

## Safe Explosives Act FAQs

### Scenario FAQs

3/28/03

1. **Mr. Smith (a non-licensee) owns land and explosives storage magazines. He has keys to the magazines. Mr. Jones is an ATF permittee and rents storage at the magazines from Mr. Smith.**

- a. **Is Mr. Smith receiving explosives and does he need a permit?**

No. Mr. Smith's possession of keys to an explosives magazine, in and of itself, is not a "receipt" of explosives requiring a license or permit. Thus, Mr. Smith is not receiving explosives and he does not need a permit. Mr. Smith has constructive possession of the explosives, however, and he is subject to the prohibited persons categories.

- b. **Does mere possession of explosives require a license or permit?**

No. See 1a.

- c. **If the magazine is not in compliance with ATF storage regulations, who is cited?**

Mr. Jones, the permitted owner of the explosives would be cited for improper storage.

2. **Mr. Thompson lives and works in the United States and provides technical blasting assistance to several licensed clients in the United States. In the course of his technical consulting work, he will demonstrate how to use explosives, set up shots, direct the blasting, etc.**

- a. **Does Mr. Thompson need a permit?**

Yes. Mr. Thompson is a consultant who is "receiving" explosives on behalf of his explosives consulting business. In the example described, he has custody or control of the explosives for his use or direction in his explosives business. Thus, Mr. Thompson needs a permit.

- b. **Mr. Thompson applies for a permit, but he does not have (and does not need) an explosive magazine as he never stores explosives. What must he provide as a contingency storage plan?**

Mr. Thompson must provide a letter or statement from someone having approved storage facilities allowing him the use of those facilities should the need for storage arise. In the alternative, he may submit a letter or statement that his storage needs which may arise will be accommodated at the licensed premises at which he provides technical services, subject to ATF verification.

**3. Ms. Johnson is a Canadian citizen who owns an explosives consulting service. She frequently provides blasting technical assistance to licensed clients in the United States. During these operations, she receives explosives.**

**a. Does she need an ATF permit?**

Yes. See 2a.

Aliens are generally prohibited from receiving or possessing explosives. A statutory exemption to this prohibition includes an exemption for nonimmigrant aliens (or refugees/asylees) who are also listed as responsible persons on a license or permit. As long as Ms. Johnson falls squarely within this exemption, she may apply to ATF for a Federal explosives permit or license. Alternatively, she may apply for relief from disabilities.

**b. What should Ms. Johnson show as her permit premises?**

If she does not have an existing location that constitutes her business premises, Ms. Johnson must make appropriate arrangements with an existing licensee or permittee to conduct business at the licensee or permittee premises. She must provide to ATF a written agreement memorializing such an arrangement. The agreement must provide ATF lawful access to the premises for purposes of inspection .

Like all applicants, Ms. Johnson must demonstrate and certify in writing that she is familiar with all published State laws and local ordinances relating to explosive materials at the premises location.

**4. ABC Fireworks Company holds an ATF permit, and hires temporary employees to assist in setting up a show.**

**a. Does ABC need to report temporary employees, for example, day laborers on the Employee Possessor Questionnaires (EPQs)?**

Yes. Persons hired as temporary employees must be reported to ATF as employee possessors on the EPQs.

**b. Does ABC need to report volunteers (e.g. Jaycees, Rotarians, municipal firefighters) used to assist in setting up the show?**

No. The volunteers are not ABC employees. ABC is not required to report such persons on the EPQs. The volunteers are subject to the prohibited persons categories, however. ABC cannot use volunteers who ABC knows are prohibited persons. Furthermore, the volunteers' possession of the fireworks is lawful only under the following circumstances:

- i. ABC must have lawfully received the fireworks pursuant to a valid Federal permit or license, the exception in section 845(a)(3), or other appropriate exception;
- ii. An authorized ABC employee receives and possesses the fireworks used in the show in the scope of his employment and on behalf of ABC;
- iii. The volunteer's possession is under the direction or control of the authorized ABC employee; and,
- iv. ABC has no knowledge that the volunteer is a prohibited person.

**5. A mine (non-permittee) contracts blasting to a licensed shot-service company. Typically, a few miners assist the shot-service company in unloading explosive materials, setting up the shot, and clearing up afterwards.**

**a. Do the miners (not employed by the shot service company) have to be reported as employee possessors?**

No. Like the ABC Fireworks volunteers in 4b, the miners are not employees of the shot-service. The shot-service company does not have to submit EPQs for the miners.

The miners are subject to the prohibited persons categories. The shot-service cannot use miners who the company knows are prohibited persons. Further, the miners' possession of the explosives is lawful only under similar circumstances as those described in 4b.

- b. The shot-service company stores its explosives at a storage magazine at the mine. The mine owns the magazine. Who would be cited by ATF for storage violations?**

ATF would cite the shot-service company, who is the owner of the explosives, for the storage violations. See 1c.

- c. If the supervisor of the mine has the keys to the magazine, is the shot-service required to report the mining supervisor on an EPQ?**

No. The supervisor is not an employee of the shot-service company and does not need to be reported on an EPQ.

- d. Does the mine need a permit?**

No. The mine does not need a permit unless it transports, ships, causes to be transported, or receives explosives. For example, the mine would need a permit if it purchased and provided the explosives to the shot-service company for the blasting.

- 6. I am president of a local fireworks club. I have obtained a permit for the club in order that the club may lawfully receive explosives under Federal law. The other officers and myself are listed as responsible persons on the permit. May we provide fireworks to our members for their shooting events?**

No. You may be distributing explosives in violation of Federal law. Further, your members may be receiving explosives in violation of Federal law. However, your club may sponsor fireworks events at which volunteer club members may possess explosives while assisting in supervised shoots, so long as their assistance is under the direction or control of the club. Further, their assistance is only lawful under similar circumstances as those described in 4b.

- 7. May a model rocket permittee allow friends to assist in setting up a model rocket containing Ammonium Perchlorate Composite Propellant (APCP) or other explosive?**

Yes. As long as the persons providing assistance are not otherwise prohibited from possessing explosives, they may assist the permittee and do not need to be reported as employee possessors. However, their assistance is only lawful under similar circumstances as those described in 4b.

**8. May students attending a public or private school receive or possess explosives?**

Students attending a public or private school are generally prohibited from receiving or possessing explosives unless they have a user permit or limited permit. There are a few exceptions to this general rule:

- a. Student-employees at public schools: Students who are employed by a public school (or other State or local political subdivision) may receive or possess explosives on behalf of the school if their possession is within the scope of their employment. They are not required to be reported on an EPQ nor are they subject to the prohibited person categories. This exception is based on 18 U.S.C. 845(a)(3), which exempts State or local political subdivisions from most provisions of the Federal explosives laws. For further information, see ATF's Open Letter to Blasting/Mining Educators at [www.atf.treas.gov/press/fy03press/112902mining.htm](http://www.atf.treas.gov/press/fy03press/112902mining.htm).
- b. Student-employees at private schools: Students who are employed by a private school may receive or possess explosives on behalf of the school if their possession is within the scope of their employment, they are reported on an EPQ, and, they are not prohibited persons. The private school must have a valid ATF license or permit pursuant to 18 U.S.C. 843, however, and must otherwise comply with the Federal explosives laws. This is because a private school is not an exempted State or local political subdivision under 18 U.S.C. 845(a)(3). For further information, see ATF's Open Letter to Blasting/Mining Educators at [www.atf.treas.gov/press/fy03press/112902mining.htm](http://www.atf.treas.gov/press/fy03press/112902mining.htm)
- c. Non-employee students at public or private schools: Students who attend either type of school to train in explosives handling, safety, procedures, etc., may receive or possess explosives in the course of their studies at the school under limited circumstances where:
  - i. The school has lawfully received explosives pursuant to a valid Federal permit or license, the exception in section 845(a)(3), or other appropriate exception;
  - ii. An authorized school employee receives and possesses the explosives used in the training in the scope of his employment and on behalf of the school;

- iii. The student's training is under the direction or control of the authorized school employee; and,
- iv. The school has no knowledge that the student is a prohibited person. (The student would not be reported on an EPQ because he is not an employee; however, the student would be subject to the prohibited person categories).

**9. Does a broker who arranges an importation of display (1.3) fireworks on behalf of a third party and never takes title to or possession of the fireworks have to obtain an importer's license?**

No. Persons acting in the capacity of a broker, who never take title to or possession of explosives, and merely are negotiating a purchase of the explosives for a third party, typically do not need an importer's license. The third party, which is the importer of record, must have an importer's license and comply with all requirements under the Federal explosives law.