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GEORGE W. BUSH.

[Pub. L. 116–92, div. E, title LXIV, §6402(a), Dec. 20, 2019, 133 Stat. 2196, amended subsec. (b) of this section by substituting “Director of National Intelligence” for “President”, thereby making the assignment of functions in the memorandum above moot.]

Memorandum of President of the United States, Sept. 8, 2007, 72 F.R. 52279, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting functions of the President under subsections (h) and (j) of section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53) (IRTPA), are hereby assigned to the Director of National Intelligence (Director). The Director shall consult the Secretaries of State, Defense, Energy, Homeland Security, and the Attorney General in performing such functions.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director information that the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Director shall perform such functions in a manner consistent with the President’s constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, and the performance of the Executive’s constitutional duties.

Any reference in this memorandum to the provision of IRTPA shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

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§ 486. Limitation of liability

A person who has completed a security awareness training course approved by or operated under a cooperative agreement with the Department of Homeland Security using funds made available in fiscal year 2006 and thereafter or in any prior appropriations Acts, who is enrolled in a program recognized or acknowledged by an Information Sharing and Analysis Center, and who reports a situation, activity or incident pursuant to that program to an appropriate authority, shall not be liable for damages in any action brought in a Federal or State court which result from any act or omission unless such person is guilty of gross negligence or willful misconduct. (Pub. L. 109–90, title V, §541, Oct. 18, 2005, 119 Stat. 2089.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2006, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART J—SECURE HANDLING OF AMMONIUM NITRATE

§ 488. Definitions

In this part:

(1) Ammonium nitrate

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 488a(b) of this title.

(2) Ammonium nitrate facility

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

(3) Ammonium nitrate purchaser

The term “ammonium nitrate purchaser” means any person who purchases ammonium nitrate from an ammonium nitrate facility.

(Pub. L. 107–296, title VIII, §899A, as added Pub. L. 110–161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2083.)

§ 488a. 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 part to prevent the misappropriation or use of ammonium nitrate in an act of terrorism. Such regulations shall be carried out by the Cybersecurity and Infrastructure Security Agency.

(b) Ammonium nitrate mixtures

Not later than 90 days after December 26, 2007, the Secretary, in consultation with the heads of appropriate Federal departments and agencies (including the Secretary of Agriculture), shall, after notice and an opportunity for comment, establish a threshold percentage for ammonium nitrate in a substance.

(c) Registration of owners of ammonium nitrate facilities

(1) Registration

The Secretary shall establish a process by which any person that—

(A) owns an ammonium nitrate facility is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

(2) Registration information

Any person applying to register under paragraph (1) shall submit to the Secretary—

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

(B) the name of the person designated by that person as the point of contact for each such facility, for purposes of this part; and

(C) 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 any person that—

(A) intends to be an ammonium nitrate purchaser is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

(2) Registration information

Any person applying to register under paragraph (1) as an ammonium nitrate purchaser shall submit to the Secretary—

(A) the name, address, and telephone number of the applicant; and

(B) the intended use of ammonium nitrate to be purchased by the applicant.

(e) Records

(1) Maintenance of records

The owner of an ammonium nitrate facility shall—

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

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

(2) Specific information required

For each sale or transfer of ammonium nitrate, the owner of an ammonium nitrate facility shall—

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

(B) if applicable, record the name, address, and telephone number of an agent acting on behalf of the person described 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 described 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 part a person producing, selling, or purchasing ammonium nitrate exclusively for use in the production of an explosive under a license or permit issued under chapter 40 of title 18.

(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 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 part.

(2) Exception

The Secretary may disclose any information obtained by the Secretary under this part to—

(A) 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

(B) to a State agency under section 488c of this title, under appropriate arrangements to ensure the protection of the information.

(i) Registration procedures and check of terrorist screening database

(1) Registration procedures

(A) Generally

The Secretary shall establish procedures to efficiently receive applications for registration numbers under this part, 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 described in section 488e(f) of this title.

(2) Check of terrorist screening database

(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 in the terrorist screening database of the Department.

(B) Authority to deny registration number

If the identifying information of a person seeking to register with the Department under subsection (c) or (d) appears in the terrorist screening database of the Department, the Secretary may deny issuance of a registration number under this part.

(3) Expedited review of applications

(A) In general

Following the six-month period described in section 488e(f) of this title, the Secretary shall, to the extent practicable, issue or deny registration numbers under this part 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 a person seeking to register with the Department under subsection (c) or (d) of the status of the application of that person 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 part.

(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 any person denied a registration number under this part.

(5) Restrictions on use and maintenance of information**(A) In general**

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.

(B) Sharing of information

Notwithstanding any other provision of this part, 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 part 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 part to update registration information submitted to the Secretary under this part, as appropriate.

(7) Re-checks against terrorist screening database**(A) Re-checks**

The Secretary shall, as appropriate, re-check persons provided a registration number pursuant to this part against the terrorist screening database of the Department, 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 registra-

tion number is revoked under this section and such person shall have an opportunity to appeal, as provided in paragraph (4).

(Pub. L. 107-296, title VIII, §899B, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2084; amended Pub. L. 115-278, §2(g)(5)(B), Nov. 16, 2018, 132 Stat. 4179.)

Editorial Notes

REFERENCES IN TEXT

The USA PATRIOT ACT, referred to in subsec. (h)(1), is Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-278 inserted at end “Such regulations shall be carried out by the Cybersecurity and Infrastructure Security Agency.”

§ 488b. 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 this part or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

(Pub. L. 107-296, title VIII, §899C, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2087.)

§ 488c. 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 part; 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 part.

(b) Delegation**(1) Authority**

The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this part.

(2) Delegation required

At the request of a Governor of a State, the Secretary shall delegate to that State the authority to carry out functions under sections 488a and 488b of this title, 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 delegates functions to a State