

rule provides preventative tools to increase public safety and security. Moreover, the required background checks may help to ensure that would-be terrorists are not permitted to obtain explosive materials for illicit use.

Prior to enactment, ATF did not have the authority to verify that persons, except licensees and permittees, properly stored explosive materials. The Act requires that all persons who wish to acquire explosive materials obtain, at minimum, a "limited permit," and that ATF verify the storage facilities of all licensees and permittees. This mandate authorizes ATF to verify that explosive materials are securely stored and that storage of explosive materials does not pose a threat to public safety.

3. Assessment

The public security and safety benefits of this rule outweigh its costs. As stated above, the costs are minimal, affect a small sector of the economy, and in some cases represent pre-existing requirements (e.g., storage).

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, ATF has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988: Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Administrative Procedure Act (APA)

Immediate implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the exceptions found at 5 U.S.C. 553(b)(A), (b)(B), and (d). The Safe Explosives Act was enacted in response to the terrorist attacks of September 11, 2001. Its provisions close numerous gaps in Federal law to prevent the threat of the use of explosives in future acts of terrorism. Issuance of a notice of proposed rulemaking followed by a comment period, consideration of the comments, and publication of a final rule would delay implementation of these important security and safety provisions. In addition, the effective date for certain provisions of the Safe

Explosives Act was January 24, 2003, only 60 days after enactment, with the remaining provisions effective on May 24, 2003. The explosives industry needs immediate guidance to comply with the statute. For example, industry members will need to determine whether any of their employees are prohibited from possessing explosives under the new prohibited person categories added to 18 U.S.C. 842(i). In addition, the explosives industry, responsible persons, employees who possess explosives in the course of their employment, and members of the general public need immediate guidance on the procedures for applying for relief from explosives disabilities under 18 U.S.C. 845(b). It is also necessary to provide immediate guidance concerning the limited permit provisions of the law to give persons who may require such a permit time to learn the new requirements of the law, determine whether they should obtain a limited permit or a user permit, and file an application to avoid conduct which will be unlawful after the applicable effective date.

The portion of this interim rule that reflects agency organization, procedure and practice is exempt under section 553(b)(A) of the APA. With respect to the portion of this interim rule that makes technical amendments, there is good cause for a finding that notice and public procedure is unnecessary and contrary to the public interest pursuant to section 553(b)(B) of the APA. With respect to the remainder of this interim rule, there is good cause for a finding that notice and public procedure is impracticable and contrary to the public interest, pursuant to section 553(b)(B) of the APA. The due and timely execution of the agency's responsibilities in implementing the Safe Explosives Act would be unavoidably impeded by a time-consuming notice and comment period. For the reasons stated above, there is also good cause for a finding that this interim rule is exempt from the effective date limitations under section 553(d).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Director, Bureau of Alcohol, Tobacco, Firearms and

Explosives, has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect persons who hold a Federal explosives license as a manufacturer or importer of, or dealer in, explosive materials. It will also affect persons who hold Federal user permits that authorize them to obtain explosives in interstate or foreign commerce. Users include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect infrequent or occasional users who obtain explosive materials within their State of residence. The foregoing would include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect "responsible persons" affiliated with Federal explosives licensees and permittees, as well as employees authorized by a licensee or permittee to possess explosive materials in the course of their employment. Finally, the rule will affect individuals subject to Federal explosives disabilities under 18 U.S.C. 842(i).

Although a number of the persons affected by the rule may be small businesses, many of these businesses already hold Federal explosives licenses and permits and, therefore, the economic impact upon these businesses will not be significant. Moreover, the requirement for businesses to comply with the requirements of the rule is a statutory mandate that ATF must implement. The rule will improve ATF's service to the explosives industry and the general public by setting forth clear procedures for obtaining a license or permit under the new provisions of the law, by setting forth definitive criteria for conducting background checks, and by providing a thorough description of the relief from disabilities provisions of 18 U.S.C. 845(b). The obligations placed on limited permittees under the provisions of the interim rule are only those necessary to ensure that such persons are not prohibited from possessing explosives and to limit their access to explosives in accordance with the restrictions in the law. The rule has been drafted to impose as few obstacles as possible to the acquisition of explosive materials by these infrequent, intrastate users.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small