

## **IX. Samples of Explosive Materials and Ammonium Nitrate**

The Act added a new section 843(i) to Chapter 40 providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product. The Act requires ATF to authorize, by regulation, reimbursement of the fair market value of the samples furnished as well as reasonable cost of shipment.

This provision became effective on January 24, 2003. Regulations that implement this provision of the Act are in § 555.110.

## **X. Amendment of 18 U.S.C. 844(f)**

The Act amended section 844(f)(1) of Chapter 40 to broaden the scope of the statute. Prior to amendment, this section made it unlawful to damage or destroy by means of fire or explosive any building, vehicle, or other personal or real property owned, possessed by, or leased to a Federal agency. The amendment broadens the statute by including any institution or organization receiving Federal financial assistance within the categories of property covered by the prohibition. This amendment restores language inadvertently deleted from the statute by the Antiterrorism and Effective Death Penalty Act of 1996. This provision became effective on January 24, 2003.

## **XI. Relief From Disabilities**

The Act amended section 845(b) of Chapter 40 to expand ATF's authority to grant relief from disabilities to all categories of prohibited persons. Prior to enactment of the Act, the statute provided authority for ATF to grant relief only to persons under indictment for or convicted of a felony. ATF had no statutory authority to grant relief to persons falling within the remaining prohibited categories. Although all persons may now apply for relief, the statute did not expand the existing language allowing licensees or permittees who apply for relief due to an indictment or conviction for a felony to continue their operations until the application for relief is acted upon. Thus, because the law does not provide a similar benefit for other disabilities, licensees and permittees subject to other disabilities will not be allowed to continue operations during the pendency of a relief application. This provision became effective on January 24, 2003.

Regulations that implement this provision of the law are in § 555.142. The regulation requires an application for relief to be filed on ATF Form 5400.29, Application for Restoration of Explosives Privileges. The regulation also specifies categories of persons to whom the Director will generally not grant relief. Such categories of persons include persons who have not been discharged from parole or probation for at least 2 years, fugitives, non-excepted aliens, unlawful drug users, persons committed to a mental institution or adjudicated as a mental defective, and persons prohibited by the law of the State in which the applicant resides from receiving or possessing explosive materials. However, the Director will consider such applications and may grant relief in extraordinary circumstances where the granting of such relief is consistent with the public interest. The Director may also grant relief to non-excepted aliens who have been lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least 2 years if he determines that the applicant has a compelling need to possess explosives, such as for purposes of employment. Thus, ATF will entertain relief applications from such persons who need to possess explosives for purposes of their employment with an explosives licensee or permittee or other employment where possession of explosives is required as part of the employee's duties. The regulation is intended to convey ATF's general policy that it is not in the public interest to grant relief to prohibited persons so they may lawfully possess explosives in the United States. This approach is consistent with the history and purposes of the Act, which indicate Congress' intention to prevent access to explosives by those categories of persons deemed most likely to misuse them in criminal or terrorist incidents.

ATF has been advised that there may be a significant number of non-excepted aliens who are employed by the explosives industry in the United States or who transport explosives via common carrier. To date, it appears that the majority of such aliens are Canadian citizens. As stated above, non-excepted aliens who have a need to possess explosives for purposes of employment fall within the "compelling need" provisions of the regulations and will have their applications for relief processed expeditiously. ATF has been working with the Canadian government to streamline the procedures for processing relief applications submitted

by Canadian citizens, particularly with respect to criminal background checks conducted in connection with such investigations. Again, it is not ATF's intention to impose unnecessary obstacles to commerce in explosives. ATF anticipates granting relief to many Canadian citizens who have no criminal records and whose records and reputations indicate that their possession of explosives in the United States poses no threat to public safety. Likewise, citizens of other countries who have a need to possess explosives for purposes of employment can expect ATF to act as quickly as possible on properly completed applications for relief from disabilities.

## **XII. Theft Reporting**

The Act added a new section 844(p) to Chapter 40, providing for felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery. Existing law, section 842(k), makes it unlawful for any person having knowledge of the theft or loss of explosive materials to fail to report such theft or loss within 24 hours of discovery to ATF and local authorities. The penalty for violation of section 842(k) is a fine of not more than \$100,000, imprisonment for not more than one year, or both. By contrast, the penalty for licensees or permittees who violate section 844(p) is a fine of not more than \$250,000, imprisonment for not more than five years, or both. This provision became effective on January 24, 2003.

Regulations that implement this provision of the Act are in § 555.165.

## **How This Document Complies With the Federal Administrative Requirements for Rulemaking**

### *A. Executive Order 12866*

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. However, this rule will not have an annual effect on the economy of \$100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an