

General Questions and Answers

4/28/03

1. When does the Safe Explosives Act go into effect?

The legislation takes effect in two parts and contains five major provisions. The first two provisions outlined below are effective 60 days after enactment. The last three provisions outlined below are effective 180 days after enactment.

Effective January 24, 2003

- (1) **New Prohibited Persons Categories:** The Act adds three new categories of persons prohibited from receiving or possessing explosives: (1) aliens (with limited exceptions); (2) persons who have been dishonorably discharged from the military; and (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; users of, and persons addicted to, controlled substances; and persons who have been adjudicated mental defectives or committed to mental institutions. Prohibited persons generally will be eligible to apply to ATF for relief from Federal explosives disabilities.
- (2) **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 will assist ATF in the identification of explosives found at crime scenes.

Effective May 24, 2003

- (1) **Requirement for all persons who wish to receive explosive materials to hold a Federal explosives license or permit:** This part of the Safe Explosives Act requires that all persons receiving explosive materials on and after the effective date, obtain a Federal explosives license or permit, and creates an additional type of permit, the “**limited permit**,” that will authorize the holder to receive explosive materials only within her/his State of residence on no more than six separate occasions during the one-year term of the permit. Prior to its enactment date, only persons who transport, ship, or receive explosive materials in interstate commerce were required to obtain a “**user permit**.” The “user permit” authorizes the holder to receive explosive materials in interstate commerce, and does not establish a limit on receipts of explosive materials during the three-year term of the

permit. Accordingly, persons whose operations may exceed the allowances authorized by the “**limited permit**” should consider obtaining a “**user permit**.”

(2) **New Required Industry Information for More Thorough ATF Background Checks:** ATF must approve an explosives license or permit application if, among other things, the applicant is not prohibited from possessing explosives. Responsible persons (e.g., facility site managers, corporate officers) will now be required to submit to ATF identifying information, fingerprints, and photographs. Employees of licensees and permittees who are authorized to possess explosive materials in the course of their employment must submit only identifying information. ATF must issue “letters of clearance” for those responsible persons and possessor employees who are not prohibited from possessing explosives. If ATF determines that a responsible person or employee is, or may be, subject to an explosives prohibition, ATF must provide specific information to the prohibited person (e.g., advise of appeal procedures) and notifies the employer of the denial. This new provision is significant, as all employees possessing explosive materials for purposes of their employment will have to undergo a background check conducted by ATF. (SEE LICENSES AND PERMITS QUESTIONS AND ANSWERS.)

(3) **Inspections:** Generally, ATF will have to perform on-site inspections of all ATF licensees and permittees at least once every three calendar years to determine compliance with Federal explosives storage regulations.

- For user permits and licensees, ATF must verify, by on-site inspection, that new applicants and renewal applicants have places of storage for explosive materials that meet the standards of safety and security set forth in the regulations.
- For new applicants for limited permits, ATF is not required to conduct an on-site inspection of places of storage. Instead, ATF may verify, by inspection or other appropriate means, that there is acceptable storage. For the first and second renewal of limited permits, ATF may continue to verify storage by other appropriate means. However, if an on-site inspection has not been conducted during the previous three years, ATF must, for the third renewal and at least once every three years after that renewal, verify by on-site inspection that the limited permittee has acceptable places of storage.

2. Who is affected by the Safe Explosives Act?

The new law will affect all current Federal explosives licensees and permittees, responsible persons, and employees authorized by those licensees and permittees to possess explosives in the course of their employment.

It will also affect anyone who wishes to receive or possess explosives in interstate or intrastate commerce. (SEE LICENSES AND PERMITS QUESTIONS AND ANSWERS.)

3. May a licensed manufacturer, importer, or dealer distribute explosive materials to non-licensees and non-permittees under the Safe Explosives Act?

No. Under the Safe Explosives Act, everyone who wishes to receive explosive materials must first obtain a Federal license or permit. This provision does not go into effect until May 24, 2003, so non-licensees and non-permittees generally will be able to receive explosives until that time. (SEE LICENSES AND PERMITS QUESTIONS AND ANSWERS.)

4. Do the provisions of the Safe Explosives Act affect the exemption for small arms 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)]

5. Are common or contract carriers required to obtain a Federal explosives license or permit to transport explosive materials?

No. Common or contract carriers are not required to obtain a Federal explosives license or permit to transport explosive materials. However, employees of a common or contract carrier transporting explosives must complete in part, ATF F 5400.8, Explosives Delivery Record, in accordance with the instructions therein. For further information on the ATF F 5400.8, please consult 27 CFR 555.103 and 555.105, or call the ATF Public Safety Branch at 202-927-2310.

6. 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 (a)(4).

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

7. Will MSHA continue to inspect mines (for storage of explosive materials)?

Yes. The Memorandum of Understanding (MOU) between the Mine Safety and Health Administration (MSHA) and ATF remains in place under the Homeland Security Act of 2002. The MOU outlines the two agencies’ responsibilities regarding the safe and secure storage of explosive materials on mine properties. MSHA conducts inspections of explosives storage facilities at mine sites subject to the jurisdiction of MSHA. During each regular health and safety inspection, MSHA compliance specialists inspect storage facilities where explosive materials are stored and inspect records of licensees and permittees under the applicable regulations of Title 30 of the Code of Federal Regulations. The mine operator is cited for any violations found during the inspection. The results of inspections, conducted on behalf of ATF, are promptly submitted to ATF. In accordance with this MOU, MSHA conducts most compliance inspections of Federal explosives licensees and permittees at mine sites. However, ATF will conduct original application and renewal application inspections.

8. How will ATF’s transfer from the Department of the Treasury to the Department of Justice affect the regulation of explosives?

Effective January 24, 2003, all of ATF’s explosives and firearms functions moved to the Department of Justice. The Department of the Treasury retained most of ATF’s alcohol and tobacco functions.