

fined not more than \$10,000", was executed by making the substitution for "not more than twenty years, or fined not more than \$20,000", to reflect the probable intent of Congress.

Pub. L. 103-322, §320106(1)(A), substituted "not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed," for "not more than ten years, or fined not more than \$10,000".

Pub. L. 103-322, §60003(a)(3)(B), struck out before period at end "as provided in section 34 of this title".

Subsec. (g)(2)(B). Pub. L. 103-272 substituted "chapter 51 of title 49" for "the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)".

Subsec. (h). Pub. L. 103-322, §320106(2), in concluding provisions, substituted "5 years but not more than 15 years" for "five years" and "10 years but not more than 25 years" for "ten years".

Subsec. (i). Pub. L. 103-322, §320917(a), inserted at end "No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed."

Pub. L. 103-322, §320106(3), substituted "not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed," for "not more than ten years or fined not more than \$10,000" and "not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed," for "not more than twenty years or fined not more than \$20,000".

Pub. L. 103-322, §60003(a)(3)(C), struck out "as provided in section 34 of this title" after "death penalty or to life imprisonment".

Subsec. (k). Pub. L. 103-322, §110504(b), added subsec. (k).

Subsec. (l). Pub. L. 103-322, §110515(b), added subsec. (l).

Subsec. (m). Pub. L. 103-322, §110518(b), added subsec. (m).

1990—Subsec. (d). Pub. L. 101-647 substituted "subsection," for "subsection,," before "shall be subject to imprisonment".

1988—Subsec. (g). Pub. L. 100-690, §6474(a), designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), whoever" for "Whoever", inserted "in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or" after "possess an explosive", inserted "or airport" after "such building", substituted "not more than five years, or fined under this title, or both" for "not more than one year, or fined not more than \$1,000, or both", and added par. (2).

Subsec. (h). Pub. L. 100-690, §6474(b)(2), which directed the amendment of subsec. (h) by striking "shall be sentenced" through the end and inserting new provisions was executed by striking "shall be sentenced" the first time it appeared through the end of the subsection which resulted in inserting concluding provisions and striking out former concluding provisions which read as follows: "shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence."

Subsec. (h)(2). Pub. L. 100-690, §6474(b)(1), in par. (2), struck out "unlawfully" after "explosive".

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsecs. (d), (f), (i). Pub. L. 98-473 substituted "personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this sub-

section," for "personal injury results" and "death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection," for "death results".

1982—Subsecs. (e), (f). Pub. L. 97-298, §2(a), inserted "fire or" after "by means of" wherever appearing.

Subsec. (h)(1). Pub. L. 97-298, §2(b), inserted "fire or" after "uses".

Subsec. (i). Pub. L. 97-298, §2(c), inserted "fire or" after "by means of".

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604 of Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-322, title XXXII, §320917(b), Sept. 13, 1994, 108 Stat. 2129, provided that: "The amendment made by subsection (a) [amending this section] shall not apply to any offense described in the amendment that was committed more than 5 years prior to the date of enactment of this Act [Sept. 13, 1994]."

##### EFFECTIVE DATE

Subsecs. (a) to (c) of this section effective 120 days after Oct. 15, 1970, and subsecs. (d) to (j) of this section effective on Oct. 15, 1970, see section 1105(a), (b), set out as a note under section 841 of this title.

#### § 845. Exceptions; relief from disabilities

(a) Except in the case of subsection (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term "destructive device" in section 921(a)(4) of title 18 of the United States Code;

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribu-

tion to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States<sup>1</sup> and

(7) the transportation, shipment, receipt, or importation of display fireworks materials for delivery to a federally recognized Indian tribe or tribal agency.

(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Attorney General for relief from such prohibition.

(2) The Attorney General may grant the relief requested under paragraph (1) if the Attorney General determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

(3) For purposes of this subsection, the term "military device" includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 958; amended Pub. L. 93-639, §101, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 104-132, title VI, §605, Apr. 24, 1996, 110 Stat. 1289; Pub. L. 107-296, title XI, §§1112(e)(3), 1126, Nov. 25, 2002, 116 Stat. 2276, 2285; Pub. L. 109-59, title VII, §7127, Aug. 10, 2005, 119 Stat. 1909; Pub. L. 111-211, title II, §236(a), (c), July 29, 2010, 124 Stat. 2286.)

### Editorial Notes

#### REFERENCES IN TEXT

The date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 104-132, which was approved Apr. 24, 1996.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-211, §236(c)(1), substituted "subsection (l)," for "subsections (l)," in introductory provisions.

Subsec. (a)(7). Pub. L. 111-211, §236(a), added par. (7).

Subsec. (b). Pub. L. 111-211, §236(c)(2), substituted "Attorney General" for "Secretary" wherever appearing.

2005—Subsec. (a)(1). Pub. L. 109-59 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety;"

2002—Subsec. (b). Pub. L. 107-296, §1126, amended subsec. (b) generally. Prior to amendment, text read as follows: "A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Attorney General for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section."

Pub. L. 107-296, §1112(e)(3), substituted "Attorney General" for "Secretary" in two places.

1996—Subsec. (a). Pub. L. 104-132, §605(1), inserted "(l), (m), (n), or (o) of section 842 and subsections" after "subsections" in introductory provisions and ", and which pertain to safety" before semicolon at end of par. (1).

Subsec. (c). Pub. L. 104-132, §605(2), added subsec. (c).

1975—Subsec. (a)(5). Pub. L. 93-639 substituted provisions exempting commercially manufactured black powder in quantities not exceeding fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices for such exemption of black powder in quantities not exceeding five pounds.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as

<sup>1</sup> So in original. Probably should be followed by a semicolon.

an Effective Date note under section 101 of Title 6, Domestic Security.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

### § 846. Additional powers of the Attorney General

(a) The Attorney General is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Attorney General is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

(b) The Attorney General is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Attorney General pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Attorney General by State and local authorities.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959; amended Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 654(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369; Pub. L. 107-296, title XI, § 1112(e)(2), (3), Nov. 25, 2002, 116 Stat. 2276.)

#### Editorial Notes

##### AMENDMENTS

2002—Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” in section catchline.

Subsec. (a). Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” in two places.

Pub. L. 107-296, § 1112(e)(2), substituted “the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives” for “the Attorney General and the Federal Bureau of Investigation, together with the Secretary”.

Subsec. (b). Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” wherever appearing.

1996—Pub. L. 104-208 designated existing provisions as subsec. (a) and added subsec. (b).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as

an Effective Date note under section 101 of Title 6, Domestic Security.

#### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 654(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369, provided that: “There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection [probably means “this section” which amended this section].”

#### CERTIFICATION OF EXPLOSIVES DETECTION CANINES

Pub. L. 106-554, § 1(a)(3) [title VI, § 626], Dec. 21, 2000, 114 Stat. 2763, 2763A-162, provided that: “Hereafter, the Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by Federal agencies, or other agencies providing explosives detection services at airports in the United States.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-58, title VI, § 630, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105-277, div. A, § 101(h) [title VI, § 640], Oct. 21, 1998, 112 Stat. 2681-480, 2681-526.

Pub. L. 105-61, title VI, § 627, Oct. 10, 1997, 111 Stat. 1315.

Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 653(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369.

### § 847. Rules and regulations

The administration of this chapter shall be vested in the Attorney General. The Attorney General may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Attorney General shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959; amended Pub. L. 107-296, title XI, § 1112(e)(3), Nov. 25, 2002, 116 Stat. 2276.)

#### Editorial Notes

##### AMENDMENTS

2002—Pub. L. 107-296 substituted “Attorney General” for “Secretary” wherever appearing.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

### § 848. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)