

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 603 of Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

**§ 843. Licenses and user permits**

(a) An application for a user permit or limited permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Attorney General shall by regulation prescribe, including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person. Each applicant for a license or permit shall pay a fee to be charged as set by the Attorney General, said fee not to exceed \$50 for a limited permit and \$200 for any other license or permit. Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Attorney General shall issue to such applicant the appropriate license or permit if—

(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4)(A) the Secretary<sup>1</sup> verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary<sup>1</sup> determines appropriate, that the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe; and

(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary<sup>1</sup> has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business;

(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.

(c) The Attorney General shall approve or deny an application within a period of 90 days for licenses and permits, beginning on the date such application is received by the Attorney General.

(d) The Attorney General may revoke any license or permit issued under this section if in the opinion of the Attorney General the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's<sup>2</sup> action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Attorney General stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Attorney General may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Attorney General shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's<sup>2</sup> written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701-706 of title 5, United States Code.

(f) Licensees and holders of user permits shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and licensees and permittees shall submit to the Attorney General such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Attorney General may enter during business hours the premises (including places of storage) of any licensee or holder of a user permit, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Attorney General may

<sup>1</sup> So in original. Probably should be "Attorney General".

<sup>2</sup> So in original. Probably should be "Attorney General's".

make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials. The Secretary<sup>1</sup> may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) Licenses and user permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

(h)(1) If the Secretary<sup>1</sup> receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary<sup>1</sup> shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary<sup>1</sup> may take into account a letter or document issued under paragraph (2).

(2)(A) If the Secretary<sup>1</sup> determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary<sup>1</sup> shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

(B) If the Secretary<sup>1</sup> determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary<sup>1</sup> shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

- (i) confirms the determination;
- (ii) explains the grounds for the determination;
- (iii) provides information on how the disability may be relieved; and
- (iv) explains how the determination may be appealed.

(i) FURNISHING OF SAMPLES.—

(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary,<sup>1</sup> furnish—

- (A) samples of such explosive materials or ammonium nitrate;
- (B) information on chemical composition of those products; and

(C) any other information that the Secretary<sup>1</sup> determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

(2) REIMBURSEMENT.—The Secretary<sup>1</sup> shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 955; amended Pub. L. 107-296, title XI, §§ 1112(e)(3), 1122(c)-(h), 1124, Nov. 25, 2002, 116 Stat. 2276, 2281, 2282, 2285.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-296, § 1122(c), in first sentence, inserted “or limited permit” after “user permit” and inserted before period at end “, including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person”, in second sentence, substituted “\$50 for a limited permit and \$200 for any other” for “\$200 for each”, inserted third and fourth sentences, and struck out former third sentence which read as follows: “Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.”

Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” in two places.

Subsec. (b). Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-296, § 1122(d)(1), added par. (1) and struck out former par. (1) which read as follows: “the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;”.

Subsec. (b)(4). Pub. L. 107-296, § 1122(d)(2), designated existing provisions as subpar. (A), inserted “the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that” before “the applicant”, and added subpar. (B).

Pub. L. 107-296, § 1112(e)(3), substituted “the Attorney General by regulations” for “the Secretary by regulations”.

Subsec. (b)(6), (7). Pub. L. 107-296, § 1122(d)(3), (4), added pars. (6) and (7).

Subsec. (c). Pub. L. 107-296, § 1122(e), substituted “90 days for licenses and permits,” for “forty-five days”.

Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” in two places.

Subsecs. (d), (e). Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 107-296, § 1122(f), in first sentence, substituted “Licensees and holders of user permits” for “Licensees and permittees” and inserted “licensees and permittees” before “shall submit”, in second sentence, substituted “holder of a user permit” for “permittee”, and inserted at end “The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).”

Pub. L. 107-296, § 1112(e)(3), substituted “Attorney General” for “Secretary” wherever appearing.

Subsec. (g). Pub. L. 107-296, § 1122(g), inserted “user” before “permits”.

Subsec. (h). Pub. L. 107-296, § 1122(h), added subsec. (h).

Subsec. (i). Pub. L. 107-296, § 1124, added subsec. (i).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by sections 1112(e)(3) and 1124 of Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107-296, title XI, § 1122(i), Nov. 25, 2002, 116 Stat. 2283, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 841 and 842 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 25, 2002].

“(2) EXCEPTION.—Notwithstanding any provision of this Act [see Tables for classification], a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act [Nov. 25, 2002], shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.”

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Filing of application for a license or permit prior to the effective date of this section as authorizing any person engaged in a business or operation requiring a license or a permit on Oct. 15, 1970 to continue such business or operation pending final action on such application, see section 1105(c) of Pub. L. 91-452, set out as a note under section 841 of this title.

**§ 844. Penalties**

(a) Any person who—

(1) violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both; and

(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined under this title or imprisoned not more than one year, or both.

(c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Attorney General may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Attorney General for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Attorney General that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Attorney General shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.

(g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not