



Memorandum

May 16, 2003

TO: Honorable Frank Lautenberg
Attention: Dan Katz

FROM: William Krouse
Analyst in Social Legislation
Domestic Social Policy Division

SUBJECT: Foreign Terrorists and the Availability of Firearms and Black Powder in the United States

As requested, this memorandum addresses the 28 specific questions you asked regarding the possible acquisition of firearms and black powder by *foreign terrorists* in the United States. It does so by grouping the questions into related categories or issues. Please contact me at 7-2225 with any questions.

Introduction

Foreign terrorists could exploit, and probably have exploited in some cases, the general availability of firearms, ammunition, and, in some cases, explosives in the United States through either legal or illegal channels. In many ways, your questions are parallel to existing issues regarding the increased federal regulation of firearms. This memorandum, therefore, does not provide definitive answers to your questions as to the effectiveness of U.S. firearms and explosives law relative to foreign terrorists; rather, it provides background on the underlying issues – many of which apply to citizens as well as to foreign terrorists. Based upon your questions, this memorandum is organized into six sections that:

- provide an overview in the form of brief responses to your questions that are grouped into major issue areas;
- consider the term “foreign terrorist” based on definitions of terrorism, including international terrorism;
- outline categories of persons prohibited from possessing firearms and noncitizen eligibility to possess and purchase firearms and ammunition;
- examine issues related to the federal regulation of firearm transfers, multiple sales, Brady Act background checks, record retention and access, and gun shows;
- provide background on semiautomatic assault weapons and 50-caliber sniper rifles; and
- briefly examine federal regulation of black powder.

Background

The National Instant Criminal Background Check System (NICS) electronically queries federal and state criminal and other disqualifying records based upon an applicant's name and other biographical information to determine firearms transfer and possession eligibility. As long as a person, including a foreign terrorist, passes the NICS check (Brady background check), they could purchase firearms and ammunition from a licensed firearm dealer. They could buy or trade for a firearm at a gun show as well. If such a transaction was with a licensed dealer, a background check would be performed, but such a check would not be required for a transaction with a private person (within state lines). Firearms have been transferred to persons prohibited from possession under current law, because the Federal Bureau of Investigation (FBI) could not complete a background check within the allotted 3 business days. In such cases, however, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) and local chief law enforcement officers are notified by the FBI and efforts are made to retrieve those firearms.

At the present time, NICS does not include international terrorist lookout records, which are generally produced by the State Department's Bureau of Intelligence and Research (I&R). According to State, however, negotiations are underway to provide limited terrorist lookout records to the FBI to be downloaded into the National Criminal Information Center (NCIC) system, one of the systems accessed by NICS to check for criminal and other disqualifying records. It is also significant that NICS is a name check system only. Consequently, terrorists or others seeking to hide their past could beat the system by presenting fraudulent identity documents and either assuming a completely fictitious identity or stealing the identity of another who has a clean record. Furthermore, criminals and other prohibited persons often have another person with a clean record purchase firearms for them – a practice known as a “straw purchase,” which is a felony offense for both parties.

In recent years, there has been growing concern about the availability of “military-type” weapons in the civilian market. Foreign terrorists could purchase such weapons, which include semiautomatic assault weapons and 50-caliber sniper rifles. Semiautomatic assault weapons, like the Bushmaster XM-15, are available for about \$900 to \$1,000. Fifty-caliber sniper rifles can be purchased for \$3,000 to \$7,000. The Bushmaster has an effective range of about 300 meters, while 50-caliber sniper rifles have an effective range of 1,500 meters, nearly one mile. Employing military surplus armor piercing/incendiary ammunition, 50-caliber sniper rifles can be used to penetrate several inches of steel plating. A shooter could also use such a weapon to bring down slow flying aircraft or to blow up fuel tanks. The type of rounds fired by either rifle can easily pierce most body armor.

Under current law, semiautomatic assault weapons and 50-caliber sniper rifles can be purchased at gun shows from private persons without a background check. The number of these rifles that could be bought at a gun show would be limited by what was offered for sale. In general, such rifles would be offered for sale much less frequently by private persons than by federal firearm licensees. Regarding multiple firearm sales, current law only requires a federal firearm licensee to report multiple sales if an individual buys more than one handgun within 5 consecutive business days. A terrorist, therefore, could buy as many long guns as he wished without triggering a federal reporting requirement.

Explosives are regulated under current law under a permit and licensing process. Black powder, in amounts of up to 50 pounds, is exempted from regulation as long as it is used

“solely for sporting, recreational, or cultural purposes” associated with antique firearms or devices. A terrorist or other criminal could amass, for example, 1,000 pounds of black powder by making 20 or more purchases. According to ATFE, depending upon how it was packaged and ignited, 1,000 pounds of any explosive packed into an automobile trunk could possibly have a lethal air blast range of 125 feet and a zone of possible injury to bystanders (zone minimum evacuation range) of about 1,750 feet.

Who Is A Foreign Terrorist?

Before addressing issues related specifically to the availability of firearms and explosives to foreign terrorists, it is useful to examine various definitions of terrorism in order to determine who would be considered a “foreign terrorist.” According to the Defense Department, terrorism is generally defined as “the unlawful use, or threatened use, of force or violence against individuals or property to coerce and intimidate governments or societies, often to achieve political, religious, or ideological objectives.”¹ The FBI distinguishes between domestic and foreign terrorism.

Domestic terrorism is the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or its territories *without foreign direction* committed against person or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives.

International terrorism involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state, or that would be a criminal violation if committed with the jurisdiction of the United States or any state. These acts appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetrators operate or seek asylum.

Hence, foreign or international terrorists are those persons who carry out terrorist activities *under foreign direction*. It is notable that foreign terrorists could be citizens or noncitizens, given that citizens could be recruited by foreign terrorist groups. Or, noncitizens (aliens) could immigrate to the United States and naturalize (become citizens), having been unidentified terrorists before entry, or having been recruited as terrorists sometime after their entry into the United States. The 19 terrorist hijackers that carried out the 9/11 attacks were all nonimmigrants. While they did not use firearms, other noncitizens have acquired firearms in the United States and used them in deadly attacks. The extent to which these attacks were *under foreign direction*, however, as opposed to being “lone wolf” acts is debatable.²

¹ Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, (New York: Oxford University Press, 1999), p. 5.

² For example, it is unclear whether the attacks carried out by Mir Aimal Kasi at the entrance to the Central Intelligence Agency complex in Langley, Virginia, on Jan. 25, 1993; or by Ali Abu Kamal (continued...)

It is significant to note that there is widespread proliferation of fraudulent identity documents in the United States. Illegal immigrants often use fraudulent identity documents to illegally acquire work and receive other benefits. They could use the same fraudulent documents to illegally acquire firearms, as could any other person seeking to hide arrest records or other disqualifying factors to beat the Brady background check system and illegally acquire firearms. According to GAO, terrorists involved in the 1993 World Trade Center bombing used fraudulent documents to enter the United States; and the FBI and State Department have linked identity theft and fraud to drug trafficking, organized crime, and terrorism.³

Prohibited Persons and Alien Eligibility

Current law prohibits certain categories of persons from possessing or purchasing firearms or ammunition. Those categories include: (1) persons convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year; (2) fugitives from justice; (3) drug users, or addicts; (4) persons adjudicated mental defectives, or committed to mental institutions; (5) illegal immigrants and nonimmigrants; (6) persons dishonorably discharged from the U.S. Armed Forces; (7) U.S. citizenship renunciates; (8) persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and (9) persons convicted of misdemeanor domestic violence.⁴

Current law does not distinguish between citizens and legal permanent residents (legal immigrants); both are eligible to receive, possess, and transfer firearms and ammunition as long as they are not in one of the categories of prohibited persons. As shown above, among prohibited categories are illegal immigrants and nonimmigrants (with exceptions for the latter). Nonimmigrants are admitted for temporary stays – sometimes for several years. Illegal immigrants are those noncitizens (aliens) who have either entered the United States without inspection (EWIs) or have violated the terms of their nonimmigrant visas by overstaying or accepting unauthorized employment. Illegal immigrants are prohibited from possessing firearms with no exceptions.

In general, nonimmigrants *are not eligible to purchase and take possession of* firearms or ammunition in the United States.⁵ There are limited exceptions, however, for certain nonimmigrants who:

- have resided in a state for 90 days that they intend to make their home in which case, they may purchase handguns in their state of residence, or purchase long guns (rifles or shotguns) in any state;

and who are either:

² (...continued)

on the observation deck of the Empire State Building in New York City on Feb. 23, 1997, were at foreign direction or were lone attacks.

³ U.S. General Accounting Office, *Identity Fraud: Prevalence and Links to Alien Illegal Activities*, GAO-02-830T, (Washington, June 25, 2002), p. 11.

⁴ 18 U.S.C. §§ 922(g) and (n).

⁵ 18 U.S.C. § 922(y).

- official representatives of a foreign government who are accredited to the United States government or the nonimmigrant's government mission to an international organization that is headquartered in the United States and possession of a firearm is necessary to their official capacity;
- officials of foreign governments or distinguished visitors who have been designated by the State Department and possession of a firearm is necessary to their official capacity;
- foreign law enforcement officers of a friendly foreign government entering the United States on law enforcement business; or
- visitors admitted to the United States for lawful hunting or sporting purposes or are in possession of a valid hunting license or permit lawfully issued in the United States.⁶

Firearm Transfers, Multiple Sales, and Brady Background Checks at Gun Shows

Foreign terrorists could exploit, and appear to have exploited in limited cases, the general availability of firearms in the United States to carry out terrorist attacks in the United States or abroad. As long as they have evaded detection by law enforcement authorities and are not identified as prohibited persons, they could purchase firearms from licensed dealers. They could purchase firearms at gun shows from either licensed or unlicensed persons. Brady background checks are required for all firearm transfers made by dealers to private persons, but such checks are not required between private persons within state lines. Nor, does the Brady background check system currently have access to foreign terrorist lookout records of the State Department. Following the “3 day” delayed sale, licensees have transferred firearms to persons, whom the FBI subsequently learned were prohibited from possessing firearms. In such cases, efforts are made to retrieve these firearms. A terrorist could plausibly stockpile weapons, since multiple firearm purchases would only be reported by licensed dealers if such purchases exceeded more than one handgun from a single dealer within 5 consecutive business days.

Firearm Transfers. Under current law, firearm transfers by federal firearm licensees and private persons are handled differently. Only federal firearm licensees (manufacturers, importers, and dealers) may ship, transport, and receive firearms that have moved in interstate and foreign commerce. Licensees are currently required to verify, with the FBI, that unlicensed customers are not disqualified to possess a firearm before subsequently transferring a firearm to them. Licensees must also verify the identity of unlicensed customers by examining a government-issued identity document, *e.g.*, a driver's license. While licensees may transfer *long guns* to out-of-state residents, as long as there are in-person meetings and such transfers would not knowingly be in violation of the laws of the state in which the unlicensed persons reside, they may not transfer *handguns* to unlicensed out-of-state residents. Licensees are also required to submit multiple sales reports to the Attorney General if any person purchases more than one handgun within 5 consecutive business days.

⁶ For further information, see ATF brochure, “Nonimmigrant Aliens Purchasing Firearms and Ammunition in the United States (ATF P 5300.18),” (Washington, July 2002), which is available at [http://www.atf.gov/pub/fire-explo_pub/p5300_18.pdf].

Unlicensed persons are prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from licensees under the scenario described above), unless they arrange for such transfers to be made by licensees in both states. Unlicensed persons are prohibited from transferring firearms to any persons who they have reasonable cause to believe are not residents of the state in which the transaction occurs. In addition, since 1986, it has been a federal offense for unlicensed persons to knowingly transfer a firearm to prohibited persons.

Only federal firearm licensees may export a firearm. Thus, persons seeking to take a firearm out of the United States must hire a licensee to do so legally. For sporting shotguns, the licensee must obtain an export license from the Department of Commerce. For any other firearm, the licensee must register the firearm with the State Department's Office of Defense Trade Controls to obtain an export license.

Brady Background Checks. Since November 30, 1998, as part of phase II of the Brady Handgun Violence Prevention Act (P.L. 103-159), federal firearms licensees are required to check with the FBI through the National Instant Criminal Background Check System to verify that a customer is not prohibited from possessing a firearm before transferring a firearm to them. Background checks are conducted on applicants for both hand and long gun transfers. During phase II of Brady Act implementation (through December 31, 2001), the FBI completed over 25 million background checks for firearm transfer applications. Of this number, 528,000 background checks resulted in firearm transfers being denied. The overall number of firearm transfer applications and required background checks increased by about 3% from 7.7 million in CY2000 to nearly 8.0 million in CY2001. Of total checks in FY2001, 1.9% (151,000) resulted in denials. In both CYs 2000 and 2001, nearly 58% of denials occurred because the applicant was a felon or was under felony indictment, as compared to 73% in CY1999. The next most common reason for denial, about 14% of cases in CY2001, was a domestic violence misdemeanor conviction or restraining order.⁷

As noted above, NICS is a name check system only. Consequently, terrorists or others seeking to hide their past could beat the system by presenting fraudulent identity documents and either assuming a completely fictitious identity or stealing the identity of another who has a clean record. Furthermore, criminals and other prohibited persons often have another person with a clean record purchase firearms for them – a practice known as a “straw purchase,” which is a felony offense for both parties punishable by up to 10 years in prison.⁸

NICS Record Retention. The length of time that the FBI can retain information pertinent to an approved firearms sale gathered pursuant to a NICS check has been an issue since the implementation of phase II of the Brady Act. The Brady Act requires that the system destroy all records related to the person or the transfer for approved sales.⁹ Records of denied transfers are kept permanently. The licensee retains the transfer's unique identification numbers for the disposition of all firearms to unlicensed persons.

⁷ For further information on phase II, see *Background Checks for Firearm Transfers, 2001*, by Michael Bowling, et al. (Washington, Sept. 2002), at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft01.pdf>].

⁸ 18 U.S.C. § 922(d) and 18 U.S.C. § 924(a)(2).

⁹ This language was included in the Brady Act by those Members of Congress who were opposed to a national gun registry of owners and/or firearms.

The Clinton Administration published regulations proposing that NICS-generated approved transfer records be kept for up to 6 months in order to audit FBI examiners and licensees to ensure compliance with legal and other system requirements.¹⁰ The National Rifle Association (NRA) challenged the DOJ proposed rule in federal court to retain the records on approved sales for 6 months. On July 11, 2000, the United States Court of Appeals for the District of Columbia, in the case of *NRA v. Reno* (No. 99-5270, 216 F. 3d 122; 2000 U.S. App. Lexis 15906), found that nothing in the Brady Handgun Violence Prevention Act prohibits the temporary retention of information about lawful firearm transfers. The Clinton Administration ultimately adopted a regulation retaining the approved records for 3 months.

Under the Bush Administration, Attorney General John Ashcroft issued a proposed regulation calling for the immediate destruction of approved transfer records.¹¹ Following the 9/11 attacks, some Members of Congress advocated, and the FBI requested, accessing Brady background check records for approved sales to see whether suspected terrorists had recently purchased firearms. The Attorney General maintained that to do so would be in contravention to the Brady Act.

NICS Delayed Sales. According to GAO, about 75% of the NICS checks handled by the FBI resulted in immediate determinations of eligibility. Of the remaining 25% that resulted in a non-definitive response, neither a “proceed” nor a denial, 80% were turned around within 2 hours. The remaining 20% of delayed transactions took hours or days for the FBI NICS examiners to reach a final determination. In many cases these sales were delayed because there was an outstanding charge without a final disposition against the person seeking to purchase the firearm. Such cases necessitate that the FBI examiners contact local or state authorities for additional information. Under current law, the FBI is authorized to delay the sale for 3 business days in order to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm.¹² If the FBI cannot make a final determination within 3 business days, the licensee may proceed with the transfer at his discretion.

If the FBI determines subsequently that the person to whom the firearm was transferred is a prohibited person, the FBI will notify the ATFE special agent in charge and the local chief law enforcement officer in the jurisdiction where that person resides, and attempts are made to retrieve the firearm.¹³ The issue of delayed firearms transfers was a major point of contention when Congress considered legislation in 1999 to require Brady checks for all firearm transfers at gun shows, since these events usually occur on weekends in temporary locations.

Brady Checks and Gun Shows. Federal law does not regulate gun shows specifically. Federal law regulating firearms transfers, however, is applicable to firearm

¹⁰ 64 *Federal Register* 10263-10265, Mar. 3, 1999.

¹¹ 66 *Federal Register* 35567-35572, July 6, 2001.

¹² For further information, see GAO Report GGD/AIMD-00-64, *Gun Control: Implementation of the National Instant Criminal Background System* (Washington, Feb. 2000).

¹³ According to the FBI, the Bureau notified the ATFE that a prohibited person had been transferred a firearm 3,719 times in FY1999, 5,056 times in FY2000, 4,265 in FY2001, and 3,429 times in FY2002.

transfers at gun shows. Licensees are required to conduct background checks on unlicensed persons seeking to obtain a firearm from them, by purchase or exchange. Conversely, unlicensed persons – those persons who transfer firearms, but who do not meet the statutory test of being “engaged in the business” – are not required to conduct such checks. To some, this may appear to be an incongruity in the law. Why, they say, should licensees be required to conduct background checks, and not unlicensed persons? To others opposed to further federal regulation of firearms, it may appear to be a continuance of the status quo, i.e., non-interference by the federal government in private firearm transfers within state lines. On the other hand, those seeking to increase federal regulation of firearms may view the absence of background checks for firearm transfers between unlicensed/private persons as a loophole in the law that needs to be closed. This view was expressed in the months following the 9/11 attacks, as members of Hezbollah were convicted of a variety of firearms violations for attempting to smuggle firearms purchased at a Michigan gun show out of the country.¹⁴

Semiautomatic Assault Weapons and 50-Caliber Sniper Rifles

In recent years, there has been increased concern among some Members of Congress about the growing supply of “military-type” firearms in the civilian gun market – particularly semiautomatic assault weapons and 50-caliber sniper rifles.

Semiautomatic Assault Weapons. Congress banned for 10 years the possession, transfer, or further domestic manufacture of semiautomatic assault weapons and high capacity ammunition feeding devices (detachable magazines that hold more than 10 rounds) that were not legally owned or available prior to September 13, 1994.¹⁵ Even before the ban, the Reagan and George H.W. Bush Administrations had halted the importation of some of these firearms under existing legal authority provided by the 1968 Gun Control Act. The Clinton Administration halted the importation of additional firearms, which were not technically semiautomatic assault weapons, but had been modified to overcome the assault weapons ban, under the determination that they were unsuitable for sporting purposes. Semiautomatic assault weapons that were legally owned prior to the ban are not restricted and can be transferred under applicable federal and state laws. It is, however, illegal to assemble a semiautomatic assault weapon from legally or illegally obtained parts. The assault weapons ban will expire on September 13, 2004.

Assault weapons were developed to provide a lighter infantry weapon that could fire more rounds, more rapidly (increased capacity and rate of fire). To increase capacity of fire, detachable, self-feeding magazines were developed. Assault weapons were designed to be fired in fully automatic mode, meaning that once the trigger is pulled, the weapon continues to fire rapidly until all the rounds in the magazine are expended, or the trigger is released. Often such weapons were designed with a “select fire” feature that allowed them to be fired in short bursts, *e.g.*, three rounds per pull of the trigger, or in semiautomatic mode, *i.e.*, one round per pull of the trigger, as well as in fully automatic mode.

Assault weapons, moreover, were designed with pistol grips, so that they could be more easily fired in close-quarters combat in a low-slung position (as opposed to being shouldered). Other military features may include folding/telescopic stock, a bayonet mount,

¹⁴ Dana Quist, “Stop Putting Profit Ahead of U.S. Security,” *Sun Sentinel* (Fort Lauderdale, Florida), Oct. 1, 2001, p. 21A.

¹⁵ P.L. 103-322, Violent Crime Control and Law Enforcement Act of 1994.

muzzle flash suppressor, or grenade launcher. Statute classifies a rifle as a semiautomatic assault weapon, if it is able to accept a detachable magazine, and includes two or more of the five characteristics described above in this paragraph. Different, but similar, definitions are provided for semiautomatic assault weapons that are shotguns or pistols.¹⁶

Many firearms manufacturers have modified the design of firearms that were classified as semiautomatic assault weapons, so they no longer meet the statutory definition of an assault weapon. It is not uncommon today to hear references to pre-ban and post-ban assault weapons, the latter having been modified and, hence, not subject to the ban. As a result, it is likely that some proposals to extend or make permanent the semiautomatic assault weapons ban may also include provisions to expand the list of certain makes and models of firearms that are statutorily enumerated as banned semiautomatic assault weapons. Others, opposed to the ban, may argue that the statutorily defined characteristics of semiautomatic assault weapons are largely cosmetic, and that these weapons are potentially no more lethal than other semiautomatic firearms that are designed to accept a detachable magazine and are equal or superior in terms of ballistics and other performance characteristics.

In October 2002, the Washington DC metropolitan area was terrorized by a series of shootings in which John Mohammad and Lee Malvo allegedly shot 13 unsuspecting passers-by with a Bushmaster XM-15 assault rifle, killing 10. The XM-15 fires a Remington .223 round (5.56 x 45 mm), the same round used in the Colt M-16 (the standard U.S. military rifle). The XM-15 is a semiautomatic version of the M-16. This round has an effective range of 300 meters and can pierce most body armor. XM-15s and other M-16 like rifles, in both the pre-ban and post-ban configurations, are often available for transfer from licensed persons at gun shows. They are available for transfer from private persons less frequently. These weapons, in a post-ban configuration, sell for about \$900 to \$1,000 (new and in-the-box). In a pre-ban configuration, they sell for as much as \$2,000.

Under current law, any firearm, including “assault weapons,” that can be fired in fully automatic mode or in multi-round bursts are classified as “machine guns,” and must be registered with the federal government under the National Firearms Act of 1934. Furthermore, it is illegal to assemble a machine gun with legally or illegally obtained parts. The population of legally owned machine guns has been frozen since 1986, and they are not covered by the semiautomatic assault weapons ban. According to firearms experts, there are about 177,000 machine guns available in the civilian market; about 22,000 of these machine guns are owned by law enforcement agencies. According to a survey of 203,300 state and federal prisoners in 1997, who had been armed during the commission of the crimes for which they were incarcerated, fewer than 1 in 50, or less than 2%, used, carried, or possessed a fully automatic or semiautomatic assault weapon.¹⁷

Fifty-Caliber Assault Weapons. Among some firearms enthusiasts, the 50-caliber sniper rifle has enjoyed growing popularity. Fifty-caliber sniper rifles come in both the bolt action/single shot or semiautomatic variety. They are often available at gun shows in ones and twos for sale by licensees. Such weapons are less frequently available for sale at gun shows by private persons, but such sales are legal under current law. These rifles fire the Browning 50-caliber round (12.7 x 99 mm), which was originally developed for heavy

¹⁶ 18 U.S.C. § 921(a)(30).

¹⁷ For further information, see *Firearm Use by Offenders*, by Caroline Wolf Harlow [<http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf>].

antiaircraft machine guns following the First World War. The diameter of the bullet is about one-half of an inch (12.7 mm). While many other rifles are chambered to fire 50-caliber bullets, the Browning round includes a very large cartridge casing, which is 3.75 inches long (99 mm), packing a larger powder charge that increases the round's range and power. Most 50-caliber sniper rifles have an effective range of over 1,500 meters, nearly one mile. These rifles are extremely cumbersome, weighing between 20 and 30 pounds. Semiautomatic 50-caliber sniper rifles are valued at between \$4,000 and \$7,000 (new and in-the-box). Used rifles sell for about half this price.

While 50-caliber sniper rifles are not routinely traced to crimes, GAO's Office of Special Investigations established that 50-caliber semiautomatic weapons have been linked to domestic and international crime.¹⁸ They also established that armor piercing incendiary rounds were available as specialty items, meaning that most licensed firearm dealers could order such ammunition upon request.¹⁹ Such rounds are capable of piercing up to six inches of steel armor plating. It is plausible that 50-caliber sniper rifles could be used to bring down slow-moving light aircraft – particularly helicopters, or blow up steel storage tanks on rail or truck beds containing natural gas or other hazardous materials.²⁰

Black Powder Exemption

Current law regulates the importation, manufacture, distribution and storage of explosive materials. In general, explosives include dynamite, black powder, pellet powder, and various igniters/detonators. Congress included the Safe Explosives Act in the Homeland Security Act of 2002 (P.L. 107-296). This Act increased the categories of persons prohibited from possessing explosives and established a national explosives user permit process. Current law exempts commercially manufactured black powder in quantities not exceeding 50 pounds from regulation as long as that powder is used solely in conjunction with “sporting, recreational, and cultural pursuits” that involve antique firearms or antique devices.²¹ If terrorists or criminals, however, sought, for example, to amass 1,000 pounds of black powder, by making 20 purchases, they could do so without a permit. According to ATFE, depending upon packaging, 1,000 pounds of any explosive in an automobile trunk, if ignited, would have a lethal air blast range of 125 feet, and a zone of possible injury to bystanders (minimum evacuation distance) of 1,750 feet.

¹⁸ U.S. General Accounting Office, Office of Special Investigations, “Weaponry: .50 Caliber Rifle Crime,” Briefing Paper B-282666, (Washington, Aug. 4, 1999), pp. 3-4.

¹⁹ U.S. General Accounting Office, Office of Special Investigations, “Weaponry: Availability of .50 Caliber Semiautomatic Rifles,” Briefing Paper B-283102, (Washington, June 30, 1999), pp. 5-7.

²⁰ The FY2001 Defense Appropriations Act (P.L. 106-259; § 8104) bans the resale of military surplus .50 caliber ammunition, unless it is “demilitarized” for the civilian market, so that the refurbished ammunition does not include armor piercing, incendiary, and tracer projectiles. This provision includes exceptions for ammunition that is refurbished for the National Guard or for export to foreign governments for military purposes.

²¹ 18 U.S.C. § 845(a)(5).