

a “dirty bomb.” The report notes that the Attorney General has stated that suicide bombings and car bombings could be the next line of attack by terrorists in the United States.

As noted by Senator Kohl during consideration of the Act in the Senate:

Most Americans would be stunned to learn that in some States it is easier to get enough explosives to take down a house than it is to buy a gun, get a driver's license, or even obtain a fishing license. Currently, it is too easy for would be terrorists and criminals to obtain explosive materials. Although permits are required for interstate purchases of explosives, there are no current uniform national limitations on the purchase of explosives within a single State by a resident of that State. * * * We must take all possible steps to keep deadly explosives out of the hands of dangerous individuals seeking to threaten our livelihood and security. The Safe Explosives Act is critical legislation, supported by the administration. It is designed solely to [sic] the interest of public safety. It will significantly enhance our efforts to limit the proliferation of explosives to would be terrorists and criminals. It will close a loophole that could potentially cause mass destruction of property and life.

148 Cong. Rec. S 11374, 11391–11394, Vol. 148, No. 150 (November 19, 2002)

Effective Dates for the Provisions of the Safe Explosives Act

A. Provisions Effective January 24, 2003

The following provisions of the Act became effective January 24, 2003:

- Adding three new categories of persons who may not lawfully receive or possess explosive materials;
- Broadening the interstate commerce element of the prohibited persons section of the law to specify that a violation is committed if possession of explosive materials affects interstate or foreign commerce;
- Providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product;
- Broadening the scope of a criminal violation of the law to include any institution or organization receiving Federal financial assistance within the categories of property covered by the violation;
- Expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons; and
- Adding a new theft-reporting violation, providing felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery.

B. Provisions Effective May 24, 2003

The following provisions of the Act become effective May 24, 2003:

- The requirement that all persons receiving explosives obtain a Federal license or permit, and the creation of a new type of permit, the “limited permit;”
- The requirement that applicants for licenses and permits provide as part of their application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of “responsible persons;”
- The extension of the time for ATF to act on an application for a license or permit from 45 days to 90 days;
- The authorization for warrantless inspections of places of storage for applicants for limited permits and holders of limited permits;
- The provision that only licensees and holders of user permits must post their licenses and permits and make them available for inspection; and
- The requirement that ATF conduct background checks on responsible persons and employees authorized to possess explosive materials.

Changes to Explosives Laws and Regulations

The new statutory provisions and the regulatory changes necessitated by the law are as follows:

I. Limited Permit

The Act amended the Federal explosives laws in 18 U.S.C. Chapter 40 to require that all persons receiving explosives on and after the effective date (May 24, 2003) obtain a Federal permit. Existing law provides for a “user permit” that is necessary only if the holder transports, ships, or receives explosive materials in interstate or foreign commerce. The Act creates an additional type of permit, the “limited permit,” that will authorize the holder to receive explosive materials only within his State of residence on no more than 6 separate occasions during the one-year period of the permit. The interim regulations specify that the term “6 separate occasions” means six deliveries of explosive materials. Each delivery must relate to a single purchase transaction and be documented on only one ATF Form 5400.4, Limited Permittee Transaction Report; be referenced on a single commercial invoice or purchase order; and be delivered in one shipment to the purchaser.

ATF Ruling 76–10 (1976–ATF C.B. 105) holds that a single Form 5400.4

may be used for a series of deliveries of explosive materials made over a 30-day period. Since that ruling is inconsistent with the definition of “6 separate occasions” set forth in this rule, it will become obsolete as of May 24, 2003.

Section 845, title 18 U.S.C., and implementing regulations at section 555.141, provide that the law and regulations, except for certain specified criminal violations, do not apply to activities and products specified therein. Among the exemptions listed are black powder (50 pounds for sporting and other limited purposes); small arms ammunition and components; Government agencies; and consumer fireworks. These exemptions are not changed by the Act or this interim rule.

The Act also provides that the maximum fee to be charged for the limited permit is \$50 for a one-year period, and the renewal fee may not exceed one-half the original fee.

Regulations that implement these provisions of the Act are in §§ 555.26, 555.27, 555.43, 555.45, 555.102, 555.103, 555.105, 555.106, 555.125, and 555.126.

A. Section 555.26 (Prohibited Shipment, Transportation, Receipt, Possession, or Distribution of Explosive Materials)

Section 555.26 has been amended to describe activities that are not authorized by a limited permit. Specifically, the section prescribes, in accordance with the provisions of the Act, that holders of limited permits may not transport, ship, cause to be transported or receive explosive materials in interstate or foreign commerce. Holders of limited permits may receive explosives only from distributors located in the permit-holder's State of residence and such receipt of explosive materials may occur no more than six times during the one-year duration of the limited permit. Persons seeking to acquire explosive materials more frequently or seeking to acquire or transport explosive materials in interstate commerce must obtain a Federal explosives license or user permit.

This section has also been amended to reflect the newly expanded categories of persons prohibited from shipping, transporting, receiving, and possessing explosive materials. Newly added “prohibited categories” include illegal and nonimmigrant aliens, persons who have been discharged from the armed forces under dishonorable conditions, and persons who have renounced their United States citizenship. Section 555.106 has been amended to reflect these new categories as well, in the