRAKIS.
LAMAR SMITH.
MARK E. SOUDER.
DANIEL E. LUNGREN.
MICHAEL T. McCAUL.
GINNY BROWN-WAITE.
DAVID DAVIS.

