

ANTI-TERRORISM EXPLOSIVES ACT OF 2002

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

OF THE

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HOUSE OF REPRESENTATIVES

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ANTI-TERRORISM EXPLOSIVES ACT OF 2002

TUESDAY, JUNE 11, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:34 p.m., in Room 2237, Rayburn House Office Building, Hon. Mark Green, Vice Chairman of the Subcommittee, presiding.

Mr. GREEN. The Subcommittee on Crime, Terrorism, and Homeland Security will come to order.

I am going to recognize myself and other Members for opening statement. Once Members have had an opportunity to offer statements, I look forward to hearing from our witnesses today.

Yesterday, the FBI announced it had uncovered a plot to unleash a dirty bomb, a bomb made of a combination of explosive and radioactive materials of an unsuspecting city, possibly our own Nation's capital. While we wish that this discovery was shocking, since September 11, 2002 [sic], our country has lived in the shadow of these threats. As we watch the terrorist attacks occurring in Israel on almost a daily basis, we have become increasingly aware of the damage and devastation that explosives can cause.

The Congress has passed already numerous bills, on a bipartisan basis, since last fall, to try to protect this country from terrorist threats. We have passed legislation to improve security at airports and ensure the safety of airline passengers. We have passed legislation to improve security at laboratories that work with dangerous biological agents and toxins. We have voted on and passed legislation to improve security at our borders and to restructure the INS. All of these bills had one goal in mind; namely, protecting the citizens of this country from further terrorist activity.

Today we are here to discuss and markup another piece of legislation aimed at protecting our citizens. The Anti-Terrorism Explosives Act of 2002 provides tighter security for explosive materials and increased security measures for purchasers and possessors of explosives by requiring all persons who wish to obtain explosives, even for limited use, to obtain some type of permit.

The legislation expands the lists of persons who are prohibited from shipping, receiving or possessing explosive materials. It also requires companies that applied to the Bureau of Alcohol, Tobacco and Firearms, the ATF, for a permit to possess, use or transfer explosives, to submit a list of all employees who have responsibility for or will have possession of explosive materials for a background

check. Explosives manufacturers are also required under this legislation to provide ATF with a sample of their explosives to facilitate the tracking of these materials.

We have three witnesses here today to discuss the importance of this legislation, and I look forward to their testimony.

The chair now recognizes Mr. Scott for an opening statement.

Mr. SCOTT. Thank you, Mr. Chairman. I am pleased to join you in convening the hearing on H.R. 4864, the Anti-Terrorism Explosives Act of 2002. In this post-9/11 context, this legislation appears to be a reasonable way to regulate access to explosives, while allowing for relatively unfettered use of such for mining, road-building and fireworks displays.

Though not exactly the same, the restrictions are similar to those on access to firearms. While I understand that there are interests in seeing a closer parallel to the statutory scheme with the one we have for firearms, no opposition to this legislation has been expressed to me, and no one sought an opportunity to testify in the witness slot customarily reserved to opposition to the legislation.

So, Mr. Chairman, I appreciate your holding this hearing as a way for interested parties to have an opportunity to assess the legislation through the normal legislative process, and I look forward to hearing from the witnesses.

Thank you.

Mr. GREEN. Thank you, Mr. Scott.

Any other witnesses or any other Members who would like to make an opening statement?

Mr. Coble?

Mr. COBLE. Mr. Chairman, no formal statement. I will just reiterate what you and Mr. Scott have said. Given the climate in which we live now, and have lived since 9/11, I think this is probably a very sound approach for us to take.

Mr. GREEN. Mr. Keller, do you have an opening statement?

Mr. KELLER. No, Mr. Chairman.

Mr. GREEN. If not, I will leave the record open for other Members to submit a statement.

I would now like to welcome the witnesses for today's hearing. Our first witness is the Honorable Kenneth Lawson, Assistant Secretary of Enforcement at the U.S. Department of the Treasury.

Our next witness will be the Director of the ATF, Bradley A. Buckles.

Our final witness of the day will be Mr. Christopher Ronay, president of the Institute of Makers of Explosives.

Gentleman, welcome, and Mr. Lawson, if you would like to begin.

STATEMENT OF HONORABLE KENNETH LAWSON, ASSISTANT SECRETARY OF ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY

Mr. LAWSON. Thank you, sir.

I thank the Chairman and Members of the Subcommittee for providing me the opportunity to appear before you today to express the Administration's support for the promising explosives initiative incorporated in H.R. 4864 that will reduce the potential criminal and terrorist misuse of explosive materials.

Treasury is proud to support the efforts in this arena to protect America. The law enforcement bureaus within the Department provide an array of enforcement activities to protect and serve this country. Over the last 9 months, at the direction of the President, we have refocused our attention on the tools used by those who wish to harm our citizens. The mission of the Bureau of Alcohol, Tobacco and Firearms provides for reducing violent crime, collecting revenue and protecting the public. ATF has been at the forefront of protecting our country from the ravages of crime on our streets.

Today, our attention is on ATF's mission to prevent explosives from being used as a tool used by terrorists and other violent criminals.

The bill before you today will greatly enhance ATF's ability to deter and investigate bombings and protect the public from unsafe storage of explosive materials. Current law requires that persons importing and distributing and manufacturing explosives have proper licenses and criminal background checks. However, there is no requirement that persons acquiring explosives intrastate be subject to criminal background checks.

Events of the recent past demonstrate the need to conduct background checks on persons who possess explosives. H.R. 4864 provides for this and recognizes there are categories of prohibited persons already deemed by Congress to be too dangerous to possess firearms and extends those prohibitions to possession of explosive materials.

We do not wish to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition and possession, storage or use of explosive materials for lawful purposes. We seek only to close a dangerous loophole that puts all of us at risk. Limited permittees will retain their ability to acquire explosive materials in their State, undergoing the same background checks as all others.

This bill ensures that anyone who may have the opportunity to possess explosives will undergo a criminal background check. Given the increasingly unstable state of affairs in our world today, unchecked access to explosives is unacceptable.

With this bill, persons who import or manufacture explosives or ammonium nitrate must provide samples of their products to ATF. This catalog of information will provide a valuable investigative tool to ATF. With a storehouse of information, ATF has the opportunity to solve, and perhaps prevent, future criminal and terrorist acts using explosives.

Provisions set forth in this bill, which Director Buckles will further explain, will give the men and women of ATF the tools they need to face the threat of future attacks on American soil.

Once again, I thank you, and I appreciate this time to testify. I would be pleased to answer any questions at the appropriate time.

Mr. GREEN. Thank you, Mr. Lawson.

Mr. Buckles?

**STATEMENT OF BRADLEY A. BUCKLES, DIRECTOR,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. BUCKLES. Thank you, Mr. Chairman, Mr. Scott, Mr. Coble, Mr. Keller. I have submitted a detailed statement for the record, and I will keep these remarks somewhat brief to keep the hearing moving.

I welcome this opportunity to appear today to discuss the promising explosives initiatives that would reduce the potential for criminal and terrorist misuse of explosive materials. The legislative proposal before you contains practical, common-sense provisions that would greatly strengthen our ability to deter illegal use of explosives and prevent persons who should not possess explosives from doing so.

ATF contributes to the Nation's fight against terrorism by enforcing the regulations affecting the legal commerce of explosives, as well as the criminal statutes against illegal use of these commodities. We are all too aware that domestic and international terrorists often employ explosives as tools of their criminal actions.

There are currently just under 9,000 explosives, importers, manufacturers, dealers and users regulated under licenses and permits issued by ATF. Federal law regulates the sale and distribution of explosives to the end user and enforces Federal standards governing the safe and secure storage of explosives.

In fiscal year 2001, we were able to conduct compliance inspections at just over half the regulated businesses. Since September 11, we have conducted additional limited security inspections at just over 7,400 licensee and permittee locations.

Additionally, in fiscal year 2001, ATF opened 881 explosives investigations, referred 271 cases for prosecution and obtained 295 convictions for explosives violation. This represents a 22-percent increase in investigations and a 36-percent increase in the cases referred for prosecution, and a 235-percent increase in convictions over fiscal year 2000.

Under the explosives laws, it is unlawful for felons and persons under indictments, drug users and persons who have been committed/convicted to mental institutions from purchasing or possessing explosives. At a time when every firearms purchaser is subject to a background check, in the case of explosives today, we rely on a process that hopes that dishonorable people will abide by honor code. An explosives purchaser must simply sign a form swearing that he's not prohibited. That form is filed with the dealer and no check is done to verify the information that's provided.

Additionally, Federal firearms laws prohibit felons and others from acquiring firearms, but they also have additional categories that are not covered by the explosives laws. Those categories include persons who have been dishonorably discharged from the military, persons who have renounced their citizenship and persons who are illegally in the United States. These same categories of persons are not prohibited from purchasing explosives materials today. The very people who may most likely have a nexus to terrorism can walk into a distributor today, fill out the required paperwork and obtain explosives. It's as simple as that.

The legislation before you would address both weaknesses in the process and in the categories of persons that are prohibited from

buying explosives. The law, as you recognized earlier, will also provide critical investigative and support tools for ATF in fighting explosives by enhancing our ability to analyze explosives residue and provide technical expertise to other agencies investigating bombings.

ATF has worked closely with the explosives manufacturers over the years, and their dedication to responsible distribution, safe use, and safe and secure storage of explosive materials has been steadfast. They have been excellent partners in our efforts to keep America safe. However, none of their efforts and none of the important features of existing law can be successful in a system that does not scrutinize the ultimate purchaser of explosives.

No piece of legislation can guarantee that explosives will not fall into the wrong hands, but we should not have a system that makes it easy.

I look forward to working with the Committee to further our mutual goals in keeping America safe, and I'd like to express my sincere appreciation for the support that this Committee has provided ATF, and I'd be pleased to answer any questions you have at the appropriate time.

[The prepared statement of Mr. Buckles follows:]

PREPARED STATEMENT OF BRADLEY A. BUCKLES

Thank you, Mr. Chairman, Mr. Scott and members of the Subcommittee. I am grateful to Chairman Smith for scheduling this hearing. I welcome the opportunity to discuss this important legislation addressing explosives.

The legislation before you contains practical, common sense provisions, which, if enacted into law, will significantly strengthen current Federal oversight responsibilities on explosives controls. It will also enhance our ability to deter, prevent, and identify individuals who illegally misuse or acquire explosives. This proposal provides new and strong measures to ensure that only persons who are legally entitled to possess explosives can do so, thereby enhancing our overall National efforts to combat terrorism.

NEED FOR ADDITIONAL AUTHORITY

We know that firearms, arson, and explosives are the most common tools of violent criminals and terrorists. However, under current Federal law, we have an "honor" system for explosives acquisition. Any individual may go into an explosives dealer's place of business within a State of residence and purchase virtually any quantity or type of explosives without a background check. As you know, background checks are currently required by law for firearms purchases. Federal firearms laws also prohibit non-immigrant or illegal aliens from purchasing or possessing firearms. It is not unlawful for these aliens to acquire or possess explosives. The legislation being considered by the Subcommittee would address both of these weaknesses in the Federal explosives laws.

Specifically, H.R. 4864 would require all purchasers of explosives to obtain a permit from ATF. A permit would be issued only to individuals who are properly identified and subjected to a thorough background check. This will ensure that prohibited categories of persons cannot acquire or possess explosives through legal distribution channels. Permits under existing law are required only for interstate purchases. This bill would extend the permit requirement to intrastate transactions. Although some States have enacted controls over intrastate purchases, they are not uniform and do not present a comprehensive solution as does the legislation before you today.

H.R.4864 will also provide for additional screening of all employees who will possess explosive materials, so that ATF can verify that these individuals are not prohibited from receiving or possessing explosives. Under current law, it is possible for terrorists and criminals to obtain access to explosive materials by obtaining jobs (such as driving trucks) with companies or individuals who are explosives licensees.

The legislation further recognizes the distinction between occasional users of explosives and frequent users by creating a new "limited user" permit for those who

anticipate only infrequent purchases. Occasional users with an intrastate purchaser's permit would be allowed to make no more than four purchases of explosives within a 12-month period and the permit would only be valid for purchases within the purchaser's State of residence. While limited permit holders must pass the background check like all other license or permit applicants, they would not be subject to warrantless compliance inspections that are required for holders of regular user permits.

This legislation also expands the list of individuals who are prohibited from purchasing or possessing explosives to include certain aliens other than lawful permanent residents, persons dishonorably discharged from the military, and persons who have renounced their U.S. citizenship. Congress has already determined that the possession of firearms by the above categories of people is dangerous to society. In order to combat terrorism and other violent crime, it is essential that Federal law prohibit the receipt or possession of explosive materials by such individuals already deemed too dangerous to possess firearms. These additions to the list of prohibited persons brings the explosives law in line with most categories of prohibited persons under the Gun Control Act.

The legislation also would enhance ATF's ability to solve criminal cases involving explosives by requiring explosives manufacturers and importers, as well as persons who manufacture or import ammonium nitrate, to provide to ATF, upon request, samples of, or chemical information on, the products they manufacture or import. This will essentially enable us to create a library with which to identify explosives materials, increase our investigative capabilities, and produce a greater body of scientific and research data available for use by the law enforcement and intelligence communities, nationwide and worldwide. Such information is essential to ATF's ability to prevent and solve bombings and to trace explosive materials used in terrorist activities and other violent crimes by matching residue with the manufacturers' samples.

This provision would further augment the capabilities of ATF's National Arson and Explosives Repository, in that it will assist us in analyzing unusual sales and thefts for trends and patterns that may indicate criminal misuse of explosives or illegal trafficking. This proactive approach will complement existing homeland security efforts.

Finally, the legislative package includes a provision restoring the ability of ATF and Federal law enforcement to investigate and prosecute those who use explosives to damage the property of institutions receiving Federal financial assistance, such as hospitals and laboratories.

We fully anticipate the need for additional resources to implement this legislation, if enacted. We are currently evaluating what those specific needs will be and will continue to coordinate the resource requirements with OMB for submission to Congress.

In summary, we believe the legislative package under consideration today would greatly enhance our current efforts to prevent the illegal and criminal diversion and misuse of explosive materials.

REGULATION AND INSPECTION OF THE EXPLOSIVES INDUSTRY

In order to put these legislative proposals in context, I would like to provide some background on ATF's current regulatory and investigative efforts involving explosives.

ATF regulates the commerce in explosives by licensing and inspecting importers, manufacturers, dealers, and persons acquiring or transporting explosive materials in interstate or foreign commerce. As a part of its regular inspection program, ATF inspects explosives storage facilities and the records of acquisition and disposition that licensees and permittees are required to maintain. ATF is able to trace explosive materials using these records.

Explosives storage facilities are inspected to ensure that explosive materials are properly secured against theft and located at minimum prescribed distances from inhabited buildings, public roads, and passenger railroads.

Under current law, any person who has knowledge of the theft or loss of explosive materials from his stock must report the theft or loss to ATF within 24 hours of discovery.

Following the September 11 terrorist attacks, ATF sent a letter urging all explosives licensees and permittees to take immediate measures to secure their explosives inventories. Between October and December 2001, ATF field personnel conducted 7,459 inspections of explosives licensees/permittees (out of a total of 9,400). ATF personnel encouraged the proprietors to report thefts, losses, or suspicious activity to ATF and the appropriate local authorities. ATF carried out these inspec-

tions to gauge internal security controls and report any unusual purchase attempts, break-ins, or any other anomalies that would indicate a breach to security.

In connection with the 7,459 inspections, ATF uncovered over 200 possible criminal violations. We also found

1,763 violations in recordkeeping, storage, and the conduct of business. Follow-up inspections will be required to ensure that corrective actions have been taken. In one instance, we revoked the license of a company which did not properly store approximately 4 million pounds of explosives materials. During the first half of Fiscal Year (FY) 2002, ATF identified and corrected 486 violations as a result of these inspections.

In addition to the inspections of explosives industry members after the September 11 attacks, ATF inspectors carried a considerable workload throughout the year, helping to ensure the lawful storage of explosives materials. In FY 01, inspectors completed 5,032 full inspections, which encompassed explosives application and compliance inspections. ATF opened investigations on 58 explosives thefts in FY 01, and ATF's Arson and Explosives National Repository Branch (AENRB) recorded the thefts of nearly 50,000 pounds of explosives and the recovery of over 12,000 pounds.

ATF'S ROLE IN COMBATING TERRORISM

As with all law enforcement agencies in the United States today, ATF faces an unprecedented challenge. Our world in 2002 is very different than it was a year ago. The magnitude and effect of the attacks of September 11 cannot be measured, but we are committed to doing everything in our power to ensure the safety of all Americans from future attacks.

In response, ATF has aligned its priorities to the current priorities of the President and the Nation—anti-terrorism. ATF is charged with the responsibility of preventing terrorists from acquiring firearms and explosives. ATF's statutory mandates and unparalleled investigative expertise place us in the forefront of this National effort.

Before and since September 11, ATF has been an active partner with other Federal, State and local law enforcement agencies in combating terrorism. From illegal arms smuggling cases, to virtually every major bombing such as the 1993 World Trade Center bombing, the Oklahoma City Federal building bombing, and the Atlanta Olympics Centennial Park Bombing, ATF has played a significant role, lending its unique expertise to these investigations.

ATF's role in investigating the illegal use of firearms dates back to 1934, with the enactment of the National Firearms Act. Under this law, the Secretary of the Treasury was directed to impose controls on machine guns, short-barreled weapons, and other dangerous weapons. The NFA was subsequently amended to include controls on "destructive devices." The term "destructive device" includes bombs, grenades, and mines. This authority was delegated to ATF's predecessor bureau within the Internal Revenue Service. Subsequently, the Organized Crime Control Act of 1970, under 18 U.S.C. Section 846, gave the Secretary of the Treasury investigative jurisdiction with respect to Federal explosives laws, also delegated to ATF.

ATF RESOURCES IN COMBATING TERRORISM

ATF employs a wide array of resources in the investigation of explosives incidents. ATF is addressing violent arson and explosives-related crimes through enforcement and training. ATF's arson and explosives programs provide a comprehensive proactive and reactive force in the fight to protect the American public from the criminal use of fire and explosives. Through these programs, ATF personnel work to prevent criminal and terrorist activity involving explosives at nearly every level of the regulatory and investigative process. ATF's focus on arson and explosives crimes continues to be a major Bureau priority.

Explosives Enforcement

In FY 01, ATF submitted 220 explosives cases for prosecution, of which 303 defendants were recommended for prosecution. Highlighted below are examples of ATF expertise and resources brought to bear in support of explosives investigations.

Our National Response Teams (NRTs) are comprised of highly trained and well-equipped professionals that can be deployed within 24 hours to major explosion and fire scenes anywhere in the United States. The teams are comprised of ATF's most experienced fire and explosives investigators and supported by state-of-the-art forensic laboratory equipment, chemists, accelerant or explosives-detecting canines, and intelligence resources. There have been 521 activations of the NRTs since 1978, the year of their inception. The NRTs were activated 26 times in FY 01 to investigate major fire and explosives incidents. These 26 activations involved 194 deaths, 24 in-

juries, and nearly \$35.8 million in estimated property damages. An ATF NRT responded to the September 11, attack on the Pentagon as well. As of May 3, 2002, there have been 19 NRT activations.

In addition to investigating fire and explosives incidents, the NRTs provide assistance to other Federal, State, and local law enforcement agencies during special events. In fiscal years 2001 and 2002, the NRT provided support at the Special Olympics in Anchorage, the Asian Bank Conference in Honolulu, the Presidential Inauguration, and most recently, the Winter Olympics in Salt Lake City.

ATF's International Response Team (IRT) participates with the Diplomatic Security Service of the Department of State to provide investigative assistance at international explosives and fire incidents. There have been 21 IRT activations since its inception in 1991. The team has responded to vehicle bombings in Peru and Macedonia, explosions in Argentina targeting the Israeli Embassy, and incidents in El Salvador, Ecuador, Surinam, Pakistan, Grenada, and Korea. In 2001, the IRT was activated three times to assist foreign governments in explosives investigations and fire scene examinations.

Also participating in many of these incidents were ATF's Explosives Enforcement Officers (EEOs). EEOs conduct explosives operations in support of ATF investigative efforts. They conduct render-safe procedures of improvised explosive devices, perform underwater explosives recoveries, make destructive device determinations and testify about these determinations in court, as well as participate in foreign country explosives capability assessments. These EEOs operate the "ARTS-V," the only fully functional remote transport vehicle-bomb disruption system designed to disrupt, at a safe distance, car and truck bombs too large to defeat by traditional methods. In FY 01, ATF EEOs traveled with the Department of State's Antiterrorism Assistance Team to assess the capabilities of 10 foreign countries to respond to terrorist or explosives incidents. In addition, the EEOs participated in each National and International Response Team callout, testified in criminal proceedings 24 times, rendered 237 technical assists, wrote 389 technical statements, and performed many other tasks in support of ATF's explosives mission.

ATF also relies on our Special Agent Certified Explosives Specialists (SACES) in combating terrorism and violent crime. Our SACES are trained to identify explosive devices. Additionally, they provide explosives technical support and assistance in explosives-related matters in the field, and are trained to assess destructive devices.

The ATF laboratories support investigations by offering scientific forensic services in the areas of alcohol, tobacco, arson, explosives, trace evidence, questioned documents, fingerprints, firearms, toolmarks, and automated ballistic identification (NIBIN).

ATF has forensic laboratories in Atlanta, San Francisco, and the Washington, DC, metro area. A new Fire Research Center under construction in the Washington, DC, metro area is scheduled for completion in March of 2003. ATF's laboratory service is composed of over 130 chemists, forensic examiners, and support personnel. ATF laboratories, the first Federal accredited laboratories, are the only Federal accredited explosives laboratories in the United States, accredited by the American Society of Crime Laboratory Directors.

ATF has more personnel trained and experienced in examining fire and explosives evidence than any other laboratory in the United States. Over 70 chemists and forensic examiners are available to provide support from their respective laboratory sites. The personnel from these laboratories assist in the collection of evidence at fire and explosives scenes and examine it to identify accelerants, incendiary device components, and destructive device components. Evidence collected at the site of an explosion is examined to identify the explosives used and to identify blasting caps, leg wires, fuses, timing mechanisms, energy sources, igniters, tape, and other components used to construct the device. The ATF laboratories house the only complete library of smokeless powder samples in existence.

In 1996, Congress, recognizing ATF's expertise in the investigation of fire/arson and explosives-related incidents, passed legislation authorizing the Secretary of the Treasury to establish a National Repository for information regarding arson incidents and the actual and suspected criminal misuse of explosives throughout the United States.

The Arson and Explosives National Repository Branch (AENRB) maintains a state-of-the-art database that contains detailed information on over 112,000 arson and explosives incidents. This database, the Arson and Explosives Incidents System (AEXIS), is used to trace stolen and recovered explosive material and military ordnance. In addition to providing vital investigative services to law enforcement personnel worldwide, the AENRB uses information from AEXIS to provide threat assessment support to Federal agencies and major event security task forces. The AENRB contains data on not only arson and explosives incidents, but destructive

devices and their components, and information on the criminal use of explosives. This database is an investigative tool that can be queried and analyzed to provide information on trends in criminal use of explosives, similarities between different explosive devices, and other investigative leads.

In spring 2001, the AENRB embarked on a focused program to connect the Nation's fire and explosion investigators to the latest in information communications and management technology. The project, known as the Bomb Arson Tracking System (BATS), is designed to facilitate and promote the collection and dissemination of fire, arson, and explosives information among participating agencies. As presently envisioned, participating law enforcement agencies and members with established National Crime Information Center (NCIC) access will be able to access BATS via desktop computer and Internet. Once connected to the ATF-secured and maintained extranet server, participants will be able to enter information, query information (both locally and across agencies), and produce relevant reports.

The AENRB coordinates explosives intelligence internationally with 12 Bomb Data Centers throughout the world and is involved in planning and coordinating the establishment of Explosive Repository Centers in Mexico and Colombia. In FY 01, AENRB personnel provided presentations on the Repository's capabilities to 2,158 representatives of Federal, State, local, and foreign law enforcement or explosives industry representatives.

Explosives Training

ATF continues to vigorously enforce the Federal explosives and arson law by providing state-of-the-art training and expertise to Federal, State, local, and foreign law enforcement partners. This training is instrumental in preparing our law enforcement partners for the fight against terrorists who use explosives.

ATF's Office of Training and Professional Development (TPD) provides the highest level of training available anywhere on the investigation of explosives and firearms-related incidents. ATF courses related to counter-terrorism include the Advanced Explosives Investigative Techniques, International Firearms and Explosives Identification, the Seminar on Terrorism and Explosives (SEMTEX), and the Post-blast Investigation Course, for foreign, Federal, State, and local law enforcement students.

ATF has trained hundreds of law enforcement officers from the United States and abroad in the techniques of conducting explosives-related investigations. This type of training is ongoing and the international courses are funded through cooperative agreements with the State Department Anti-Terrorism Assistance Program and International Narcotics and Law Enforcement Affairs.

For the past several years, to protect the Nation's largest airports, the Federal Aviation Administration (FAA) and ATF have joined together to conduct SEMTEX and field training exercises that better prepare and train aviation, security, and law enforcement personnel in explosives countermeasure techniques. In FY 01, ATF trained 312 FAA personnel. ATF and FAA are currently updating this curriculum in light of September 11. In FY 02, 300 additional personnel are expected to be trained.

During FY 02, ATF, in conjunction with the U.S. Department of Education, is developing a CD-ROM training platform titled, "Bomb Threat Management and Response." This training CD-ROM will provide a standardized bomb threat management and response template that can be used by school administrators to develop a customized response program for their schools. This CD-ROM will be completed in the summer of 2002 and distributed to all school districts, local law enforcement offices, and ATF offices. It is anticipated that ATF field personnel will be called upon by the school districts to help establish and implement these management and response plans.

Additionally, ATF developed a course for bomb technicians on the safe destruction and disposal of explosive materials. The Advanced Explosives Destruction Techniques (AEDT) course was developed in response to the fact that far more injuries and deaths of bomb technicians occur during disposal operations than during render-safe operations. Over the course of a year and a half, ATF worked with many State and local bomb technicians, along with representatives from the Environmental Protection Agency, the Department of Transportation, the Consumer Product Safety Commission, and others to develop the course. Together, we developed a course that covers the safety, legal, logistical, operational, and health facets of explosives disposal/destruction operations.

Explosive Detection Canines

ATF-certified accelerant and explosives detection handler/canine teams support ATF's fire and explosives investigations. In FY 01, ATF's six special agent/canine

teams searched 10,356 vehicles, buildings, or items during the execution of Federal, State, or local search warrants, or in conjunction with searches or sweeps during ATF or Federal security details. Our canines supported preventive security efforts at such diverse events as the response to the September 11 attack on the Pentagon, the Special Olympics, the 2001 and 2002 Superbowl, the 2002 Winter Olympics, and many others.

The ATF Canine Training Center in Front Royal, Virginia, trains explosives and accelerant detection canines. In a training arrangement with the U.S. Department of State, ATF trains explosives detection canines for foreign countries to be used in the war against terrorism and to protect American travelers abroad. ATF has also trained and certified 310 explosives-detection canine teams for deployment in 13 countries around the world. Additionally, ATF has trained 47 explosives detection canine teams for other Federal, State, and local agencies, including the Federal Bureau of Investigation, the Central Intelligence Agency, and the Internal Revenue Service. With the funding provided in the FY 02 Anti-Terrorism Supplemental Appropriations Act we will be expanding the canine training center to meet the increasing demand for these resources. Since the start of the program, ATF has also trained and certified 94 accelerant-detection canines for State and local agencies.

Explosives Study Group

ATF's Explosives Study Group (ESG) is examining: 1) the feasibility of tagging explosive materials for purposes of detection and identification; 2) possibilities for rendering inert common chemicals used to manufacture explosive materials; 3) imposing controls on certain precursor chemicals used to manufacture explosives; 4) State licensing requirements for the purchase and use of commercial high explosives; and 5) the possible use of new prevention (explosives detection) technologies, as directed by section 732 of the Antiterrorism and Effective Death Penalty Act of 1996, as amended by the Omnibus Consolidated Appropriations Act for FY 97. A report on these findings is in the final stages of review.

The ESG has also compiled a comprehensive list of State licensing requirements for the purchase and use of commercial high explosives, and is currently consulting with State regulators and industry members to develop recommendations for consideration by Congress that would advance public safety.

The ESG has worked with The Fertilizer Institute (TFI) to expand the "Be Aware for America" program to address areas of vulnerability for distributors of ammonium nitrate fertilizer and agricultural chemicals. This expansion, the "Be Secure for America" program, is aimed at ensuring the security of the transportation, storage, and manufacturing of agricultural chemicals.

Additionally, ATF is conducting promising research at the Oak Ridge National Laboratory, including prototype development, engineering, and training on advanced sensing technologies for explosives detection. The objective is the development of a portable explosives detector that will function with a short, real-time response rate for trace amounts of explosives.

The ESG has continued to communicate and work with other Federal agencies such as the FAA, the Customs Service, the Department of Justice, and the Department of Energy. The goal is to achieve a coordinated effort to identify and direct resources toward the most promising technologies for both the detection of additives and the detection of explosive materials.

Dipole Might

ATF, the Army Corps of Engineers, and the Defense Special Weapons Agency have been jointly conducting a multi-year research project called Dipole Might to create a database of information and a protocol for investigating large-scale vehicle bombs. This project analyzes blast effects of large vehicle bombs to allow for a more effective deployment of investigative resources and quicker analysis of recovered evidence following bombing events such as the World Trade Center, the Oklahoma City bombing, and the U.S. embassies in Kenya and Tanzania. Dipole Might is funded by the National Security Council.

Partnerships

ATF continues its tradition of partnering with other Federal, State, and local agencies on developing protocols and partnerships to efficiently utilize our resources in the fight against terrorism and violent crime. Some of the agencies we have partnered with include the Central Intelligence Agency, the Department of State, the Customs Service, the Secret Service, the National Transportation Safety Board, the Department of Justice, Federal Bureau of Investigation, the United States Department of Agriculture, the Chemical Safety and Hazard Investigation Board, and the new Transportation Security Administration.

Additionally, ATF has worked to establish a rapport with industry organizations such as the International Society of Explosives Engineers, the Institute of Makers of Explosives, the American Pyrotechnics Association, and the National Shooting Sports Foundation.

ATF's criminal investigative analysts (Profilers) assigned to the FBI's National Center for the Analysis of Violent Crime (NCAVC), spent two years conducting research and interviewing 38 imprisoned bombing offenders. In June 2001, they published the findings of their joint study with the NCAVC. The study, "Behavior and Characteristics of Bomb Related Offenders," will serve as a catalyst for further research into understanding the motivations and characteristics of subjects who use explosives for criminal intent.

Our profilers are also assisting in our Nation's war on terrorism, and they are working with their FBI counterparts to conduct ongoing threat assessments, such as that for the G-8 Summit in Canada.

CONCLUSION

In summary, let me once again express my appreciation for the opportunity to appear before the Committee. It has been a privilege to provide you with background on ATF's explosives resources and programs, as well as this legislative package which we believe will greatly enhance our Nation's safety and homeland security. I would be happy to answer any questions you may have.

Mr. GREEN. Thank you, Mr. Buckles.
Mr. Ronay?

STATEMENT OF J. CHRISTOPHER RONAY, PRESIDENT, INSTITUTE OF MAKERS OF EXPLOSIVES

Mr. RONAY. Thank you, Mr. Green, Mr. Scott, Members of the Committee.

I am Christopher Ronay, the president of the Institute of Makers of Explosives. It's also referred to as IME.

Since 1913, the IME has been the safety institute for the commercial explosives industry in the United States. Our membership includes U.S. manufacturers and distributors of industrial explosives. Our products are used in every State and are distributed throughout the world.

The commercial explosives industry is one of the most highly regulated in America. The IME supports this high level of regulation, and for over 20 years we have sought additional regulation requiring Federal permits for all purchases of explosives, commercial explosives, that we address.

Additionally, since the horrific events of September 11, the IME has called for Government-administered security checks for everyone handling commercial explosives, as well as those who manage and direct explosive operations. For these reasons, I greatly appreciate this opportunity to testify before you today.

The IME has long sought this Federal permit for all purchases of explosives. Current Federal law, as I said, continues to exempt intrastate purchases of explosives from any such requirement. This bill closes this loophole in Federal explosives law and requires a permit for all purchases of commercial products.

We would, of course, prefer that all licensees and permittees be subject to the same safety and security requirements, and along with the Bureau of Alcohol, Tobacco and Firearms and the Administration, we have worked through some of the provisions of the early versions of this bill to ensure that these provisions do protect the safety and security of all purchases.

H.R. 4864 addresses these concerns and allows the Government to obtain the essential information from the permittees and licens-

ees and conduct storage site inspections prior to issuing permits, and this is one of our concerns, that these reasonable accommodations should accomplish the compliance with the law.

Any weakening of these provisions should be resisted. This bill requires all persons authorized to possess explosives during the course of their employment to have a Federal background check. In addition, those directing the management and policies of a licensee or permittee will be required to establish positive identification through the processing of their fingerprints and a photograph.

IME fully supports these appropriate security measures. However, we are anxious that these clearances be processed in a timely manner. We urge the Subcommittee to support this expectation and believe that this bill addresses those concerns adequately.

IME supports the expansion of the list of disqualifying offenses. Likewise, we support the provisions in this bill that protect privacy and due process rights of individuals denied clearances based on the background check disqualifications.

The Bureau of Alcohol, Tobacco and Firearms has testified previously that it does not have the resources to implement all of the provisions of this bill. It is estimated that this legislation will require over 110,000 background checks annually. We urge the Subcommittee to request sufficient resources for ATF to fully implement all of these provisions.

Despite the fact that on September 11 the terrorists did not use explosives in their attacks on the United States, history demonstrates that they favor the use of explosives in their criminal acts. This legislation provides an opportunity to close a significant loophole in Federal explosives law. The IME is very pleased to support this legislation. Public safety and security deserves no less.

Finally, I would like to praise the Subcommittee staff who worked so hard to address these sensitive and important issues with all of us.

This concludes my testimony, and I would be pleased to answer any questions that you have.

[The prepared statement of Mr. Ronay follows:]

PREPARED STATEMENT OF J. CHRISTOPHER RONAY

Mr. Chairman, Representative Scott, and Members of the Subcommittee:

I am Chris Ronay, President, of the Institute of Makers of Explosives or IME.

The IME represents all U.S. manufacturers of high explosives and other companies that distribute explosives or provide other related services. Over 2.5 million metric tons of explosives are consumed annually in the United States of which IME member companies produced over 95 percent. These products are used in every state in the Union and are distributed worldwide. The value of our shipments is estimated in excess of \$1 billion annually.¹ The ability to manufacture, transport and distribute these products safely and securely is critical to this industry.

The IME is the safety institute of the commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. We do not sponsor trade shows or other marketing events.

For a number of years, the Institute has voiced its concern about the inadequacies of federal law regulating intrastate purchasers of explosives. And, since the horrific events of September 11th, IME called for government-administered, security clear-

¹*Explosives Manufacturing*, 1997 Economic Census, US Department of Commerce, August 1999, EC97M-32598.

ances for those who direct explosive operations and those who handle explosives for permittees or licensees. For these reasons, I greatly appreciate the opportunity to testify about HR 4864, the Anti-Terrorism Explosives Act of 2002.

Shortly after September 11th, we learned of Administration proposals dealing with these critical issues. However, those proposals, while addressing aspects of our concern, raised many new concerns and prompted our support for the development of HR 4864. Our belief that the good in these proposals could be made better has been borne out. We are here to identify aspects of this legislation that deserve particular acclaim and should be supported. We also intend to ask that the Subcommittee ensure that resources will be available to implement this legislation as intended. Public safety and security deserve no less.

Eliminating the Intrastate Purchase Loophole

The commercial explosives industry and explosives users are highly regulated. We support this level of regulation. Key to entry into this regulatory system is the requirement to obtain a federal license (to manufacture, import and/or distribute explosives) or a permit (to purchase and/or use explosives) from the Bureau of Alcohol, Tobacco, and Firearms (BATF). For reasons not justified by safety or security, federal law has excepted intrastate (and certain contiguous state) purchasers of explosives from the requirement to obtain a federal permit. BATF's own data shows that those operating under the intrastate exception (non-permittees) account for report nearly half of all explosives thefts reported to the Bureau.² HR 4864 closes this loophole in federal explosives law.

While we would have preferred that all licensees and permittees be subject to the same requirements, the Administration's proposals set a different standard for intrastate purchasers. Intrastate purchasers are allowed to apply for a "limited permit." A limited permittee is restricted in the number of purchases that can be made in a year. Limited permittees would also have been relieved of essential reporting requirements and authority of the government to inspect operations short of a court order. These conditions may prompt the hoarding of explosives without adequate storage and severely limit the government's ability to verify compliance. The very kind of "weak links" sought by criminals and terrorists. HR 4864, however, does not ban the government from obtaining essential information from limited permittees and it restores an inspection requirement prior to issuing a permit. These are reasonable accommodations of the government's interest to ensure compliance with the law. Any attempts to weaken these provisions should be resisted.

Background Checks and Clearances

The bill provides two levels of background clearances. On a basic level, all persons authorized to possess explosives in the course of employment and all persons authorized to direct the management and policies of a licensee or permittee will be checked against a number of "disqualifying offenses." In addition, those authorized to direct will be required to establish positive identification through the submission and processing of fingerprints and photo. These are appropriate clearances that should be supported.

We understand that the FBI may require 45 days to process positive identification requests, and every applicant for a permit or license will be required to identify at least one person who must submit to the positive identification requirement. Recognizing these demands on the FBI, this legislation extends the time in which BATF must issue decisions on applications from 45 to 90 days. It is wholly unreasonable to expect BATF to process applications within the current 45-day hammer in the law given the FBI's processing demands. HR 4864's extension of the 45-day hammer should be supported.

While we support giving BATF the time needed to make correct determinations about employee background qualifications, we are anxious that these clearances be processed in a timely manner. HR 4864 addresses this concern by allowing BATF to process the background checks separately from the overall processing time allowed to finalize a permit or license. In addition, once employees are in the background check system, letters of clearance will be issued that are expected to expedite subsequent background checks that will be required periodically. Finally, HR 4864 will allow for electronic interchange of background check information and clearances. We fully support these provisions of HR 4864.

²This statistic together with the fact that BATF routinely recovers more explosives than are reported stolen suggests that an even higher percentage of thefts result from non-permittees inasmuch as they are not required to keep inventory records nor are they subject to BATF inspections unless a search warrant is obtained. On the other hand, BATF licensees and permittees are routinely audited for inventory discrepancies.

We urge the Subcommittee to make clear its expectation that background checks will be accomplished in a timely manner. The commerce of explosives is necessary to mining, construction, demolition and a number of specialty industries. Our industry and those that use our products need access to a legitimate labor pool. Likewise, workers have rights to work that should not be needlessly infringed by delay in the processing of background checks.

Expansion of Disqualifying Offenses

IME wholly supports the expansion of the list of disqualifications. Likewise, we support the provisions in the bill that protect privacy and due process rights of individuals who are denied clearance to possess explosives or direct operations based on background check disqualifications.

In light of the events of September 11th, we believe the provisions relating to alien status are critical. We understand that BATF will, of necessity, rely on information provided by the Immigration and Naturalization Service (INS) in determining alien status. We believe that weaknesses in the INS must be corrected before we or the public can have confidence in this aspect of the background check, and we applaud the House Judiciary Committee for its leadership in the development of HR 3525, the Enhanced Border Security and Visa Entry Reform Act, now Public Law 107-173, that will, when implemented, close gaps in our Nation's ability to accurately determine alien status.

We understand that the revised list of disqualifications in HR 4864 will be effective on the date of enactment. However, implementation of a federal program to accomplish background checks to verify a person's qualification (or disqualification) may be delayed up to six months. In the interim, employers will be expected to make determinations about the qualification of new hires. Given that the expanded disqualification standards cannot be reliably met without federal assistance, employers may satisfy this requirement by having new employees certify in writing that they are not disqualified based on the expanded standards. We understand that the legislation intends to grandfather current employees from the requirement to undergo immediate background checks based on the expanded disabilities as long as they are working under the conditions of a current valid permit or license. Congressional acknowledgement of this principle is critical to spread out BATF's administrative workload and to avoid serious and unwarranted disruption to our ability to continue operations as the provisions of the bill are phased in.

Definitions

The revisions to the statute introduce key terms that need definition. These terms are "responsible person" and persons authorized to "possess" explosives. These terms are the basis for identifying which employees or prospective employees should be subject to background checks. Without such definitions, the regulated community would be unsure of its compliance obligations. Courts have voided standardless requirements in the past. HR 4864 defines "responsible person." However, we understand that BATF is reluctant to provide a statutory definition of "possess." The Bureau fears such a definition may impede its enforcement authority. Currently, the Bureau relies on interpretations of "possess" well established in law and upheld by the courts. HR 4864 continues the statutory silence of federal explosives law on this matter. However, we understand that report language on the bill will articulate the Bureau's interpretation of "possess" and urge leniency toward employers that may overlook some employee who should have been subject to a background check but was not, unless willful disregard of the law by the employer can be shown. Such report language provides industry with the guidance needed to comply while preserving BATF's enforcement authority.

Sample Collection

The Administration's proposals would add a new subsection to federal explosives law that allows BATF to obtain samples of commercial explosives for purposes of "classification" and "identification." We have no objection to providing samples on request to BATF. However, the proposal that the Bureau could use the samples for purposes of "classification" conflicts with US Department of Transportation (DOT) authority under federal hazmat law, 49 U.S.C. Chapter 51. BATF uses DOT's classifications in the regulation of explosive materials. Explosives are one of the few DOT-regulated hazardous materials that are not self-classified. DOT performs this function for commercial explosives. HR 4864 recognizes these facts and does not provide that "classification" be a purpose for which the Bureau may request samples. This change does not undermine the Bureau's forensic duties. We wholly support HR 4864 in this matter.

Resources to Implement

In testimony before the Senate Appropriations Committee on BATF's FY 2003 budget, Bureau witnesses responded to questions about resources needed to implement S. 1956, the Senate-version of HR 4864.³ The testimony is clear that BATF does not have the resources to implement the new proposed provisions of law and, in fact, that resources devoted to explosives oversight are already stretched.

The Administration's FY 2003 budget request clearly points to gaps in BATF's ability to perform assigned functions. In the wake of the events of September 11th, BATF set out to inspect all licensees/permittees, currently a class of about 9,400, of which IME represents about 3.4 percent. These were not all full inspections. The task would be too daunting. Despite BATF's initiative, this effort reached little over 80 percent of its inspection goal. Notwithstanding, the inspections yielded approximately 2,000 violations, about 10 percent of which were referred for enforcement.⁴ Although less than 2.7 percent of licensees/permittees, a pool of about 250, were the source of these violations, BATF still must follow-up to ensure that corrective actions have been taken. At the time the Bureau's budget document was prepared, BATF estimated that its corrective action workload would be about 850 in FY 2003.⁵ The violations data from the post-September 11th inspection drive as well as that from FY 2001, indicate that 850 corrective actions is less than half the current workload.⁶ Yet, BATF's FY 2003 budget request asks for no additional FTE under the budget function that includes these and other inspection activities of the Bureau's regulated commodities, holding at 529 FTE.⁷ With this resource commitment, BATF states that it will only be able to inspect 50 percent of the explosives industry and that it will "strive" to investigate 100 percent of reported explosives thefts and losses.⁸

HR 4864 will add two major responsibilities to this workload: the processing of "limited permits" (all other licensees/permittees are assumed to be in the system), and the processing of the background checks, which are to be done at two levels: for those that "direct" and those that "possess." BATF has told us that they do not know how many "limited permits" will be requested. However, resources will have to be committed to processing the application and instituting a system to ensure that anyone with a limited permit does not purchase more than the allotted (currently four) purchases a year. Private industry will not be able to police the limited purchase requirement.

BATF also does not know how many additional background checks it will have to perform. However, based on what we know of the agency's current universe of "responsible persons" subject to background checks and BATF's own estimate of the universe of new persons to be subject to background checks, we conservatively estimate that the new background check universe created by this legislation will be over 110,000 per year or 550 a day.

We have observed the disruption to a legitimate industry that can occur when a program of background checks is imposed without a viable system in place to implement such requirements. We urge the Subcommittee to work with us in requesting sufficient resources to fully implement the provisions of HR 4864.

Conclusion

This Subcommittee has an opportunity to close a significant loophole in federal explosives law. Despite the fact that on September 11th terrorists used no explosives in their attacks on the United States, history shows that they will use explosive to further their ends. This legislation is long overdue. Finally, we want to praise Subcommittee staff who worked so hard to address the sensitive and importance issues I have noted.

This concludes my testimony. I would be pleased to answer any questions.

Mr. GREEN. Thank you, Mr. Ronay. I appreciate it.

³ Testimony of Bradley A. Buckles, Director, BATF, before the Senate Subcommittee on Treasury and General Government, April 17, 2002.

⁴ Statement of Bradley A. Buckles, Director, BATF, Subcommittee on Treasury, Postal Service and General Government, House Appropriations Committee, February 28, 2002, page 3.

⁵ FY 2003 BATF Budget Justification, Volume 2, page 20.

⁶ Op. Cit., Statement of Bradley A. Buckles, February 28, 2002, page 17. (FY2001—1,813 violations; 1st quarter FY 2002—1,763 violations.)

⁷ FY 2003 BATF Budget Justification, Volume 1, page 13.

⁸ FY 2003 BATF Budget Justification, Volume 2, page 20. (The Budget Justification does not disclose data to evaluate whether or not the Bureau has met its goal to investigate 100 percent of reported explosives thefts and losses.)

A couple of quick questions. In fact, Mr. Ronay, I will ask the first question of you. Do you know how common theft of explosives is out there, and can you tell me what kind of explosives are most often stolen?

Mr. RONAY. The theft statistics are gathered by the Bureau of Alcohol, Tobacco and Firearms, as you know, and it's not particularly common, given the fact that it's measured against the 6 billion pounds that are consumed within the United States each year.

I can tell you that about half of what is reported stolen to the ATF is stolen from those nonpermittees and nonlicensees as they exist today, and if there was a way to check their storage requirement, their storage premises and license them, I think that would have a significant dent on the thefts.

Mr. GREEN. In terms of what types of explosives, do you have any guess on that?

Mr. RONAY. They range from all of the packaged products, the small-diameter explosives to some of the larger bulk explosives, but primarily they are going to be small containerized explosives.

Mr. GREEN. Mr. Lawson—

Mr. LAWSON. Yes, sir?

Mr. GREEN [continuing]. How would this legislation help the type of threat that we saw just in the last couple of days, the dirty bomb situation? Can you tell us how that might help?

Mr. LAWSON. Sure. Quite honestly, it would impose strict restrictions against individuals who seek to possess explosives by requiring a criminal background check and also a Federal permit. As you know, with a dirty bomb, you take a radioactive material, along with an explosive, and the explosive will cause the radioactive material to be spread. By having this bill pass, you will have tighter controls to ensure that the right people who have no criminal history, that have a legitimate purpose, have access to explosives, not the wrong individuals, such as these terrorists.

Mr. GREEN. Now this legislation largely comes from an Administration request and reflects Administration policy. The Administration's request obviously predates what we have seen in just the last couple of days, the dirty bomb situation. What prompted the Administration to come forward and request this legislation?

Mr. LAWSON. Post-9/11, the Administration asked all departments to look at laws within their jurisdiction which should be reconsidered so that we can defeat terrorism, sir.

Mr. GREEN. Mr. Scott, do you have questions?

Mr. SCOTT. Thank you, Mr. Chairman.

A follow-up and kind of a different angle on your question. Do we have a problem now or are we trying to prevent problems that have not occurred in the past?

Mr. BUCKLES. If I might answer that, Mr. Scott. We do have some problem now. There are some commercially manufactured explosives that are used in explosive devices today. They are not the major source of materials used in explosive situations that we've investigated to date. If you look at any kind of larger explosion, the Murrah Federal Building, the bombing of the New York World Trade Center in 1993, those bombings tend to include the use of some kind of commercial explosive in order to make large vehicle

bombs like that operate. So the preventive part of this is very important. We've been lucky.

Mr. SCOTT. You've mentioned two cases. How were the bombs, the explosives, acquired in those cases?

Mr. BUCKLES. Well, the primary explosive, for example, at the Murrah Federal Building was ammonia nitrate and diesel fuel that was mixed by Mr. McVeigh, and that was the main explosive. But in order to get that homemade mixture to go off, it required some kind of booster, which was, we believe there was a det cord that was used with the barrels of ammonia nitrate and probably some kind of other kind of high explosive that was used to set off the ammonia nitrate mixture.

Mr. SCOTT. And how were they acquired?

Mr. BUCKLES. I can't tell you—

Mr. SCOTT. How would this bill have affected that acquisition?

Mr. BUCKLES. Well, the way it would affect the acquisition of this is somebody is going to have to, in order to buy this kind of material, they're going to have to apply for a permit with ATF. They're going to have a background check. We're going to look and see if they have storage facilities and the things that would go along with the normal use of explosives.

Mr. SCOTT. Would McVeigh have passed a background check?

Mr. BUCKLES. I'm not sure if he would have passed it from the criminal point of view, but he would have had to have had some demonstrated purpose for—

Mr. SCOTT. Legitimate use.

Mr. BUCKLES [continuing]. For acquiring explosives.

The other thing it does is that we do have a lot of problem with the theft of explosives. Today, ATF regulates all of the manufacturers and interstate users of explosives and their magazines, but we have thousands and thousands of users out there that we do not know what kind of magazines they are storing in, whether or not they are secure, whether or not they are safe. This would also enhance our ability to make sure that explosives that are in the right hands are in secure facilities where they are not subject to being stolen.

Mr. SCOTT. Do you have the logistical capability of doing the background checks?

Mr. BUCKLES. We do not have the resources at this point to carry out that number of background checks. We'd have to seek—

Mr. SCOTT. So, as we pass the bill, you're going to be looking for some money.

Mr. BUCKLES. Yes, sir.

Mr. SCOTT. Have you asked for it?

Mr. BUCKLES. That, we're going through that process within the Treasury Department and OMB at this time.

Mr. SCOTT. Now the bill extends the time period for processing positive identification requests, as I understand it?

Mr. BUCKLES. Extends the time from?

Mr. SCOTT. Forty-five days—

Mr. BUCKLES. To 90 days.

Mr. SCOTT. Okay.

Mr. BUCKLES. The application period, yes.

Mr. SCOTT. What happens to a business in this period of time? Maybe Mr. Ronay—and who is the permittee, and what happens if you have people in your employ that don't pass the background checks? What happens in that case? And what happens if you hire somebody, how is this thing going to work?

Mr. RONAY. Well, if someone doesn't pass the background check, they aren't going to be allowed to be employed in that capacity, authorized to handle the product, and they'd be able to—

Mr. SCOTT. The business would have to wait until the background check is cleared before they could hire somebody?

Mr. RONAY. Well, there is a provision in this legislation that allows a new hire to be brought on with his certification that he meets all of the disqualification requirements, and then the process would continue, and of course if he was found to be false, he would then be out, but he could work in the meantime.

Mr. SCOTT. But the business could continue.

Mr. RONAY. Yes.

Mr. SCOTT. You wouldn't have to wait for this process to take place.

Mr. RONAY. Likewise, a current employee wouldn't come up for a background check until that licensee was due to be renewed at the next stage, and then there would be a spreading out over the year of these requirements.

Mr. SCOTT. And if somebody is denied, what appeal rights do they have if it was a wrongful denial?

Mr. RONAY. There are appeal rights built into the ATF law today to follow up on disqualification findings.

Mr. BUCKLES. Essentially, what we will be using, Mr. Scott, is the current National Instant Check System that's used in the case of firearms. As you know, in most of those cases, in the overwhelming majority, that background check and the results come back from that almost instantaneously, and within 24 hours most of these will be cleared.

The procedures that are set forth in this legislation are similar to those in the firearms laws, that if someone thinks that they're coming up as convicted or disabled for some reason and they don't think it's accurate, we have the same process that they can go through to get those records correct.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. GREEN. Thank you, Mr. Scott.

Mr. Coble, questions?

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Lawson—

Mr. LAWSON. Yes, sir?

Mr. COBLE [continuing]. What industry will be most affected by these changes? Naturally, manufacturers and distributors of explosives. Will other industries be impacted?

Mr. LAWSON. From my thinking, it would be construction and mining companies, I believe, since they'll be hiring the individuals who will possess the explosives. If there's some problem with their background checks, they could be slowed up with doing their work, sir.

Mr. COBLE. How about retail outlets, would that be a problem, do you think?

Mr. LAWSON. I don't think so. I think that retail outlets, by virtue of the process that ATF has proposed, they should be able to sell their merchandise fairly quickly.

Mr. COBLE. Mr. Ronay, your industry has been traditionally supportive of making changes to laws regarding explosives permitting. What—strike that.

Is it your belief that there are glaring shortcomings of the current system of State regulation for intrastate purchasing?

Mr. RONAY. There—

Mr. COBLE. And, if so, what are they?

Mr. RONAY. A number of States, it varies, I think approximately half of the States do not have the regulations that require permitting within their State for those intrastate purchases.

We have long been concerned in the industry about casual purchases over the counter or purchases by even companies that don't—that work within the State. We would like them to fall in line with that requirement so that the ATF can monitor their activity and their storage as well.

Mr. COBLE. And some uniformity, you mean.

Mr. RONAY. And uniformity is all important, sir.

Mr. COBLE. Mr. Buckles, I am told that BATF will keep or maintain a file on the applicant, fingerprints and other personnel information regarding requests for permits. Who else will have access to this? Will FBI, for example, would they have similar files?

Mr. BUCKLES. Would they have access to our permit and application files?

Mr. COBLE. Yes, would anybody else have access and, B, would anybody else maintain the file, other than you all?

Mr. BUCKLES. Well, we would be the only ones maintaining the files on those applications, and the availability of that information to the FBI or other Government agencies would be controlled by the Privacy Act and other legislation that would set up the standards. There would have to be a legitimate reason for the agencies to look at it. There would be no general prohibition like there might be with tax information.

Mr. COBLE. That's what I was leading to.

Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. GREEN. Thank you, Mr. Coble.

Mr. Goodlatte, any questions?

Mr. GOODLATTE. I have no questions.

Mr. GREEN. Mr. Keller, questions?

Mr. KELLER. Yes, I just have a couple of questions.

Director Buckles, you could probably answer these for me.

In reading through this law, the gist of it, from what I get, is that, under existing law, convicted felons and illegal aliens can't buy a firearm, so it only makes common sense that they shouldn't be able to buy things like TNT and dynamite as well.

You mentioned that one of the things you check for in the background check is if someone is a convicted felon or an illegal alien. I understand the convicted felon part. How do you determine if someone is an illegal alien?

Mr. BUCKLES. Well, we would check INS records on whether or not that person was legally in the United States. Quite often, ille-

gal aliens or someone who has entered the United States at one point legally and has overstayed their visa, and so they would show up in INS records as someone who was illegally in the United States.

If you have somebody who has come into the United States completely illegally and been able to manage to develop some sort of identification without ever having any formal entry into the United States, obviously, that, whatever identity they would take on, would not necessarily be in the INS computer. But people who had overstayed and originally come into the country would show up.

Mr. KELLER. So ATF would do the check for the criminal background and then INS would do the check for the illegal alien issue?

Mr. BUCKLES. The way the system works is what we would be using is the system that's been set up for the firearms law. Under that, it's basically a system that when you put the name in, it bounces the name and identifying information off of databases from INS, from State Department, et cetera, different databases.

Mr. KELLER. Everyone is interested, obviously, in this Jose Padilla fellow and the dirty bomb situation. If you take that situation, and my understanding is a dirty bomb is essentially a conventional bomb that somehow has got some radioactive material attached to it—

Mr. BUCKLES. Correct.

Mr. KELLER. What part would trigger the necessity of the permit, the obtaining the radioactive material or obtaining the conventional bomb or both?

Mr. BUCKLES. In this case, it would be the explosives that would be used. The newspaper this morning spoke of an example of the use of so many pounds of TNT that would explode and then spread the radioactive material. What this legislation would do would be control how easy it would be to get your hands on TNT to make the conventional bomb.

Mr. KELLER. But someone could still get the radioactive material without a lot of difficulty, I guess?

Mr. BUCKLES. Well, I can't really speak to that. That would not be covered by this legislation.

Mr. KELLER. Does anyone else have an answer on the radioactive material?

Mr. RONAY. No, sir.

Mr. KELLER. Mr. Chairman, I will yield back.

Mr. GREEN. Thanks, Mr. Keller.

Mr. Scott, since you're holding up the entire minority side, we'll let you ask one more follow-up question.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Ronay, as I understand it, for intrastate, within-the-State purchases, you can go do anything essentially you want to do. There is no permitting process, no check or anything. How many felons are buying explosives now for employers or handling explosives or working with employers who have a legitimate use for the explosives that will lose their jobs under this provision?

Mr. RONAY. There should be no felons or anyone on the current disabled list working for a permittee or a licensee today. They are still—

Mr. SCOTT. If you're buying just within the State, what do you need a license for?

Mr. RONAY. Well, most commercial companies, even within a State, they may operate intrastate or interstate, will probably already have an ATF license to operate. Their employees, they're obligated to ensure that their employees are not on the disabled list. A felony conviction is one thing that puts you on that list.

So those people would probably not be affected at all by that.

Mr. SCOTT. So any legitimate user of explosives should not be adversely affected by this legislation.

Mr. RONAY. That's correct.

Mr. SCOTT. Other than have to go through a process for the first time.

Mr. RONAY. Yes.

Mr. BUCKLES. If I might, Mr. Scott. It's currently already prohibited for, if there's a felon working for an intrastate explosives user, it's already illegal, under Federal law, for that person to be possessing explosives. What we don't do today is have that user run some kind of check to verify whether or not the person is.

Mr. GREEN. Thank you, Mr. Scott.

[Whereupon, at 5:07 p.m., the Subcommittee was adjourned.]

