

Safe Explosives Act FAQs

Licenses and Permits Questions and Answers

3/28/03

1. I currently have a Federal explosives license or permit. What do I need to do to ensure that I'm in compliance when the new law goes into effect?

Effective January 24, 2003, three new categories of persons will be prohibited from receiving or possessing explosive materials: (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. Thus, it will be unlawful for these persons to receive or possess explosives or after that date. (SEE GENERAL QUESTIONS AND ANSWERS).

Effective January 24, 2003, you must use the new revised ATF Form 5400.4, Explosives Transaction Record, for distributions to non-licensees and non-permittees, and the ATF Form 5400.8, Explosives Delivery Record (7/98), for certain deliveries of explosive materials. Revisions to the Explosives Transaction Record include, primarily, the addition of the expanded prohibited persons categories. (SEE RECORDKEEPING QUESTIONS AND ANSWERS.)

Beginning May 24, 2003, all persons receiving explosive materials must have a Federal explosives license or permit. Thus, you may no longer distribute explosives materials to non-licensees or non-permittees after that date.

There will be additional requirements for compliance with the new law after May 24, 2003. ATF will post these requirements as soon as possible. Please continue to check the website for new information.

2. I currently have a Federal explosives license or permit, and it will expire prior to May 24, 2003. What do I need to do in order to renew my license or permit?

If your license or permit is due to expire and will be timely renewed prior to May 24, 2003, you should submit the current version of ATF Form 5400.13/5400.16, Application for License or Permit. However, ATF's National Licensing Center may request that you submit the new application package to require responsible persons to certify that they do not fall within any of the new prohibited persons categories. Please continue to check the website for new information.

3. I currently have a Federal explosives license or permit and it will expire on or after May 24, 2003. What do I need to do in order to renew my license or permit?

If your license or permit expires on or after May 24, 2003, you must submit a revised ATF Form 5400.13/5400.16, Application for Explosives License or Permit. This revised application is available on ATF's website.

As part of the application package, you must submit the names, identifying information, fingerprints, and photographs of all responsible persons. In addition, you must submit the names and identifying information of your employees who are authorized to possess explosive materials in the course of their employment. This information must be provided on ATF Form 5400.28, Employee Possessor Questionnaire. This form is now available on ATF's website.

Under the new legislation, ATF will have 90 days to approve your application. In order to ensure that your license or permit is issued before your current license or permit expires, it is recommended that you submit your application package 90 days before your license expires.

4. 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.

5. How and when do I apply for the new "limited permit"?

If you are a person who would like to apply for a limited permit, you must submit an appropriate application package to ATF.

The application package will include an application form. The ATF Form 5400.13/5400.16 is available now. In addition, you must submit the names, identifying information, fingerprints, and photographs of all responsible persons. You must also submit the names and identifying information of employees who are authorized to possess explosive materials in the course of their employment. This information must be provided on an ATF Form 5400.28 that is available now.

Under the new legislation, ATF will have 90 days to approve your application for a limited permit. If you will require a limited permit by May 24, 2003, it is recommended that you submit your application package as soon as possible, but no later than March 15, 2003.

Again, the application package and the necessary forms to be submitted with the package are available now.

6. What is the difference between a “responsible person” and a “possessor of explosives” for the purposes of the new legislative requirements?

The new law defines a “**responsible person**” as an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. For example, responsible persons generally include sole proprietors and explosives facility site managers. In the case of a corporation, association, or similar organization, responsible persons generally include corporate directors/officers, and stockholders, who have the power to direct management and policies as they pertain to explosive materials.

Generally, **responsible persons** at a corporation (or association or similar organization) include only those corporate officers and directors who direct corporate management and policies as they pertain to explosives. For example, a corporate vice president’s duties may include acquiring and approving contracts with explosives distributors. He would be a responsible person. Another vice president may manage solely human resources. He would not typically be a responsible person.

Generally, **responsible persons** at a corporation (or association or similar organization) include stockholders who own more than 50 percent of the outstanding shares of corporate stock. A person who owns 50 percent or less of outstanding shares may or may not be a responsible person. For example, a person who owns 40% of shares may have a proxy vote of an additional 20% of shares. He would be a responsible person. Another person may own 20% of shares and have no additional proxy votes. Generally, he would not be a responsible person. However, each person employed by a corporate applicant must assess all of his corporate responsibilities and determine whether or not his duties permit him to control corporate management and policies pertaining to explosives. Each applicant must make a good faith effort to determine who in the business qualifies as a responsible person. Please call ATF if you have questions on a particular person.

[18 U.S.C. 841(s); 18 U.S.C. 843; 27 CFR 555.49]

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 of a licensee or permittee transporting explosive materials from a licensed distributor to a purchaser.

7. 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.

8. 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.

9. How do I get my fingerprints taken?

Fingerprints must be submitted on Fingerprint Identification Cards, FD-258 that have been issued by ATF. The fingerprint cards must contain the following ORI information: GAATF9900, ATF- EXPL LIC CTR, ATLANTA, GA. At this time, these fingerprint cards may only be obtained by contacting the National Explosives Licensing Center at 404-417-2750. The fingerprint cards should be completed at your local law enforcement authority.

10. 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. These notifications must be retained as part of the licensee's/permittee's permanent records. In addition, letters of clearance will be issued to responsible persons and employee possessors.

11. 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.

12. 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.

13. Will the new law affect the duration of the licenses and permits?

The Federal explosives licenses and user permits are valid for 3 years and are renewable. The new limited (intrastate) permit will be valid for 1 year and is renewable. The user-limited permit is valid only for a single purchase of explosive materials and is not renewable.