

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF BUILDING AND FIRE REGULATION

Code Change Form for the 2009 Code Change Cycle

Code Change Number: _____

Proponent Information

(Check one): Individual Government Entity Company

Name: _____

Representing: _____

Mailing Address: _____

Email Address: _____

Telephone Number: _____

Proposal Information

Code(s) and Section(s): SFPC Section 107.2, 3301.2.3.1, 3301.2.3.1.1 and 3302.1 "DESIGNATED INDIVIDUAL"

Proposed Change (including all relevant section numbers, if multiple sections):

Change Section 107.2 to read:

107.2 Permits required: Permits may be required by the fire official as permitted under the SFPC in accordance with Table 107.2, except that the fire official shall require permits for the manufacturing, storage, handling, use, and sale of explosives. In accordance with Section 3301.2.3.1, an application for a permit to manufacture, store, handle, use, or sell explosives shall only be made by an individual certified as a blaster in accordance with Section 3301.4.1, or by a person who has been issued a background clearance card in accordance with Section 3301.2.3.1a designated individual.

Exception: Such permits shall not be required for the storage of explosives or blasting agents by the Virginia Department of State Police provided notification to the fire official is made annually by the Chief Arson Investigator listing all storage locations.

Change Sections 3301.2.3.1 and 3301.2.3.1.1 to read:

3301.2.3.1 Permit applicants. TheAs a condition of permit as provided for in Section 107.5 of the SFPC, the fire official shall not issue a permit to manufacture, store, handle, use or sell explosives or blasting agents, or conduct a fireworks display, to any individual applicant who has not provided on the permit application the name and signature of a designated individual as representing the applicantis not certified by the SFMO as a blaster in accordance with Sections 3301.4.1, or who is not in the possession of a Background Clearance Card or to designated persons representing an applicant that is not an individual and who is not in possession of a Background Clearance Card issued in accordance with Section 3301.2.3.1.1. If the applicant's designated individual changes or becomes no longer qualified to represent the applicant's responsible management, the applicant shall notify the fire official who issued the permit on the change of status of designated individual. The notice is to be made prior to the use of any explosives but in no case shall the notification occur more than seven (7) days after the change of status and shall provide the name of another designated individual. The fire official may revoke or require the re-issuance of a permit based on a change of permit conditions or status.

The SFMO shall process all applications for a Background Clearance Card for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of Background Clearance Cards.

3301.2.3.1.1 Background Clearance Card: The SFMO shall process all applications for a Background Clearance Card (BCC) for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of a Background Clearance Card. Using forms provided by the SFMO, Aa Background Clearance CardBCC may be applied for and issued upon completion of the following requirements: to any person who submits to the

completion of a background investigation by providing fingerprints and personal descriptive information to the SFMO. The SFMO shall forward the fingerprints and personal descriptive information to the Central Criminal Records Exchange for submission to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history records check regarding such applicant. The applicant for a BCC shall be at least 21 years of age and shall demonstrate the capability to effectively communicate safety messages verbally and in writing in the English language.

- ~~1. Any firm or company manufacturing, storing, using or selling explosives in the Commonwealth shall provide the name of a designated person or persons who will be a representative of the company and be responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits from the fire official.~~
- ~~2. Using a form provided by the SFMO, all individual applicants and all designated persons representing an applicant that is not an individual, shall submit to a background investigation, to include a national criminal history record check, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster.~~
- ~~3. Each such applicant shall submit fingerprints and provide personal descriptive information to the SFMO to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant.~~

Add the following definitions to Section 3302.1:

“Designated Individual”. A person in possession of a *Background Clearance Card (BCC)* issued by the SFMO, or is certified by the SFMO as a *Pyrotechnician*, or is a *Restricted* or *Unrestricted Blaster*, any of whom are responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives, (ii) applying for explosives or firework permits, (iii) is at least 21 years of age, and (iv) shall demonstrate the capability to effectively communicate safety messages verbally and in writing in the English language.

“Responsible management”. A person who is:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

“Sole proprietor”. A person or individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of § 59.1-69 through 59.1-76 of the Code of Virginia.

Change the following definitions in Section 3302.1 to read:

Background Clearance Card. An identification card issued to an individual that is not a certified blaster and is representing himself or acting as a representative *responsible management* or an employee of a company, corporation, firm or other entity, solely for the purpose of submitting an application to the fire official for a permit to manufacture, use, handle, store, or sell explosive materials.

Blaster, Restricted. Any person engaging in the use of explosives or blasting agents utilizing five pounds (2.25 kg) of less per blasting operation and using instantaneous detonators. A certified restricted blaster can fulfill the role of a *designated individual* on an application for permit to manufacture, use, handle, store, or sell explosive materials.

Blaster, Unrestricted. Any person engaging in the use of explosives or blasting agents without limit to the amount of explosives or blasting agents or type of detonator. A certified unrestricted blaster can fulfill the role of a *designated individual* on an application for permit to manufacture, use, handle, store, or sell explosive

materials.

“Pyrotechnician” (Firework Operator). Any person supervising or engaged in the design, setup or conducting of any fireworks display, either inside a building or outdoors. A certified pyrotechnician can fulfill the role of a designated individual on an application for permit for a fireworks display

Supporting Statement (including intent, need, and impact of the proposal):

The purpose of this change is to establish a conditional link between the entity that seeks and receives a permit for explosives and the person that represents that entity.

The catalyst for this change is a criminal case that is about to go to trial. For this case, the individual who’s making application is acting as sole proprietor in a small scale explosive manufacturing operation and who has been charged with a felonious act. Under the current regulations, if this individual were to be convicted of the felony for which he’s charged, under Section 3301.2.3.1.4, for a Background Clearance Card, or Section 3301.4.4, for a Blaster Certification, the card provided allowing them to apply for permit is to be revoked and they’re to return the card to the SFMO immediately. But what happens to the permit that was issued? Unless there is some clear link between the individual who made application and the continued validity of the permit, there’s no clear basis to revoke or suspend the permit. This change is to provide that clear, enforceable link. There have been other infrequent situations of a similar nature that could have raised this prospect before but this more recent case is more intense and has raised the question and need to a greater level of concern and importance.

When reading § 27-97.2 of the Code of Virginia, it appears the SFPC in its current form is not fully compliant with the intent of the statutory directive. To paraphrase that COV section, the applicant is to provide to the enforcing agency the name of a representative responsible for applying for permits, and if the “designated person” has become convicted of a felony, the issuing authority is to deny an application for permit. The question is raised again as to what happens to the permit that may have been issued prior to the conviction. This same COV section states this representative is to ensure “compliance with state law and regulations relating to blasting agents and explosives”. If that representative is no longer qualified to provide that assurance, the permit should be revoked unless another qualified individual can be named.

The change also links fireworks in the same manner since, by definition, fireworks are explosives.

This change is modeled, in part, by the existing regulations promulgated by the Department of Professional and Occupational Regulation, Board for Contractors who’ve incorporated a similar linkage to contractor licensing.

The proposed changes have been reviewed by agency counsel.

Submittal Information

Date Submitted: _____

The proposal may be submitted by email as an attachment, by fax, by mail, or by hand delivery.

Please submit the proposal to:

DHCD DBFR TASO (Technical Assistance and Services Office)
The Jackson Center
501 N. 2nd Street
Richmond, VA 23219-1321

Email Address: taso@dhcd.virginia.gov
Fax Number: (804) 371-7092
Phone Numbers: (804) 371-7140 or (804) 371-7150

