



EXPLOSIVES INDUSTRY NEWSLETTER

2023

To keep Federal explosives licensees and permittees abreast of changing Federal explosives laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide annual Explosives Newsletters. Previous editions of the Explosives Newsletters are available on ATF's Web site (<https://www.atf.gov/resource-center/publications-library>).

Pursuant to 27 CFR § 555.23, ATF annually publishes the List of Explosive Materials in the Federal Register. The 2022 List of Explosive Materials was published on December 20, 2022, and can be found at: <https://www.federalregister.gov/documents/2022/12/20/2022-27630/commerce-in-explosives-2022-annual-list-of-explosive-materials>.

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PROTECTING THE PUBLIC
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Chief, Explosives Industry Programs Branch

On October 10, 2021, Mike O'Lena reported as the Chief of the Explosives Industry Programs Branch (EIPB) at ATF's National Center for Explosives Training and Research (NCETR) in Huntsville, Alabama. EIPB is responsible, in part, for making explosives classifications and regulatory determinations, processing variance requests, and serving as the primary point of contact for explosives industry associations and government agencies. Mr. O'Lena began his ATF career as an inspector in the Seattle Field Division in August of 2001. Since 2008, Mr. O'Lena has served as an explosives enforcement specialist within EIPB. Mr. O'Lena succeeds Annette Butler who became a program manager for ATF's Office of Regulatory Affairs.

Importation and Manufacture of Small Arms Ammunition and Components

ATF has received numerous inquiries regarding the licensing and permitting requirements for the manufacture and importation of small arms ammunition and its components under the Federal explosives laws and regulations.

In general, firearms ammunition is an "explosive" because it contains smokeless powder and primers. However, 18 U.S.C. § 845 exempts small arms ammunition and components thereof from the provisions of 18 U.S.C., Chapter 40. ATF has long held in private letter rulings and previous explosives industry newsletters (June, 2013; December, 2014) that the term "small arms ammunition" pertains to .50 caliber or smaller rifle or handgun ammunition, as well as certain shotgun ammunition. Further, under 27 CFR § 555.11, ATF has defined "ammunition," in part, as "Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses." Accordingly, .50 caliber or smaller rifle and handgun ammunition (and certain shotgun ammunition) containing only smokeless powder, primers, and other items specifically listed as components of small arms ammunition, is exempt from the Federal explosives laws and regulations. See, 27 CFR § 555.141(a)(4)

Manufacture— 27 CFR § 555.41(b)

A Federal explosives license or a user permit is required if a person:

- Acquires explosive materials (e.g. lead styphnate) to manufacture explosive components of small arms ammunition (e.g. primers) that they will then use to manufacture small arms ammunition for their own personal use.

A Federal explosives manufacturer license is required if a person:

- Manufactures explosive components of small arms ammunition (1) for further distribution or sale and/or (2) for further use in their own commercial small arms ammunition manufacturing operations.

A Federal explosives license or permit is not required if a person:

- Acquires components of small arms ammunition, as prescribed in 27 CFR § 555.11, that will be used to manufacture small arms ammunition for personal use or for sale/distribution.

Importation— 27 CFR § 555.41(b)

A Federal explosives license or a user permit is required if a person:

- Imports explosive materials (e.g. lead styphnate) to manufacture components of small arms ammunition that they will then use to manufacture small arms ammunition for their own personal use.
- Imports smokeless propellant. ATF has held that, because there are numerous types and formulations of smokeless propellant, ATF must have the latitude to examine any particular importation to determine if it is "smokeless propellant designed for use in small arms."

A Federal explosives importer license is required if a person:

- Imports explosive materials (e.g. lead styphnate) for the purpose of selling or distributing those materials.

A Federal explosives license or permit is not required if a person:

- Imports small arms ammunition or components of small arms ammunition (e.g. primers), as prescribed in 27 CFR § 555.11, with the exception of smokeless propellant.

The Federal explosives determinations discussed above do not supersede the required compliance with any other Federal, State, or local law.

Importation of Articles Pyrotechnic Marked as Display Fireworks

It has recently come to ATF's attention that The People's Republic of China has implemented changes to their fireworks classification scheme that may impact importations of articles pyrotechnic into the U.S. As a result, numerous articles pyrotechnic that typically would have been shipped to and within the U.S. with a 1.4 hazard classification are now being labeled and shipped by Chinese manufacturers with a 1.3 hazard classification. ATF's article pyrotechnic determination is

based, in part, on the U.S. Department of Transportation (DOT)-designated UN code as prescribed in 27 CFR § 555.141(a)(7). To meet the Articles pyrotechnic definition at 27 CFR § 555.11, articles must be designated by DOT as UN0431 or UN0432.

In response to China's classification changes, in May of 2021, the DOT approved two emergency special permits for articles pyrotechnic imported into the U.S. from China. The emergency special permits authorize articles pyrotechnic classified by DOT as UN0431 to be transported from China to their final destination within the U.S. as display fireworks (UN0335, 1.3G). The articles pyrotechnic will be imported into the U.S. under an "articles pyrotechnic for technical purposes" (UN0431, 1.4G) classification but the packaging will contain markings designating them as display fireworks during transport, (i.e., UN0335, 1.3G). DOT requires that a copy of the emergency special permit must be carried aboard each cargo vessel or motor vehicle used to transport packages covered under the special permits and at each facility where the package is offered or reoffered for transport. Under the DOT emergency special permits, the display fireworks markings (i.e., UN0335, 1.3G) are authorized only until the articles pyrotechnic reach their final destination within the U.S. The packaging must then be remarked to reflect the correct classification as articles pyrotechnic (UN0431, 1.4G).

Articles pyrotechnic imported under the aforementioned DOT special permits remain exempt under 27 CFR § 555.141(a)(7) provided they meet the additional criteria for articles pyrotechnic in 27 CFR § 555.11.

Indoor Storage in a Residence / Dwelling

Reminder

The regulations in 27 CFR §§ 555.208(b)(1), 555.210(b)(1), and 555.211(b)(1) specify that no indoor explosives magazine is to be located in a residence or dwelling. Section 555.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, § 555.22(a)(1)-(3) provides that such "variances" are permissible only in certain circumstances, including where "the alternate method or procedure will not be contrary to any provision of law and will not ... hinder the effective administration of this part." The following are required for variance consideration:

1. Good cause is shown for the use of the alternate method or procedure;
2. The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and
3. The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

ATF Rulings

ATF Ruling 2002-3, Indoor Storage of Explosives in a Residence or Dwelling
[18 U.S.C. 842(j), 27 CFR 555.208(b)(1), 555.210(b)(1), and 555.211(b)(1)]

ATF may approve variances to store explosives in a residence or dwelling only upon certain conditions including, but not limited to, 1) receipt of a certification of compliance with State and local law; 2) the name, title, address, and phone number of the authority having jurisdiction for fire safety of the locality in which the explosive materials are being stored; 3) and documentation that local fire safety officials have received a copy of the certification. See the full ATF [Ruling 2002-3](#).

ATF Ruling 2002-4, Indoor Storage of Explosives in Business Premises Directly Adjacent to a Residence or Dwelling
[18 U.S.C. 842(j), 27 CFR 555.208(b)(1), 555.210(b)(1), and 555.211(b)(1)]

ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling. The ruling only applies to the indoor storage of explosives when the business premises is in the same building or structure as a residence or dwelling. Even where the business premises are segregated from the living quarters by the existence of a door or a common wall, the business premises retain their character as a residence or dwelling. Accordingly, indoor storage of explosives in such premises is generally prohibited and can only be allowed pursuant to an approved variance. ATF may approve such variances upon receipt of all appropriate certification and other documentation as may be requested. See the full ATF [Ruling 2002-4](#).

Fishing Vessels

ATF has determined that Federal explosives licensees and permittees (FEL/Ps) are required to obtain a variance if their explosives storage is inside a fishing vessel. Storing explosives, such as explosive pest control devices (EPCDs), inside a fishing vessel is considered indoor storage of explosive devices. A fishing vessel is both a residence and dwelling when a crewmember lives aboard the vessel, therefore, EPCDs cannot be stored inside that vessel unless the FEL/P obtains a storage variance as prescribed in 27 CFR § 555.22.

Law Enforcement Buildings, Prisons or Jails Cells

ATF has determined that buildings used by law enforcement agencies to house prisoners are residences or dwellings. As a result, the indoor storage of explosives within these buildings is prohibited. However, ATF understands that law enforcement agencies frequently have a need (e.g. for riot control) to store explosive materials within these buildings.

Law enforcement agencies and FEL/Ps with a need to store explosives in a residence or dwelling in scenarios such as those described above should submit a request to deviate from the Federal explosives regulations to ATF's Explosives Industry Programs Branch at EIPB@atf.gov. Requests should include the specific location of the explosives storage magazine(s) in relation to adjacent living areas (e.g., bedrooms, galley, prison cells); the construction and security of the room housing the explosives storage magazine(s); and a description and hazard classification of the explosive devices being stored.

Open Letter – Electronic Nicotine Delivery Systems

ATF has issued an open letter concerning the possession and use of electronic nicotine delivery systems near or within explosives storage magazines. Electronic nicotine delivery systems rely on a power source such as a battery and electric heating element (e.g. atomizer) to vaporize a liquid solution to simulate traditional smoking. A July 2017 U.S. Fire Administration report on the subject "Electronic Cigarette Fires and Explosions in the United States 2009 – 2016" disclosed that there have been numerous fires and explosions caused by these devices.

Rechargeable battery

Atomizer / Heating element

The regulation at 27 CFR § 555.212 prohibits smoking, matches, open flames, and spark producing devices from being: 1) in any magazine; 2) within 50 feet of any outdoor magazine; or 3) within any room containing an indoor magazine. This regulation exists, in part, to ensure potential sources of fire are not brought into or near explosives storage magazines thereby reducing the risk of an accidental explosion. ATF has determined that electronic nicotine delivery systems are spark producing devices. Therefore, they cannot be brought into or within 50 feet of any outdoor explosives storage magazine or within any room containing an indoor magazine. The full text of the October 2021 open letter may be found at <https://www.atf.gov/rules-and-regulations/explosives-open-letters>.

Distance Requirements for Ammonium Nitrate Products

Ammonium nitrate, also known as "AN" is used in a variety of explosive materials, and it is stored by explosives industry members in dry form, in emulsions, and in solutions. ATF has received several inquiries about the applicability of the tables of distances under 27 CFR, Part 555 to ammonium nitrate in its various forms.

Ammonium Nitrate - Fuel Oil

Ammonium nitrate and fuel oil in combination (ANFO) is an explosive material (blasting agent) under the Federal explosives regulations at 27 CFR, Part 555. It is stored in both bulk and packaged form and is typically used in mining and quarrying. ANFO is subject to the statutory and regulatory provisions for the handling, use, and storage of explosive materials, including the tables of distances at Sections 555.218 and 555.220.

Ammonium Nitrate Emulsion

Ammonium nitrate emulsions are combinations of ammonium nitrate and fuel oil or a similar fuel. "Unsensitized" emulsion is stored and transported at a density that makes it insensitive to detonation, and it receives a 5.1 (oxidizer) classification from the U.S. Department of Transportation (DOT) (see Hazardous Materials Table at 49 CFR, Part 172). ATF does not consider unsensitized emulsions to be "explosive materials;" however, unsensitized emulsions are considered a form of "ammonium nitrate" for the purposes of the table of distances at 27 CFR § 555.220.

In contrast, "sensitized emulsion" has a lower density and is classified as a blasting agent under Part 555 (27 CFR § 555.11), and DOT assigns it a 1.5 hazard classification. Sensitized emulsion can be made, stored, and transported in its 1.5 classification; or in the alternative a sensitized emulsion can be made ("sensitized") at the blast site by the addition of "microspheres" or a chemical agent to unsensitized emulsion. Because sensitized emulsions are blasting agents, they are subject to the to the statutory and regulatory provisions for storage of explosive materials, including the tables of distances at Sections 555.218 and 555.220.

Ammonium Nitrate Solution

Ammonium nitrate is often mixed with water to form a solution that can be used as an ingredient in ammonium nitrate emulsions. Typically, such a solution contains 15 – 20 percent water, and is not susceptible to detonation. The DOT typically assigns these solutions a 5.1 (oxidizer) classification. ATF considers such a solution neither as an explosive material, nor as "AN" for the purposes of the tables of distances.

Black Powder Exemption Reminder

Federal law, 18 U.S.C. § 845(a)(5), exempts the purchase and possession of "commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term 'destructive device' in section 921(a)(4) of title 18 of the United States Code." Accordingly, no explosives permit is required if a person only intends to purchase and use commercially manufactured black powder in quantities not to exceed 50 pounds for the above stated purposes in antique firearms or antique devices.

However, an individual or company purchasing any amount of black powder for any other purpose must obtain a Federal explosives license or permit and meet all prescribed requirements in 27 CFR, Part 555 – Commerce in Explosives.

Because the statutory exemption only applies to certain intended uses by the consumer, persons engaging in the business of manufacturing, importing, or dealing in any quantity of black powder must be licensed, maintain records, and store such explosive material in accordance with regulations (27 CFR § 141(b)(1)(i)).

In addition, please be aware that the exemption under the Federal law confers no right or privilege to be in violation of other Federal, State or local laws or regulations.

Less Lethal Munitions Marking Requirements

ATF was recently asked if the regulations at 27 CFR § 555.109 apply to the manufacture and importation of less lethal munitions (e.g. flash bangs) that are commonly classified by the U.S. Department of Transportation as Class 1 explosives.

The Federal explosives regulations at 27 CFR § 555.109 require that licensed manufacturers and licensed importers of explosive materials mark their explosive materials with certain information, including the name and location of the manufacturer or importer, as applicable, and the date and shift of manufacture. This requirement applies to less lethal devices that are not otherwise exempt under 555.141. (E.g., explosives materials manufactured under contract with a U.S. Federal agency are exempt from the ATF explosives regulations.).

While some less lethal munitions (e.g. flash bangs) are destructive devices under the Gun Control Act as defined in 18 U.S.C. § 921(a)(4), they are also explosive materials subject to all applicable requirements in 27 CFR, Part 555 – Commerce in Explosives.

27 CFR § 555.109

As a reminder, licensed manufacturers who manufacture explosive materials for sale or distribution must place the following marks of identification on explosive materials at the time of manufacture:

- The name of the manufacturer; and
- The location, date, and shift of manufacture. Where a manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

Licensed importers who import explosive materials for sale or distribution must place marks of identification on the explosive materials they import. Licensed importers must place the required marks on all explosive materials imported prior to distribution or shipment for use, and no later than 15 days after the date of release from Customs custody. These marks include:

- The name and address (city and state) of the importer; and
- The location (city and country) where the explosive materials were manufactured, date, and shift of manufacture. Where the foreign manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

The marks required under § 555.109 must be permanent, legible, and in the English language, using Roman letters and Arabic numerals.

The marks must be placed on each cartridge, bag, or other immediate container of explosive materials manufactured or imported, as well as on any outside container used for the packaging of such explosive materials.

Licensed manufacturers and importers may use any method, or combination of methods, to affix the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, permanent, show all the required information, and are not rendered unreadable by extended periods of storage.

Additional Guidance

Licensed manufacturers and importers who want to use an alternate marking or coding system must submit a request and receive approval from ATF's Explosives Industry Programs Branch (EIPB). This includes manufacturers or importers who:

- Want to mark their explosive materials with serial numbers or unique alphanumeric codes such as those required by the European Commission's Directive 2008/43/EC (amended by Commission Directive 2012/4/EU) on Identification & Traceability of Explosives for Civil Uses.
- Manufacture and label explosives for another industry member.

All inquiries or variance requests can be submitted to EIPB at EIPB@atf.gov or to the Explosives Industry Programs Branch, 99 New York Avenue, NE., Mailstop 6N-518, Washington, D.C. 20226.

ATF Ruling 2011-3 Reminder

In ATF Ruling 2011-3, ATF authorized Federal explosives licensees and permittees (FEL/Ps) to secure explosives magazines with hidden-shackle "hockey puck" locks, recessed padlocks, and padlocks with boron alloy shackles, provided certain requirements are met. ATF has encountered situations in which FEL/Ps using the above locking methods are not complying with all conditions in the ruling.

It is important to bear in mind that ATF Ruling 2011-3 authorizes certain locking methods as alternatives to the locks specified in the Federal explosives regulations at 27 CFR, Part 555. An FEL/P using one of these alternatives must adhere to the conditions stated in the ruling. For example, an FEL/P securing their magazine with "recessed" locks must, among other things, ensure that the opening that houses the locks must be small enough to prevent sawing, levering, or

prying action on the locks when the locks are installed. In another example, hidden-shackle "puck" locks may be used if they have a hardened steel body and meet the other requirements in the ruling.

We encourage FEL/Ps using an alternate locking method under ATF Ruling 2011-3 to review the ruling and ensure that their locks meet all applicable conditions. FEL/Ps also should consider maintaining documentation (e.g. a lock manufacturer's specifications sheet) to show that the locks meet these requirements. ATF Ruling 2011-3 and other ATF rulings may be found at [Explosives Rulings | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#).

Government Exemptions

The Federal explosives law at 18 U.S.C. § 845(a)(3) and (a)(6), and the implementing regulations at 27 CFR §§ 555.141(a)(3) and (a)(5), exempt from the provisions of 27 CFR, Part 555, "The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision" and "The manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by, the military or naval services or other agencies of the United States."

Contractors and Subcontractors

ATF has held that these exemptions extend to contractors and subcontractors performing explosives operations exclusively pursuant to a current and valid contract with a U.S. Federal agency, the U.S. Military, or a State government or local municipality (see December 2009 and December 2010 Explosives Industry Newsletters). Therefore, explosives operations conducted directly and **exclusively** pursuant to such a current contract or subcontract are exempt from the requirements in 27 CFR, Part 555—Commerce in Explosives. However, a company performing work on behalf of an exempt government component may still need a Federal explosives license or permit for activities performed outside of the government contract.

DOD Contract Considerations

Work performed pursuant to a contract with the DOD is exempt from ATF regulation provided that all work performed is on behalf of a DOD component, including the U.S. Army Corps of Engineers (USACE). However, some DOD components, such as the USACE, may require as a condition of a remediation or demilitarization contract that a company obtain a Federal explosives license or permit even if the contracted operations are exempt from Part 555.

Frequently, industry members are contracted to perform "demilitarization" operations on certain military munitions, e.g., disassembling a certain type of exploding missile projectile. The contract may require that the company remove the explosive materials from each projectile. The contract may also stipulate that the explosive materials must be destroyed or stored for further use by the DOD. Since all work in this case would be performed on behalf of the DOD, and ownership of the materials would be retained by the DOD, the work performed pursuant to the contract would be exempt from ATF regulation.

On the other hand, if a contract allows the contractor to retain the extracted explosive materials for their own use, for use in further manufacture, or for sale in commerce, ownership of the explosive materials passes from the DOD to the private company. I.e., after this point the company is no longer performing work on behalf of DOD. ATF generally considers this an acquisition and any further activities involving the explosive materials would be regulated by 27 CFR, Part 555.

DOD Storage Considerations

Storage of commercial explosive materials not for use in conjunction with a DOD contract are subject to ATF regulation and inspection. This is true even if the explosive materials are stored in the same magazine as, and in close proximity to, exempt DOD explosive materials that are not regulated by ATF. Explosive materials for use in conjunction with a DOD contract, when stored with ATF regulated explosive materials, are not included in the total explosive weight in the magazine when determining table of distance requirements under Subpart K. [Refer to the December 2009 Explosives Newsletter](#). To ensure that the tables of distances can be properly applied to ATF-regulated materials, regulated commercial explosive materials should be segregated from unregulated DOD-owned or contracted explosive materials to the greatest extent possible. The weights of the commercial explosive materials should be available for examination.

Not Covered under the Exemptions

- These exemptions do not apply to any explosives-related operations conducted prior to the finalization and issuance of an official U.S. Government request or contract, including any explosives operations performed during the contract or bidding process for a U.S. Government contract.

- Upon conclusion of the U.S. Government contract, any remaining explosive materials not claimed by the DOD or the U.S. Government are subject to all ATF explosive regulations. Further, any explosive materials rejected by the DOD or the U.S. Government may be subject to ATF's explosives regulations.
- The Federal explosives exemptions do not apply to explosive materials, products or services delivered to foreign governments.
- Subsection (a)(3) applies to the transportation, shipment, receipt, or delivery of explosives materials to a federal, state, or local agency, but not to storage. Accordingly, State and local government agencies are not exempt from complying with storage and theft/loss reporting requirements in the Federal explosives regulations. As a result, any such agency or an industry member conducting operations pursuant to a State or local government agency's contract must continue to store and report thefts and losses of explosive materials in accordance with the requirements of 27 CFR 555, Subpart K—Storage.
- The Federal explosives exemptions discussed above do not supersede the required compliance with any other Federal, State, or local law. Industry members conducting operations that are regulated by more than one law, such as the Gun Control Act (GCA), the National Firearms Act (NFA), and the Arms Export Control Act (AECA), must continue to adhere to those requirements.

Supporting Documentation

In order to establish that an operation is exempt from the Federal explosives laws and regulations, the industry member should maintain documentation (e.g., the U.S. Government contract or purchase order) which clearly identifies that his/her operations or explosive materials are for, on behalf of, or for delivery to a Federal, State or local government agency. This documentation should identify: (1) the name of the government agency requesting the services or products; (2) a document reference number (such as an invoice, purchase order, or contract number); (3) the effective dates or tenure for which the services or products to be provided or delivered; (4) the name of the government agency's point of contact, and (5) the explosives-related materials, products, or services that are delivered to the government agency. During an ATF inspection, ATF industry operations investigators may ask to review copies of these documents in order to verify exemption from the Federal explosive laws and regulations.

Additional Information

For additional information on the applicability of the exemption for DOD contractors or U.S. Government entities, see the articles in ATF's December 2009 and December 2010 newsletters. For additional information on the applicability of the exemption for public educational institutions, see the article in ATF's June 2011 newsletter. Previous issues of the Explosives Industry Newsletter are available at <https://www.atf.gov/resource-center/publications-library> (search Document Type "Newsletter," Category "Explosives").

Questions regarding the application of the Federal explosives exemptions, or requests for a formal determination whether specific operations are exempt, may be addressed to the Explosives Industry Programs Branch by telephone at (202) 648-7120, or by e-mail to EIPB@atf.gov.

Storage at Correctional Facilities

ATF has recently received inquiries regarding the storage of explosive materials at state and local correctional facilities. Specifically, the inquiries have focused on the storage of less lethal tactical devices in metal cabinets or other containers that are not explosives magazines. The Federal explosives law at Title 18, U.S.C., Chapter 40, and the implementing regulation at 27 CFR § 555.141(a)(3), exempts from the provisions of 27 CFR, Part 555, "The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision". This exemption does not include the storage of explosive materials.

Therefore, state and local government agencies, and contracting companies operating under a state and/or local contract to maintain correctional facilities, must store their explosive materials in conformity with the requirements in 27 CFR 555, Subpart K – Storage.

The regulation at 27 CFR § 555.205 requires explosive materials to be kept in locked magazines that meet the prescribed requirements unless they are: (1) in the process of manufacture; (2) being physically handled in the operating process of a licensee or user; (3) being used; or (4) being transported to a place of storage or use by a licensee or permittee or by a person who has lawfully acquired explosive materials under 27 CFR § 555.106.

Generally, any device used in a correctional facility that is classified by the U.S. Department of Transportation (DOT) as a Class 1 explosive (except small arms ammunition) must be stored in an explosives storage magazine that meets ATF's prescribed storage requirements. This includes 37 and 40 millimeter less lethal devices typically classified by DOT as a 1.4S explosive. While some of these explosive devices may also be classified as destructive devices subject to the requirements in 27 CFR, Part 478 – Commerce in Firearms and Ammunition and 27 CFR, Part 479 – Machine Guns, Destructive Devices, and Certain Other Firearms, they are also subject to ATF's explosives regulations in 27 CFR, Part 555 – Commerce in Explosives.

ATF's explosives regulations do not provide an exemption for devices containing small quantities of explosive materials. Devices containing any amount of explosive material, unless otherwise exempt under 27 CFR § 555.141 (e.g., small arms ammunition), are subject to ATF's storage requirements.

However, ATF will consider requests to deviate from the prescribed storage requirements if the requestor meets the conditions set forth in 27 CFR § 555.22 for alternate methods or procedures. ATF may approve a request for an alternate method or procedure if: (1) Good cause is shown for the use of the alternate method or procedure; (2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and (3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of Part 555.

Q&As

Q. What should a permanent resident (who holds a green card), include with the Employee Possessor Questionnaire (EPQ) form to prove they are a lawful permanent resident?

A. As stated on the form, permanent resident need to provide their U.S. issued Alien or Admission Number (e.g., AR, USCIS, or I-94 number) and attach supporting documentation.

Q. What does the Federal Explosives Licensing Center (FELC) accept as supporting documents for a lawful permanent resident (LPR)?

A. The FELC will accept a copy of the individual's LPR card or a statement from the individual saying they are an LPR.

Q. Can a Canadian employee who lives in Canada and crosses the border to work in the U.S. be an Employee Possessor (EP)?

A. No, unless the employee is an LPR, such a person cannot be an EP unless they apply for and are granted Relief for this disability by ATF.

Q. Can an employee with just a work visa be an EP?

A. No, a person with a work visa can live and work in the U.S., but they are not an LPR and cannot be an EP unless they are granted Relief for this disability by ATF.

Q. How does a prohibited person under 18 U.S.C. 842(i) apply for relief from a Federal explosives disability?

A. Persons must complete ATF Form 5400.29, Application for Restoration of Explosives Privileges, and follow the instructions at: <https://www.atf.gov/explosives/apply-relief-federal-explosives-disabilities>

Q. Can an employee in the U.S. under the Deferred Action for Childhood Arrivals (DACA) be an EP?

A. No, DACA members are allowed to live and work in the U.S., but they are not an LPR and cannot be an EP.

Receiving ATF Website Update Notices

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