



Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

Assistant Director

Washington, DC 20226
FY-03-02

November 29, 2002

Open Letter to Federal Explosives Licensees and Permittees

The purpose of this letter is to provide you information on the provisions of the Safe Explosives Act (the Act), which was enacted on November 25, 2002. This legislation directly affects all persons who receive explosive materials by requiring that all persons have, at minimum, a "limited permit" in order to obtain explosive materials. This requirement will be effective 180 days after enactment of the new law. Persons who do not currently hold a Federal explosives license or permit, and who will receive explosives on or after May 24, 2003, must obtain from the Bureau of Alcohol, Tobacco and Firearms (ATF) an approved license or permit prior to receiving further shipments of explosives.

The Act also expands the list of persons prohibited from possessing explosives. Unlike the provisions of the Act pertaining to the permit requirement, the expanded list of individuals prohibited from possessing explosive materials is effective on January 24, 2003. In addition to the existing prohibited persons categories, the newly enacted legislation adds: (1) aliens (with limited exceptions); (2) persons who have been dishonorably discharged from the military; and (3) persons who have renounced their United States citizenship. Similarly, it will be unlawful to distribute explosive materials to these persons or to anyone currently prohibited from possessing explosives. Prohibited persons generally will be eligible to apply for relief from Federal explosives disabilities.

Explosives Provisions Effective January 24, 2003

New ATF Forms

In an effort to implement the newly enacted explosives legislation, ATF has updated Form 5400.4, Explosives Transaction Record, and Form 5400.8, Explosives Delivery Record. These forms contain, among other things, new instructions and important notice sections in order to facilitate a better understanding of the requirements that apply to all persons who purchase and store explosive materials.

The required use of the new forms will be effective on January 24, 2003. All previous versions of this form are obsolete and may not be used. We were unable to provide hard copies of the new forms to licensees and permittees prior to the enactment of the new law. In the meantime, you may obtain printable copies of these revised forms online at <http://www.atf.treas.gov>. You may also order the forms from the ATF Distribution Center at 703-455-7801 or by contacting your local ATF office. The new forms are currently being printed and will be distributed to you as

soon as possible. We regret any inconvenience or disruption to your business operations that this may have caused.

ATF Form 5400.4, Explosives Transaction Record

This form is currently used in transactions involving the distribution of explosive materials to persons and business entities that do not hold a Federal explosives license or permit. The revisions to this form include, primarily, the addition of the expanded prohibited persons categories. The revised form will also require the seller to verify the identity of buyers by removing the option to check the "is known to me" box on the form in Section B, Item 18. The form has also been revised in Section A, Items 9-14, to facilitate the collection of additional information related to the purchaser's intended use of explosive materials. ATF has also revised the buyer certification statement in Section A, Item 16.

ATF Form 5400.8, Explosives Delivery Record

This form is currently used when an employee of a purchaser, or a common carrier hired by a purchaser, takes possession of explosive materials at a licensee's premises. The form serves as a record for the licensee to identify the person who has taken possession of explosive materials on behalf of the purchaser for delivery to that purchaser.

The revised form contains all prohibited person categories and requires that purchasers, employees of purchasers, and common carriers hired by purchasers, certify that they are not prohibited from taking possession of explosive materials. The revised form also requires sellers to verify the identity of all persons taking possession of explosive materials on behalf of a purchaser by removing the option for licensees to check the "is known to me" box on the form in Section B, Item 12.

Sample Submissions

When requested by ATF, manufacturers and importers of explosive materials, including ammonium nitrate, must furnish 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.

Explosives Provisions Effective May 24, 2003

Limited Permits

Beginning May 24, 2003, all persons who seek to acquire explosive materials must possess a license, a user permit, or a new intrastate "limited permit." The newly created limited permit will allow the purchaser to receive explosive materials on no more than six occasions during the period of the permit; however, unlike a user permit or a license, the limited permit will not allow the holder to acquire or to transport explosive materials outside his or her State of residence. Revised applications and renewal applications for all licenses and permits will be made available as soon as possible.

Background Checks

The new law also requires that all licensees and permittees, along with responsible persons, submit to ATF identifying information, fingerprints, and photographs. All employees who possess explosive materials on behalf of a licensee or permittee will be required to submit only identifying information. In turn, ATF is required to conduct background checks on all responsible persons and all employee possessors to determine whether such persons are, or are not, prohibited from possessing explosive materials. ATF will notify employers in writing or electronically of the result of each background check and will supply employees and responsible persons with "letters of clearance" where appropriate. If ATF determines that an employee or responsible person is subject to an explosives prohibition, ATF must provide information about the determination and appeal procedures.

Please be advised that 18 U.S.C. 842(i) generally prohibits persons who are subject to any of the prohibiting categories from possessing explosive materials. Although licensees and permittees are not required to perform their own background checks on employees who will possess explosive materials in the course of their employment, they should attempt to ensure that current employees and prospective employees are not prohibited from possessing explosive materials. If employers do conduct background checks through a private or other entity, those checks cannot be used in lieu of the ATF background check.

Inspection Authority

ATF will be required to physically inspect all ATF licensees and permittees at least once every three calendar years for compliance with Federal explosives storage requirements. ATF inspection authority will not otherwise change with respect to current licensees and permittees. ATF will have authority to conduct inspections of the new "limited permittees" and their places of storage for explosive materials.

If you need any additional information regarding the newly enacted legislation, please contact the Public Safety Branch at 202-927-2310.

Sincerely yours,

A handwritten signature in black ink that reads "John P. Malone". The signature is written in a cursive, flowing style.

John P. Malone
Assistant Director
Firearms, Explosives and Arson