

The Office of Infrastructure Protection

National Protection and Programs Directorate
Department of Homeland Security

Public Meeting Concerning the Department's Notice of
Proposed Rulemaking for the Ammonium Nitrate Security
Program

October 2011



Homeland
Security

Statutory Authority

- December 26, 2007 – President signed 2008 Consolidated Appropriations Act that adds Secure Handling of Ammonium Nitrate provisions to the Homeland Security Act
- This statute directs the Department of Homeland Security (DHS) to “regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility...to prevent the misappropriation or use of ammonium nitrate in an act of terrorism”
- Some statutory requirements:
 - Establish threshold quantities of ammonium nitrate in mixtures
 - Register ammonium nitrate facility (AN Facility) owners and ammonium nitrate purchasers (AN Purchasers), and vet these individuals against the Terrorist Screening Database (TSDB)
 - Require AN Facilities to maintain records for two years on ammonium nitrate sale or transfer
 - Inspect/audit records
 - Require AN Facilities to report ammonium nitrate theft or loss

Advance Notice of Proposed Rulemaking

- October 29, 2008 – DHS published an Advance Notice of Proposed Rulemaking (ANPRM)
- Received 32 comments from organizations and individuals:
 - 20 from private companies and trade associations
 - 3 universities
 - 3 government agencies
 - 6 individuals, including one farmer
- The Department has consulted with the following:
 - Multiple Federal agencies, including:
 - The Department of Agriculture (USDA)
 - The Federal Bureau of Investigation’s Explosives Unit
 - The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
 - Multiple State and local governments
 - Industry representatives through listening sessions

Notice of Proposed Rulemaking

- August 3, 2011 – Notice of Proposed Rulemaking (NPRM) was published in *Federal Register*
- NPRM is open for public comment over a 120-day period, until December 1, 2011
- DHS is conducting public meetings in areas of highest ammonium nitrate usage
- Information on these sessions was announced prior to meetings via *Federal Register* notice
 - Partner agencies will also be invited to attend (e.g., ATF, USDA)
 - States were informed of NPRM publication and public meetings, and were invited to participate
- Comments concerning NPRM can be provided orally at public meetings, online, and by mail

Definition of Ammonium Nitrate

- The statute defines ammonium nitrate as:
 - Solid ammonium nitrate that is chiefly the ammonium salt of nitric acid that contains not less than 33% nitrogen by weight
 - Any mixture containing a percentage of ammonium nitrate that is equal to or greater than the percentage as determined by DHS
- DHS proposes covering mixtures containing at least 30% ammonium nitrate by weight
 - This proposal is based on most current detonability studies and consultation with other Federal experts
 - This proposal includes ammonium nitrate mixtures most effectively used in bomb-making

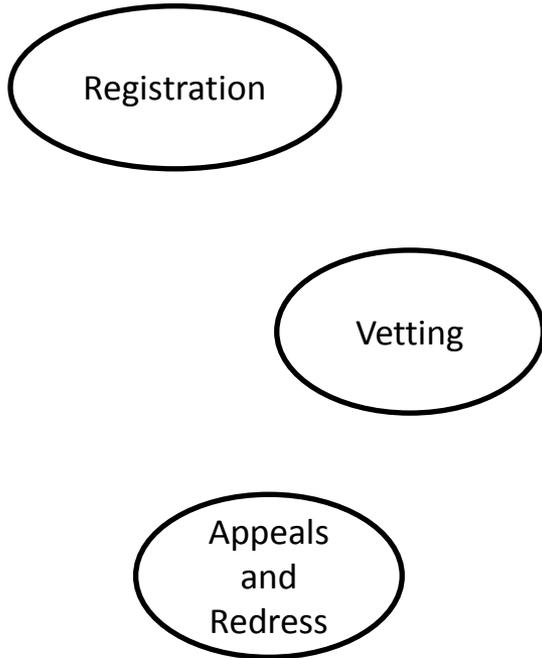
Exemptions

- DHS proposes to exempt:
 - Any quantity of ammonium nitrate weighing less than 25 pounds (ammonium nitrate is primarily sold in 50-pound bags)
 - Cold packs (if regulated may impact retail stores, medical facilities, health care providers, athletic teams, or individuals using cold packs for personal first aid purposes)
- Explosives Exemption:
 - The statute provides DHS the discretion to exempt from regulation persons producing, selling, or purchasing ammonium nitrate exclusively for **the production of an explosive**
 - DHS proposes to exempt mixtures of ammonium nitrate produced, sold, or purchased **that are explosives** (i.e., regulated by ATF)
 - Not exempt from this regulation would be ammonium nitrate or mixtures of ammonium nitrate produced, sold, or purchased **to produce an explosive**

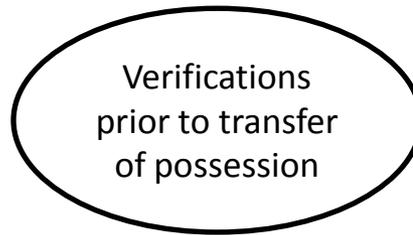


Ammonium Nitrate Security Program Overview

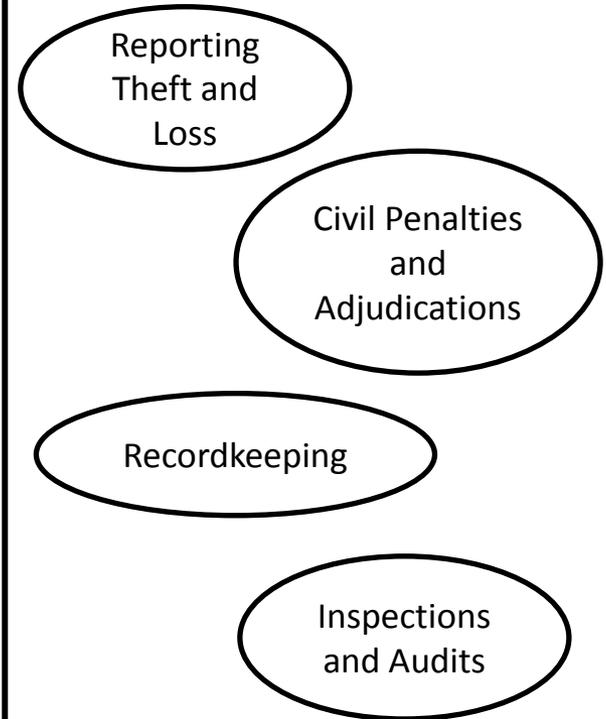
Pre-Sale Activities



Point-of-Sale Activity



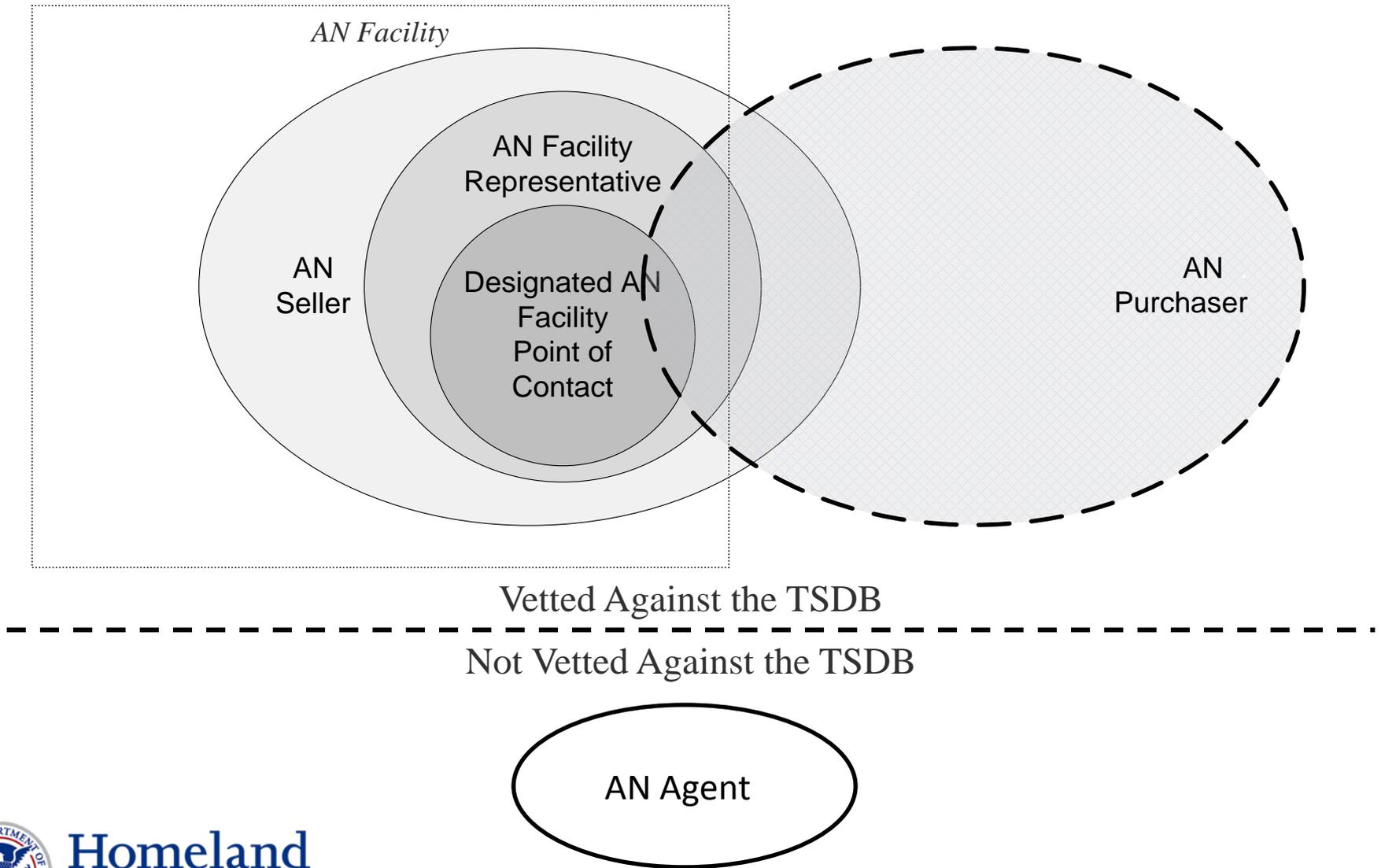
Ongoing and Follow-up Activities



Pre-Sale Activities

- The Secure Handling of Ammonium Nitrate provisions of the Homeland Security Act require AN Purchasers and owners of AN Facilities to register with DHS, be vetted against the TSDB, and obtain registration numbers from DHS
- DHS proposes requiring AN Purchasers and ammonium nitrate sellers (AN Sellers) to register using the Web-based AN User Registration Portal
- Agents acting on behalf of registered AN Purchasers (AN Agents) are not required to be registered and thus will not be compared against the TSDB
- DHS may deny a request for a registration number (AN Registered User Number), or revoke an AN Registered User Number, for the following reasons:
 - The application is incomplete
 - The individual submits false or fraudulent information
 - The individual is determined to be a national security threat as a result of TSDB vetting
- An individual whose AN Registered User Number is denied or revoked may challenge the propriety of denial or revocation

Proposed Program Roles



Proposed Verifications at Point of Sale

- SCENARIO #1: Transfer of possession of ammonium nitrate *does not* involve an AN Agent
 - AN Seller must verify AN Purchaser is registered with DHS
 - AN Seller must verify AN Purchaser identity
- SCENARIO #2: Transfer of possession of ammonium nitrate *does* involve an AN Agent
 - AN Seller must verify AN Purchaser is registered with DHS
 - AN Seller must verify AN Purchaser identity
 - AN Seller must verify AN Agent is authorized by AN Purchaser
 - AN Seller must verify AN Agent identity
 - This scenario allows AN Agents to act on behalf of registered AN Purchasers without being compared against the TSDB



Verifications Involving Transportation of Ammonium Nitrate Under Department's Proposed Rule:

Example 1

- EXAMPLE #1: Delivery of ammonium nitrate from AN Facility to AN Purchaser, made by transporter who is affiliated with the AN Facility and is *not* an AN Agent for the AN Purchaser
 - If the transporter is the only person making the delivery, he would have to be registered as an AN Seller affiliated with the AN Facility from which the ammonium nitrate is being delivered
 - Both the AN Purchaser's identity and registration would have to be verified in this scenario
 - Validity of the AN Purchaser's registration number could be verified by the AN Facility at the time the AN Purchaser makes the purchase (this could be done remotely; e.g., over the phone)
 - The AN Purchaser's identity, however, would have to be verified in person, by means of a check of photo identification at the time of delivery

Verifications Involving Transportation of Ammonium Nitrate Under Department's Proposed Rule:

Example 2

- EXAMPLE #2: Delivery of ammonium nitrate from AN Facility to AN Purchaser, made by transporter who is *not* affiliated with the AN Facility and who is *not* an AN Agent for the AN Purchaser
 - Transporter would have to be vetted by DHS and registered both as an AN Seller and an AN Purchaser
 - AN Facility must verify transporter has valid registration and valid identification before transferring ammonium nitrate to transporter
 - Transporter is acting as an AN Purchaser when he/she picks up ammonium nitrate in this scenario
 - Upon reaching delivery location, transporter must verify that ultimate AN Purchaser has valid registration and valid identification before transferring ammonium nitrate to ultimate AN Purchaser
 - Transporter is acting as an AN Seller when he/she delivers ammonium nitrate to the AN Purchaser in this scenario

Recordkeeping and Records Examination

- Proposed recordkeeping requirements include:
 - Records pertaining to each sale or transfer of ammonium nitrate must be maintained for two years and may be electronic or paper form
 - AN Facilities must take reasonable actions to protect the records
- Proposed inspection and auditing of records requirements include:
 - DHS will conduct periodic inspections at AN Facilities and/or other locations where their records may be kept during regular business hours
 - AN Facilities will generally be given 24-hours notice and records must be made available immediately upon arrival
 - DHS may conduct inspections or audits on less notice under exigent circumstances or when delay might be seriously detrimental to security
 - Records must be provided within 4 hours of inspectors' arrival when less than 24-hours notice is provided

Other Proposed Requirements

- Reporting Theft or Loss
 - DHS proposes that certain AN Sellers (i.e., Designated AN Facility Points of Contact and AN Facility Representatives) must report theft or unexplained loss within 24 hours
 - DHS proposes requiring reports be made to ATF in the same manner currently used for reporting theft or loss of explosives to ATF
- Guidance to AN Facilities
 - DHS plans to issue guidance materials on several topics (e.g., how to identify suspicious activities) as required by the Secure Handling of Ammonium Nitrate provisions of the Homeland Security Act
- Cooperation with State Governments
 - States may apply to DHS to seek delegations of authority to implement this program
 - DHS may also enter into cooperative agreements with States or with the Secretary of USDA to implement this program



Challenges, Adjudications, and Appeals

- DHS has proposed mechanisms for challenging DHS determinations under this program
 - An individual, facility, or entity that receives a civil penalty would have the right to challenge the propriety of the penalty in an administrative adjudication
 - Statute authorizes DHS to issue civil penalties of up to \$50,000 per violation against individuals or facilities/entities for violating the ammonium nitrate rules
 - An individual whose AN Registered User Number is denied or revoked would have the right to challenge the propriety of denial or revocation

Economic Evaluation

- DHS utilized information from the ANPRM outreach, ANPRM listening sessions, and economic census data to estimate potential impacted populations
 - The primary estimate reflects 86,000 purchasing establishments and 4,361 selling establishments
 - Primary estimate reflects 176,000 individuals registering as AN Purchasers and 20,500 individuals registering as AN Sellers
 - An overlap between the AN Purchaser and AN Seller populations exists
- Small Business
 - Costs have been minimized that benefit small businesses directly, through the focusing on flexibility to all parties
 - Economic impacts have been closely tied to business size and transaction volume that will minimize the burden on small business while still implementing the minimum statutory requirements

Public Meeting Sessions (10 a.m. to 2 p.m.)

Tuesday, October 11

JACKSON, MS

Jackson Marriott
200 East Amite Street
Jackson, MS 39201
Windsor Ballroom 1&2

Thursday, October 13

LUBBOCK, TX

Holiday Inn Hotel & Towers
801 Avenue Q
Lubbock, TX 79401
S. Plains Conf. Center

Tuesday, October 18

SACRAMENTO, CA

DoubleTree Hotel Sacramento
2001 Point West Way
Sacramento, CA 95815
Capitol Ballroom Salon B/C

Thursday, October 20

KNOXVILLE, TN

Knoxville Marriott
500 E. Hill Ave
Knoxville, TN 37915
Georgia/Carolina Ballroom



**Homeland
Security**

Public Meeting Sessions (10 a.m. to 2 p.m.) (cont.)

Tuesday, October 25

OVERLAND, KS

Marriott Overland

(Near Kansas City, MO)

10800 Metcalf Ave

Overland Park, KS 66210

Thursday, October 27

OKLAHOMA CITY, OK

Sheraton Oklahoma City Hotel

1N. Broadway Ave

Oklahoma City, OK 73102

Tuesday, November 1

SAVANNAH, GA

Hilton Savannah DeSoto

15 East Liberty Street

Savannah, Georgia 31401-3979

Thursday, November 3

CHARLESTON, WV

Ramada Charleston Downtown

600 Kanawha Blvd. E.

Charleston, WV 25301

Morgan/Baronner/Isacoff

Public Meeting Sessions (10 a.m. to 2 p.m.) (cont.)

Thursday, November 8

MOBILE, AL

Mobile Marriott

3101 Airport Blvd.

Mobile, AL 36606

Magnolia/Camellia Ballroom

Thursday, November 10

WASHINGTON, DC

The Kellogg Conference Center

at Gallaudet University

800 Florida Ave. NE

Washington, DC 20002

Kellogg Auditorium

Tuesday, November 15

DENVER, CO

Grand Hyatt Denver

1750 Welton Street

Denver, CO 80202

Meeting Room (TBD)

For Further Information

- Review the Notice of Proposed Rulemaking for the Ammonium Nitrate Security Program via www.regulations.gov
 - Select document type *proposed rule*
 - Select *Open for Comment/Submission* check box
 - Enter Document ID *2008-0076*
 - Click *Search* Button
 - Scroll down next page
 - Select [Ammonium Nitrate Security Program](#) link
- Go to <http://www.gpoaccess.gov/fr>
 - Enter “page 46908” including “” in Quick Search field
 - Select [Ammonium Nitrate Security Program](#) link
- To review the Privacy Impact Assessment go to http://www.dhs.gov/files/publications/gc_1284567214689.shtm#15
- For Ammonium Nitrate Security Program updates go to
 - www.dhs.gov/ammoniumnitratesecurity

Providing Comments on NPRM

- Provide oral comments at public meetings
- Provide written comments online at www.regulations.gov
 - Select document type *proposed rule*
 - Select *Open for Comment/Submission* check box
 - Enter Document ID *2008-0076*
 - Click *Search* button
 - Scroll down next page
 - Select [Submit a Comment](#) link under *Action* tab for Ammonium Nitrate Security Program
 - Enter requested contact information and comment
- Provide written comments online at <http://federalregister.gov/a/2011-19313>
- Provide written comments by mail to:
 - U.S. Department of Homeland Security
National Protection and Programs Directorate
Infrastructure Security Compliance Division (NPPD/ISCD)
245 Murray Lane, S.W., Mail Stop 0610
Arlington, VA 20598-0610



Contact Information

- U.S. Mail
 - U.S. Department of Homeland Security
National Protection and Programs Directorate
Infrastructure Security Compliance Division
245 Murray Lane, S.W., Mail Stop 0610
Arlington, VA 20598-0610
- Email
 - AmmoniumNitrate@hq.dhs.gov
- Phone
 - (703) 235-5263



Homeland Security