



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

MAR 15 2011

OPEN LETTER TO ALL FEDERALLY RECOGNIZED INDIAN TRIBES AND EXPLOSIVES LICENSEES AND PERMITTEES

This letter provides guidance regarding the Tribal Law and Order Act of 2010. The law created an exemption for federally recognized Indian tribes or tribal agencies from provisions of the Federal explosives laws with respect to display fireworks.

The Federal explosives laws require all persons who engage in the business of manufacturing, importing, or distributing explosives to obtain a license from ATF. Federal law also prohibits the distribution of explosive materials to, or the receipt of explosive materials by, any person other than a licensee or permittee. Additionally, all persons who receive explosives, who transport explosives, or who cause explosives to be transported, are required to obtain a Federal explosives permit or license from ATF.

Section 236 of the Tribal Law and Order Act of 2010, Exemption for Tribal Display Materials, amends 18 U.S.C. § 845, Exceptions, by adding § 845(a)(7) to also exempt "the transportation, shipment, receipt, or importation of display fireworks materials for delivery to a federally recognized Indian tribe or tribal agency."

This provision allows federally recognized Indian tribes and tribal agencies to obtain display fireworks materials without a Federal explosives license or permit. It is similar to the explosive materials exception in section 845(a)(3) for Federal, State, or local government agencies. Only authorized employees of a federally recognized Indian tribe or tribal agency acting within the scope of their official duties may acquire display fireworks materials on behalf of the tribe or tribal agency without an ATF license or permit. The term "Indian tribe" is defined by 18 U.S.C. § 841(t) as "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe." A list of these recognized tribes is published annually in the Federal Register by the Department of the Interior.

The new law does not exempt Indian tribes and tribal agencies engaged in the business of manufacturing fireworks from the requirement to obtain a license to manufacture explosives. Moreover, as provided by 18 U.S.C. § 842(a)(3)(B), tribes and tribal agencies, in addition to State and local governments, may not distribute display fireworks, display fireworks materials, or other explosive materials to another person or entity that does not have a Federal explosives license or permit or is not otherwise exempt. Additionally, as provided by 27 CFR, Part 555, Subpart G—Records and Reports, ATF licensees distributing display fireworks materials are still

required to maintain separate records of the distribution. This new exception provision does not apply to certain subsections, including §§ 844(d), (e), (f), (g), (h), and (i), pertaining to criminal misuse of explosives. Furthermore, under 18 U.S.C. § 842(k), all persons must report the theft or loss of explosive materials from their stock within 24 hours of discovery.

Indian tribes and tribal agencies, like State and local agencies, must still comply with the Federal explosives storage regulations specified in 27 CFR, Part 555, Subpart K—Storage. These regulations outline how explosive materials must be stored in properly constructed explosives storage magazines and details certain minimum distances explosives magazines need to be located from inhabited buildings, public highways, passenger railways, and other explosives storage magazines.

ATF is committed to helping licensees and permittees comply with Federal explosives laws and regulations. You may address questions via e-mail to EIPB@atf.gov or in writing to:

Chief, Explosives Industry Programs Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE., Mailstop 6N-672
Washington, DC 20226



Arthur Herbert
Assistant Director
Enforcement Programs and Services