

ATF EXPLOSIVES Industry Newsletter

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SPECIAL EDITION

This special edition of the Explosives Newsletter is being sent out to alert all persons importing, manufacturing, dealing in, or using explosives about the new requirements that became effective with the passage of the Safe Explosives Act of 2002. This new legislation amends Title XI of the Organized Crime Control Act of 1970.

Previously, a Federal permit to purchase explosive materials was necessary if a person wished to transport, ship, or receive explosives in interstate commerce. A permit, however, was not necessary for persons acquiring or using explosives within their own State of residence. The new legislation now requires that any person who wishes to transport, ship, cause to be transported, or receive explosive

materials in either interstate or intrastate commerce must first obtain a Federal permit issued by ATF. This requirement will take effect on May 24, 2003.

The new legislation also creates a new category of permit -- a "limited permit" -- designed for the intrastate purchaser who buys explosives infrequently and does not intend to transport or use the explosives interstate. This permit will allow the purchaser to receive explosive materials from an in-State explosives licensee or permittee on not more than six (6) occasions during the period of the permit. The permit will allow ATF to better monitor explosives commerce in an effort to enhance homeland security, but it is designed not to be overly burdensome to legitimate purchasers. The limited permit will be valid for 1 year and is renewable. ATF intends to set the application fee for the limited permit at \$25, with a renewal fee of \$12.

The new legislation also requires all applicants for explosives licenses and permits to submit photographs and fingerprints on responsible persons to ATF for the purpose of performing background checks. In addition, all applicants must submit the names and identifying information for all employees who will possess explosive materials. In this way, ATF can conduct a thorough background check to ensure that these individuals are not prohibited from receiving or possessing explosives.

These provisions will apply to all licenses and permits issued beginning May 24, 2003. Persons with existing licenses and permits that expire on June 1, 2003, and thereafter will be required to comply with the fingerprint and photograph provisions upon renewal of their license or permit. Under the provisions of the previous law, no background checks were conducted for the employees of businesses



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that used explosives. While the business owners or managers of companies using explosives were required to be on record with ATF, employees such as blasters, warehousemen, and drivers were not. The new legislation provides for ATF to systematically identify and conduct background checks on all responsible persons and employees who will possess explosives, upon receipt of their identifying information, to reduce the risk that prohibited persons will gain access to explosives.

SAFE EXPLOSIVES ACT OF 2002

Key provisions outlined

The Safe Explosives Act, signed into law by the President on November 25, 2002, provides some major changes in the Federal explosives laws. The new law takes effect in two phases. A brief summary of the provisions that take place in the two phases is provided below.

Phase 1, which became effective January 24, 2003, contains two main provisions:

A. Prohibited Persons Categories - the existing prohibited persons categories are increased with the addition of three new categories of persons who are prohibited from receiving or possessing explosives.

1. Aliens (with limited exceptions)
2. Persons dishonorably discharged from the U.S. Military
3. Citizens of the United States who have renounced their citizenship.

These categories have been added to the pre-existing list of prohibited persons, which includes felons; fugitives from justice; users of, and persons addicted to, controlled substances; and persons who have been adjudicated mental defectives or committed to mental institutions. Prohibited persons may apply to ATF for relief from their Federal explosives disabilities. For more information on obtaining relief from disabilities, see the section on procedures for applying for relief below.

B. Samples - When requested by ATF, manufacturers and importers of explosive materials and ammonium nitrate must submit samples of these materials to ATF, as well as information on their chemical composition or other information. This information will assist ATF in the identification of explosives found at crime scenes.

Phase 2, effective May 24, 2003 contains three

main provisions:

A. Intrastate Permit – Intrastate users of explosives will be required to first obtain an ATF “limited permit” or user permit prior to receiving explosive materials. This would include anyone intending to acquire explosives infrequently and within their own State of residence. The limited permit will allow the purchaser to receive explosive materials on not more than six occasions during the period of the permit. The limited permit will be valid for one year, and will not authorize the permittee to transport or receive explosives interstate. In contrast, interstate users of explosives must obtain ATF user permits. The requirement for manufacturers, importers, and dealers in explosives to first obtain an ATF license remains unchanged.

B. Requirement for ATF Background Checks – ATF must approve an application for a license or permit if, among other things, the applicant is not prohibited from possessing explosives. Responsible persons, (e.g., corporate officers, facility site managers) will now be required to submit identifying information, fingerprints, and photographs to ATF. Employees who will possess explosives must also submit identifying information. ATF will issue “letters of clearance” for responsible persons and for possessors of explosives who are not prohibited from possessing explosives. If ATF determines that a responsible person or employee is prohibited from possessing explosives, ATF must provide specific information to the employer and the prohibited person, and advise them of the procedures to file an appeal. This new provision is significant, as all persons receiving explosive material in interstate or intrastate commerce will have to undergo a background check conducted by ATF.

C. Inspections – In general, ATF will inspect all licensees and permittees at least once every 3 years for compliance with Federal explosives storage regulations. In the case of user permits and licenses, ATF must verify by physical inspection that applicants and renewal applicants have places of storage that meet the requirements for safety and security set forth in the Federal explosive regulations. However, for persons applying for the new limited permits, ATF is not required to conduct a physical inspection of the storage facilities. Instead, ATF may verify by “other means as the Attorney General determines appropriate” that there is acceptable storage. For first and second renewals ATF may continue to verify by other means; however, if a physical inspection has not been conducted during the previous 3 years,

ATF must conduct one for the third renewal, and at least once every three years thereafter.

D. Aliens and the Safe Explosives Act - As noted above, effective January 24, 2003, the Safe Explosives Act ("Act") generally prohibits the possession or receipt of explosive materials by an alien, which is defined under the Act as a person who is not a citizen or national of the United States.

There are three general exceptions to the alien prohibition:

- (1) A permanent resident alien;
- (2) A nonimmigrant alien (or refugee/asylee) who is listed as a responsible person on a Federal explosives license or permit;
- (3) A nonimmigrant alien (or refugee/asylee) who is a designated foreign law enforcement, military, or intelligence officer.

ATF has received several questions concerning nonimmigrant aliens. The general rule is that a nonimmigrant alien (as well as a refugee or asylee) cannot possess or receive explosives **UNLESS**:

- (1) The individual is listed as a responsible person on an application for a Federal explosives license or permit;
- (2) The individual has been designated as a specified foreign official;
- (3) The individual is authorized to possess explosives in the course of his or her employment in the transportation, shipment, receipt, or importation of explosives for delivery to any agency of the United States or to any State or political subdivision thereof under 18 USC 845(a)(3); or,
- (4) The individual has been granted relief by ATF under 18 USC 845(b).

The Immigration and Naturalization Act (INA) defines terms such as permanent resident alien, nonimmigrant alien, refugee, and asylee. For example, according to the INA, a permanent resident alien is an alien who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Permanent residents generally carry a Permanent Resident Card, commonly known as a "Green Card."

Also according to the INA, a nonimmigrant alien is an alien in the United States in a nonimmigrant classification. Typically, these are persons who seek temporary entry to the United States for a specific purpose, such as persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The particular type of nonimmigrant alien classification may be evidenced on the non-immigrant's visa or other documentation. For further information on this issue, please check www.ins.gov or www.state.gov.

Any further questions on this issue should be addressed to ATF's Public Safety Branch in Washington, DC, at (202) 927-2310.

APPLICATION FOR RESTORATION OF EXPLOSIVES PRIVILEGES

Generally, persons prohibited from possessing explosives under the new law may apply for relief from disabilities. This is accomplished by completing an application on form ATF F 5400.29, Application for Restoration of Explosives Privileges.

In order to assist ATF in processing your application, it is suggested that you submit additional information in reference to your particular prohibition. A list of the requested information is available on the ATF website. The application and additional information should be submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives, Tech World Post Office, P.O. Box 50220, Washington, DC 20091. Any questions can be directed to the Public Safety Branch at 202-927-2310, or directly to the Explosives Relief of Disability Section at (202) 927-2260.

CHANGES WITHIN ATF RESULTING FROM THE SIGNING OF THE HOMELAND SECURITY BILL

Two separate bureaus to be created

On November 25, 2002, President Bush signed into law the Homeland Security Law, which created a new Cabinet-level agency by consolidating a number of existing agencies together, and tasking them to make America safer and more secure. The Bureau of Alcohol, Tobacco and Firearms (ATF) was not included as a part of that new agency. However, The Homeland Security Law did directly affect ATF because part of the legislation provided for a split of ATF into two separate bureaus.

On January 24, 2003 (60 days after the Homeland Security Bill became law), one part of the existing ATF was transferred from the Treasury Department and established in the Department of Justice as the Bureau of Alcohol, Tobacco, Firearms, and Explosives. However, the Bureau will continue to use ATF as its official designation. This new Bureau within the Justice Department will continue to oversee the firearms, explosives, and arson programs and will also enforce the Federal criminal laws concerning alcohol and tobacco smuggling and diversion.

On the same day, a separate entity was created to handle the regulatory and taxation aspects of the alcohol and tobacco industries. This agency is known as the Tax and Trade Bureau (TTB), and it will remain within the Treasury Department, where the current ATF and its predecessors have served honorably for approximately 200 years. The move of the major portion of the existing ATF to the Justice Department will allow ATF special agents and inspectors to partner with other Justice law enforcement agencies. This, in turn, should eliminate duplication and give a stronger unity of direction toward Federal law enforcement efforts. Similarly, revenue collection and regulation of the alcohol and tobacco industries remains a better fit within the Treasury Department.

Of utmost importance, however, is ATF's commitment to continue to serve the public in all these areas, and to do so with as little interruption as possible. As ATF assembles its management teams to facilitate the transfer of program functions to their new homes, we recognize that we face major

changes. We want to assure all concerned that these changes will not create any immediate problems for either our regulated industries or our law enforcement partners.

ATF Director Bradley Buckles may have said it best when, on November 25, 2003, he told ATF employees "While the new entities become official in 60 days, two physically separate and distinct units will not magically appear on that date. Almost everyone will be sitting in front of the same computer, behind the same desk, in the same office" on January 24th. He added, "While rapidly moving to independent, self-sustaining structures will remain a goal, it will not be pursued at the expense of unnecessary disruption of employees or mission activities."

FREQUENTLY ASKED QUESTIONS

As you can imagine, ATF has received an extremely large volume of questions regarding the Safe Explosives Act. ATF is placing the most recent information available to answer these questions on the ATF website. (www.atf.gov) We urge all persons who currently use or possess explosives, or who anticipate using or possessing explosives in the future, to go to the ATF website for the latest developments in this area.

THE NEW FEDERAL EXPLOSIVES LICENSE AND PERMIT APPLICATION *Explosive Applications and Renewals*

Effective immediately, please be advised that in order to apply for a Federal explosives license/permit (FEL), you **MUST** contact the National Explosives Licensing Center (NELC) at (404) 417-2750. Please be advised that your application package will not be considered complete without the proper FD-258, FBI Fingerprint Card (ORI # ATF-GA-9900), which can only be obtained by contacting the NELC. The new required forms include the following:

1. ATF Form 5400.13/5400.16 (2/03) - Application for Explosives License or Permit All responsible persons of original and renewal applications will be required to submit fingerprint cards (FD-258, ORI# ATF-GA-9900, in duplicate) and provide a 2x2 photograph with their application.
2. ATF Form 5400.28 - Employee Possessor Questionnaire (EPQ)
3. FD-258, FBI Fingerprint Card, ORI# ATF-

GA-9900 (available by contacting the NELC)

If you have any questions about this matter, please contact the NELC at (404) 417-2750 or the Public Safety Branch at (202) 927-2310.

OTHER FREQUENTLY ASKED QUESTIONS

1. What is the new "Limited Permit"?

The new limited permit is for persons who wish to transport, ship, cause to be transported, or receive explosive materials in intrastate commerce. This permit is designed for the infrequent receipt of explosive materials for intrastate users. This permit will allow a purchaser to receive explosive materials on no more than six separate occasions from in-state licensees or permittees during the 12-month period of the permit. The limited permit does not allow the holder to transport, ship, cause to be transported, or receive explosive materials in interstate commerce. This restriction includes contiguous states. ATF intends to set the fee for the new limited permit at \$25, and the renewal fee is \$12. Purchasers who need more than 6 receipts per year should apply for the current ATF User's Permit. Applications for this permit should be submitted to ATF as soon as possible, using the current application form.

2. What is the difference between a "responsible person" and a "possessor of explosives"?

A "Responsible person" is defined in the law as an individual who has the power to direct the management and policies of the company pertaining to explosive materials. This generally includes sole proprietors, partners, site managers, corporate officers and directors and majority stockholders. However, this does not require corporate applicants to report every officer or director as a responsible person. Individuals within a corporation not having the power to direct the management and policies of the corporation with respect to explosive materials are not "responsible persons". These corporate officials having no responsibility or authority in connection with the company's explosive business need not be reported as "responsible persons" and they do not have to submit fingerprints and photographs to ATF. A "possessor of explosives" is someone who has actual physical possession or constructive possession, which means the person has dominion or control over explosives. For example, persons who are physically handling explosive materials would be considered to be possessors of explosives. This would include employees who handle

explosive materials as part of the production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees, such as blasters, who actually use explosive materials. Other examples of possessors include a supervisor at a construction site who keeps keys for magazines in which explosives are stored or who directs the use of explosive materials by other employees, and an employee truck driver transporting explosive materials from a licensee to a purchaser.

3. Why do I have to provide new and additional information on responsible persons and employee possessors of explosives?

The new law requires information on responsible persons and employee possessors of explosives so that ATF can conduct background checks on such persons to reduce the risk of prohibited persons gaining access to explosives.

4. When will I need to submit the identifying information for my responsible persons and employee possessors of explosives?

New applicants and renewal applicants whose license or permit expires on or after May 24, 2003, must submit identifying information for responsible persons and employee possessors (and fingerprints and photographs for responsible persons) upon submission of an original or renewal application. Additional requirements may be imposed regarding these submissions. We will release this information as soon as possible.

5. How do I get my fingerprints taken?

Fingerprints must be submitted on Fingerprint Identification Cards, FD-258. The fingerprint cards should be completed at your local law enforcement authority. Please contact NELC at 404-417-2750 to obtain a complete application packet which includes fingerprint cards.

6. Will I be notified whether or not my responsible persons and employee possessors have passed their background checks?

Yes. A notification of clearance will be issued directly to employers advising whether or not their responsible persons and employee possessors are, or may be, prohibited from possessing explosives. In addition, letters of clearance will be issued to responsible persons and employee possessors.

7. What happens if one of my responsible persons or employees possessing explosives does not pass their ATF background checks?

If an individual does not pass the background check, a letter will be sent to the licensee or permittee who submitted the individual's name. A letter will also be sent to that individual explaining the prohibition, outlining appeal procedures, and identifying availability of relief, if any. In the meantime, that individual may not lawfully possess explosives.

More information on licensee/permittee requirements, as well as relief and appeal procedures, will be posted shortly.

8. Who will conduct the background checks on applicants, responsible persons, and possessors?

ATF will perform the background checks. If employers wish to require their own background checks as a condition of employment, they may do so; however, such a background check will not be accepted in place of the ATF background check.

9. Will the new law affect the term of the licenses and permits?

The Federal explosives licenses and permits, except for the limited permit, will continue to be valid for 3 years. The new limited (intrastate) permit will be valid for 1 year only and is renewable.

10. Does the Safe Explosives Act affect the storage of explosives?

No. The current laws and regulations governing storage under 18 U.S.C. 842(j) and 27 CFR, Part 55, Subpart K, are unaffected by the proposed legislation.

Please Note: There is no exemption from proper storage of explosive materials for most possessors of explosive materials. As noted in 27 CFR 55.205, all explosive materials must be kept in a storage magazine meeting the requirements contained in Subpart K, Federal Explosive Regulations, unless they are:

- (a) In the process of manufacture;
- (b) Being physically handled in the operating process of a licensee or user;
- (c) Being used, or
- (d) Being transported to a place of storage or use by a licensee or permittee or by a person

who has lawfully acquired the explosive materials.

11. Do the provisions of the Safe Explosives Act affect the exemption for small arm ammunition?

No, small arms ammunition and components thereof are generally exempt from the Federal explosives law and regulations including the Safe Explosives Act. This includes smokeless powder designed for use in small arms ammunition. A person acquiring smokeless powder is generally not required to obtain a Federal explosives license or permit. However, it should be noted that persons engaged in the business of importing and/or manufacturing smokeless powder must have the appropriate Federal explosives license.

18 U.S.C. 845(a)(4); 27 CFR 555.11; 27 CFR 555.141(a)(4)

12. May a person who does not hold a Federal explosives license or permit purchase black powder?

Yes, there is a statutory exemption for commercially manufactured black powder that is purchased in quantities of 50 pounds or less and is intended solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921 (a)(16), or antique devices as exempted from the term "destructive devices" in 18 U.S.C. 921 9a)(4).

18 U.S.C. 845(a)(5); 27 CFR 555.141(b)

The answers to the above questions reflect the best information that was available as we went to print with this Special Edition of the Newsletter. You should continue to monitor the ATF website for any new developments or information. You may also contact your local Industry Operations office of ATF, or the Public Safety Branch in Washington, D.C. **Please note: ATF's Public Safety Branch has a new phone number: (202) 927-2310.**

