



# ATF EXPLOSIVES Industry Newsletter

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**Working for a Sound and  
Safer America**

## ATF Celebrates 40 Years of Public Service

In response to the misuse of explosives in bombings in the United States in the late 1960s, Congress passed the Organized Crime Control Act of 1970, providing for close regulation of the explosives industry. With this Act, the Alcohol, Tobacco, and Firearms Division of the Internal Revenue Service (IRS) became responsible for the regulation of explosives in the United States, as well as for the investigation of persons engaged in criminal acts involving explosives.

On July 1, 1972, the Bureau of Alcohol, Tobacco, and Firearms (ATF) was established as a separate Bureau within the Department of the Treasury, responsible for the regulation of explosives in the United States, as well as for the investigation of persons engaged in criminal acts involving explosives. In January 2003, as part of the Homeland Security Act of 2002, ATF moved to the Department of Justice and its name was changed to the Bureau of Alcohol, Tobacco, Firearms, and Explosives to reflect its mission in the Department of Justice.

In addition to our law enforcement and regulatory responsibilities, ATF also strives to work and consult with the explosives industry and its associations to ensure the safety and security of the public. ATF works with industry associations to provide guidance; to help identify areas of weakness or vulnerability in security; and to protect the general public from explosives accidents with as little disruption to the industry as possible.

Because of the potential misuse of explosives to the detriment of public safety, ATF's role in protecting the public from unsafe and unsecure explosives storage and the misuse of explosives has become more vital in recent years. ATF has dedicated itself to educating and working with the explosives industries we regulate—and the businesses, agencies and groups that affect those industries—to help prevent terrorism, reduce violent crime and to keep the public safe.

As we celebrate our 40th anniversary as an agency, we also recognize the contributions made by the industry and its members. Your compliance with ATF's explosives storage and recordkeeping requirements helps to keep explosive materials out of the hands of those who seek to disrupt or destroy the peace and progress of civilization. Your work with us to help identify and eliminate unsafe practices or products helps to keep the public safe. We applaud you for the important work that you do and thank you for your commitment to public safety. Please join us in commemorating these 40 years of service by viewing our 40th anniversary presentation at <http://www.atf.gov/explosives/industry/eipb-atf-anniversary-40.pdf>



*"In appreciation of your dedication to the safety and security of explosives and the partnership that you fostered to promote public safety." (Plaque presented by ATF to departing ISEE Executive Director Jeffrey Dean at the ISEE Awards Banquet in February)*

## New Publications

**A**TF has issued two new pamphlets containing regulatory compliance guidelines and reminders of recordkeeping requirements for licensed dealers of explosive materials. These new web publications include information on inventory requirements, using commercial records, and a check list to help licensees and permittees stay in compliance with statutory and regulatory requirements. The new publications, ATF P 5400.22, Recordkeeping Requirements for Dealers of Explosive Materials and ATF P 5400.23, Compliance Guidelines for Federal Explosives Licensees and Permittees may be found at <http://www.atf.gov/publications/explosives-arson/>. These publications are intended as aids for compliance with statutory and regulatory requirements—not as replacements. The Federal explosives law at Title 18, United States Code, Chapter 40, provides explosive materials statutory requirements and implementing regulations at 27 CFR, Part 555, provide specific regulatory requirements for explosive materials.

## ATF Ruling 2012-2, Uncovered Firework Bins

**T**he preparation and design of fireworks display shows involves the selection of a wide variety of aerial shells, cakes, and candles. Some fireworks industry members have constructed permanent (fixed) wooden shelves in explosive materials storage magazines that integrate "picking" bins, which are not usually affixed with lids or covers. It is common industry practice for those who use the picking bin system to designate a specific display fireworks category for each bin (e.g., by manufacturer, size, and display effect). Firework licensees and permittees transfer the display fireworks from their original cardboard cases to these fixed wooden bins until they are picked for a display fireworks show.

Under Federal law, Title 18, United States Code, section 824(j), all persons must store explosive materials, to include explosive devices, in compliance with Federal regulations. The regulations at 27 CFR § 555.214(c) require, in part, that containers (including cardboard cases and bins) of explosive materials must be closed while being stored. Further, the regulation at 27 CFR § 555.214(b) states: "Containers of explosive materials are to be stored so that marks are visible. Stocks of explosive materials are to be stored so they can be easily counted and checked upon inspection."

Fixed "picking" bins used to store display fireworks are containers and therefore must be closed and labeled with the marks of identification required in 27 CFR § 555.109. However, ATF finds that, under certain conditions, there is good cause for authorizing the storage of display fireworks in fixed, unmarked, and uncovered bins. For example, such storage significantly decreases the movement of firework cases within and between explosives storage magazines and therefore decreases the chances of an accident or a sparking hazard occurring during the fireworks picking or inventory processes. Further, well-constructed fixed bins are not susceptible to collapse like cardboard cases are so they ultimately provide for more safety and better protection to the display fireworks shells. In addition, fireworks stored in fixed, uncovered bins render marks of identification readily visible to enable easier counting and checking upon inspection to facilitate inventories.

As a result, ATF finds that, under certain conditions, the storage of display fireworks in fixed, unmarked, and uncovered bins is substantially equivalent to,

within the purpose of and consistent with the effect intended by, the specifically prescribed requirements in 27 CFR § 555.214(b) and (c).

For these reasons, ATF has issued ATF Ruling 2012-2, allowing Federal explosives licensees and permittees to store display fireworks in fixed, uncovered, and unmarked bins within explosive materials storage magazines provided they meet all of the following conditions at all times:

1. All display fireworks, including the quickmatch leaders, must be fully contained within the bins. The bins must prevent the spillage of display fireworks contents. Safety caps (fuse caps) must be securely affixed to the quickmatch leaders to prevent exposure of the black powder match (fuse);
2. The shelving and bin system must be stable and constructed of, or lined with, non-sparking materials (e.g., wood). Any sparking hazards, including exposed sparking nails or screws used to construct the bin system, must be countersunk or permanently covered with a non-sparking material;
3. The shelving and bin system must be constructed within the storage magazine to prevent the shelving and bin system from moving or falling during the storage, handpicking, inventory, and inspection processes; and
4. The magazine door(s) must remain closed and locked when the magazine is not attended.

Any explosive materials magazines in which uncovered and unmarked bins are used to store fireworks may not contain any of the following explosives (unless the other explosive materials are separately stored and contained in covered containers or bins):

1. Exposed explosive materials (e.g., loose igniters, black powder, flash powder);
2. Damaged fireworks that have exposed black powder match or pyrotechnic powder;
3. Partially assembled fireworks or firework components (e.g., unfinished comets or crossettes) that have exposed black powder match or pyrotechnic powder; or
4. Quickmatch and other pyrotechnic fuse with exposed ends and that are not contained in a sealed bag.

Any display fireworks affixed with igniters in fixed, unmarked, and uncovered bins inside explosive materials magazines must meet the following additional conditions at all times:

1. Each igniter must be affixed with a protective shroud that covers the igniter head;

2. Each igniter must be shunted (establish contact between both wires), or contain an electrical cap; and
3. The igniter wire and quickmatch leader must be secured to each other (e.g., tied together) or otherwise attached to minimize entanglement with other wires and leaders in the bins.

Industry members using, or planning to use, uncovered bins in explosives storage magazines should read and comply with ATF Ruling 2012-2, found in its entirety at <http://www.atf.gov/regulations-rulings/rulings/>. This ruling supersedes all previous variance approvals for uncovered bins used in explosives magazines.

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## Storage of EPCDs Aboard Fishing Vessels

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### *Suitability of Fishing Vessels for Explosives Storage Magazines*

It has come to ATF's attention that many fishing companies require the storage of explosive pest control devices (EPCDs) aboard their fishing vessels to deter seals and other wildlife from their catch. Some companies keep their explosives storage magazines within the vessel's wheelhouse while others affix their magazines to the vessel's deck. The regulations at 27 CFR Part 555—Commerce in Explosives, do not contain specific provisions for the storage of explosives on fishing vessels. Therefore, anyone storing explosives on fishing vessels must obtain a variance from ATF prior to using the storage.

Storage inside a vessel's wheelhouse or other indoor location aboard the vessel constitutes indoor storage, which may not exceed 50 pounds of explosive materials. Conversely, persons storing EPCDs on the vessel's deck must ensure that table of distance requirements are met at all times. Fishing companies storing flash powder EPCDs must ensure that their magazines meet the minimum specified distances in 27 CFR § 555.218 while those containing low explosive EPCDs must meet the minimum specified distances in 27 CFR § 555.219. The tables of distances protect the general public—in buildings and on highways/railways—in the event of a magazine explosion. Therefore, ATF will not approve variance requests to forgo the tables of distances for outdoor storage because it would significantly diminish public safety if the distance requirements were not followed.

### ***Storage of EPCDs Containing Flash Powder in a Type 4 Magazine***

Many EPCDs used in fishing operations, to scare away seals and other wildlife, contain flash powder. The regulation at 27 CFR § 555.202(a) classifies flash powder, which can be caused to detonate by means of a blasting cap when unconfined, as a high explosive. The regulation at § 555.203 requires high explosives to be stored in type 1 or type 2 magazines when unattended. Therefore, flash powder EPCDs must generally be stored as high explosives.

However, the U.S. Department of Transportation (DOT) has assigned a 1.4 hazard classification to certain flash powder EPCDs when packaged in a specific fashion. This classification is based partially upon a determination that the EPCDs will not mass explode when packaged in their DOT-approved shipping containers. Also, the security requirements for type 4 magazines are essentially the same as those for type 1 and type 2 magazines.

Therefore, ATF will generally approve variance requests to store flash powder EPCDs in a type 4 magazine, provided that they remain packed in their original DOT-approved shipping containers. You must obtain a variance from ATF prior to storing EPCDs containing flash powder in a type 4 magazine.

### ***Requesting a Variance***

Anyone who wants to store EPCDs on fishing vessels and/or to store flash powder EPCDs in type 4 magazines should send their requests to ATF's Explosives Industry Programs Branch (EIPB) at [eipb@atf.gov](mailto:eipb@atf.gov) or via mail to 99 New York Avenue, Mailstop 6N-672, Washington, D.C. 20226. In order for EIPB to process your request, you should submit the following information with your request: company information (e.g. name, address, Federal explosives license/permit number), fishing vessel information (e.g. name, dimensions, photos, docking location), EPCD information (e.g. manufacturer and/or brand name, product name, quantity desired to be stored), storage magazine information (e.g. type, construction of magazine, construction of wheelhouse housing the magazine if applicable, magazine location), contact information (e.g. email address, phone number, and name and title of requester). Keep in mind that a responsible person on the Federal explosives license or permit must submit the variance request.

Persons requiring a Federal explosives license or permit should contact the Federal Explosives Licensing Center at [felc@atf.gov](mailto:felc@atf.gov) or 877-283-3352. Additional information regarding EPCDs, licensing and storage may be found at our website at <http://www.atf.gov/explosives/how-to/explosive-pest-control-device-requirements.html>.

## **ATF Regulation of 1.4 Materials**

**A**TF has received numerous inquiries regarding ATF's regulation of explosive materials used in the fireworks industry and commonly classified by the U.S. Department of Transportation (DOT) as Division 1.4 explosives such as igniters, quick match, and time fuse. It has come to ATF's attention that some persons believe DOT Division 1.4 explosives are exempt from ATF's explosives regulations.

ATF classifies explosives for the purpose of ensuring their safe and secure storage. The DOT Pipeline and Hazardous Materials Safety Administration, which is responsible for regulating and ensuring the safe and secure movement of hazardous materials, including explosives, by all modes of transportation in the United States, classifies explosive materials for the purpose of ensuring safety during transportation.

ATF explosives regulations under 27 CFR, Subpart K—Storage, designate three classes of explosive materials, which are required to be stored in specific types of storage magazines as specified in the regulations. High explosives are explosive materials which can be caused to detonate by means of a blasting cap when unconfined (e.g., dynamite, flash powder, bulk salutes). Low explosives are explosive materials which can be caused to deflagrate when confined (e.g., igniters, black powder, igniter cords, fuse lighters). Blasting Agents are defined as any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined (e.g., ammonium-nitrate fuel oil (ANFO)).

DOT uses 6 hazard divisions (1.1, 1.2, 1.3, 1.4, 1.5, and 1.6) and 13 compatibility groups to assign classification codes for explosives in Class 1. DOT designates Division 1.4 explosives as those "explosives that present a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not cause virtually instantaneous explosion of almost the entire contents of the package."

ATF and DOT make explosives classifications independently from each other. Therefore persons should not rely upon DOT's classification (e.g., Division 1.4) when trying to determine if ATF regulates specific explosive materials. Although ATF does not mirror DOT's classification codes for general explosives classifications, ATF defines "display fireworks", "consumer fireworks," and "articles pyrotechnic," in part, by referencing the United

Nations identification numbers (UN numbers) assigned by DOT to the explosives materials. The following is a summary of UN numbers and the ATF definition with which they are associated:

ATF Definitions	UN Numbers
Display Fireworks	UN0333, UN0334, UN0335
Consumer Fireworks	UN0336, UN0337
Articles Pyrotechnic	UN0431, UN0432

The ATF explosives regulation at 27 CFR § 555.141(a)(7) exempts from the Federal explosives regulations at 27 CFR Part 555 the importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the DOT at 49 CFR 172.101 and generally known as “consumer fireworks” or “articles pyrotechnic”. In addition to the UN number requirements, explosives materials must meet all other criteria in the specified definitions for “consumer fireworks” or “articles pyrotechnic” to be considered exempt from ATF explosives regulations.

Persons acquiring or distributing fireworks that have not been assigned one of the aforementioned UN numbers for “consumer fireworks” or “articles pyrotechnic” do not meet the exemption criteria in 27 CFR § 555.141 and are required to meet all prescribed explosives licensing, recordkeeping, and storage requirements in 27 CFR Part 555. Keep in mind that, in addition to the UN number requirements, explosive materials must meet all other criteria referenced in the specified definitions for “consumer fireworks” or “articles pyrotechnic” to be considered exempt from ATF explosives regulations in 27 CFR Part 555. Persons who require an ATF explosives determination may submit a request to the Explosives Industry Programs Branch at [eipb@atf.gov](mailto:eipb@atf.gov). Explosives determination requests should include, in part, a description of the device, the DOT competent authority document, testing reports, Material Safety Data Sheets, diagrams, photos, and/or videos.

## Recording in the Daily Summary of Magazine Transactions

The regulation at 27 CFR § 555.127 requires explosives licensees and permittees to maintain daily summaries of magazine transactions (DSMT) for magazines containing explosives. Pursuant to 18 USC 843(f) and 27 CFR § 555.121, ATF officers may enter the premises of any licensee or permittee for the purpose

of examining or inspecting any record or document required by or obtained under 27 CFR Part 555. The DSMT is vital in ensuring the traceability of explosives and assisting ATF and other law enforcement agencies in the event of explosives theft or loss. An analysis of violations discovered during ATF explosives inspections between fiscal years 2006 and 2011 revealed that DSMT violations were the most frequently cited violations every fiscal year. For instance, DSMT violations cited in fiscal year 2011 accounted for approximately 25 percent of the total explosives violations.

Each DSMT must contain the following information:

1. Manufacturer’s name or brand name of explosive material;
2. Total quantity of explosives received into the magazine during the day;
3. Total quantity of explosives removed from the magazine during the day; and
4. Total quantity of explosives remaining on hand at the end of the day.

Quantity entries for explosives can be recorded by individual units. ATF recommends recording explosives quantity entries in a manner that is consistent with the markings on the explosives packaging, which helps facilitate inventories. For example, licensees and permittees receiving explosives packages that are marked with the number of individual units within the package will facilitate inventories by maintaining their DSMT by recording individual units instead of explosives weight.

The regulations also allow for display fireworks quantity entries to be expressed as the number and size (e.g., 3-inch, 4-inch) of individual display fireworks in a finished state or as the number of packaged display segments or packaged displays (e.g., cases, packages) for a specific display. Licensees and permittees maintaining DSMT quantity entries by the number of packaged display segments in a display fireworks show must be able to provide ATF officers with the number and size of display fireworks contained in any one packaged display segment. Keep in mind that DSMT entries for display fireworks (including those finished or packaged in segments for display shows) must also contain the manufacturer’s name or brand name.

Pursuant to regulations in 27 CFR 555, Subpart G—Records and Reports, each licensee is required to conduct at least one annual physical inventory, which also must be recorded in the DSMT and made available for ATF inspection. Although ATF requires at least one physical inventory per calendar year, we recommend conducting multiple inventories throughout the year.

ATF would also like to remind licensees and permittees that unresolved inventory discrepancies must be reported to ATF within 24 hours of discovery as prescribed in 18 USC 842(k) and 27 CFR § 555.30.

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## Aluminum Type 2 and Type 3 Magazines

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**T**he regulation at 27 CFR § 555.208(a) requires, in part, that a type 2 outdoor magazine exterior and doors be constructed of not less than ¼ inch steel and lined with at least two inches of hardwood.

The regulation for type 2 indoor magazines at 27 CFR § 555.208(b) requires, in part, that metal indoor magazine sides, bottoms, and doors are to be constructed of no less than number 12-gauge (.1046 inches) metal and be lined inside with a nonsparking material. Outdoor magazines must be bullet-, fire-, weather-, and theft-resistant, as well as ventilated. Indoor magazines must be fire-resistant and theft-resistant—they need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration.

The regulation at 27 CFR § 555.209 states, in part, that a type 3 magazine is a “day-box” or other portable magazine. It must be fire-, weather-, and theft-resistant. A type 3 magazine is to be constructed of not less than number 12-gauge (.1046 inches) steel, lined with at least either ½ inch plywood or ½ inch Masonite-type hardboard. Further, the regulation at 27 CFR § 555.203(c) states that type 3 magazines are portable outdoor magazines for the temporary storage of high explosives while attended, subject to the limitations prescribed by §§ 555.206 and 555.213. Other classes of explosive materials may also be stored in type 3 magazines.

Some manufacturers have constructed type 2 and type 3 magazines of aluminum to reduce the weight of the magazines and to allow for greater portability. These magazines do not meet the regulatory requirements, which specify that type 3 magazines must be constructed of no less than number-12 gauge steel, lined with at least either ½ inch plywood or ½ inch Masonite-type hardboard (for spark resistance), and that type 2 magazine exteriors and doors must be constructed of no less than ¼ inch steel lined with at least 2" of hardwood (for outdoor magazines) or have sides, bottoms and doors constructed of no less than number 12-gauge metal lined with a nonsparking material (for indoor magazines).

Although aluminum is generally considered to be a nonsparking metal, a variance is required to use an aluminum type 2 or type 3 magazine because these magazines

do not meet the steel construction and lining requirements found in the regulations at 27 CFR §§ 555.208 and 555.209. To obtain a variance one must show that the construction of the proposed magazine provides levels of fire-resistance, weather-resistance, theft-resistance, and bullet resistance (if applicable) equivalent to those provided by the construction required in the regulations (e.g., lining the magazine with plywood or some other non-sparking material). Variance requests may be submitted directly to the Explosives Industry Programs Branch at [eipb@atf.gov](mailto:eipb@atf.gov) or through the local ATF office. Variance request guidelines may be found at <http://www.atf.gov/explosives/how-to/request-variance-exemption-or-determination.html>. Field office address and contact information may be found at <http://www.atf.gov/field/>.

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## Advertised as “ATF Approved”

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**S**everal licensees and permittees have inquired about explosive materials storage magazines or locking devices advertised as “ATF compliant” or “exceeding ATF requirements.” ATF would like to remind all persons that the storage of explosive materials must be in accordance with the regulations at 27 CFR, Part 555, Subpart K—Storage. ATF does not endorse any particular brand of magazine or lock as meeting magazine construction or locking requirements found in Subpart K, nor has ATF granted permission to any manufacturer or company to print or post any statement of ATF approval for a particular product. Further, ATF does not issue blanket variances to manufacturers or distributors of explosive materials storage magazines.

Pursuant to 27 CFR § 555.22, ATF may approve the use of an alternate method or procedure in lieu of a method or procedure specifically prescribed in Part 555 when: (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.

A Federal explosives licensee or permittee may not store any explosive materials in any magazine that does not meet regulatory construction requirements unless the licensee or permittee has received a variance for such storage from ATF. Additional information on how to apply for a variance is available at <http://www.atf.gov/explosives/how-to/request-variance-exemption-or-determination.html>. Variance requests may be sent through the ATF field office or directly to the Explosives Industry Programs Branch at [cipb@atf.gov](mailto:cipb@atf.gov).

All persons storing regulated explosive materials should use an explosive materials storage magazine that meets construction requirements found at 27 CFR, Part 555, Subpart K—Storage or uses alternate construction approved under an ATF ruling. If a specific magazine or lock does not meet the requirements found in Subpart K or the criteria of an ATF ruling, a licensee or permittee may submit a request for a variance from the construction requirements. ATF Rulings may be found at <http://www.atf.gov/regulations-rulings/rulings/>.

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## ATF to Host Explosives Regulatory Conference

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**A**TF will be hosting an explosives regulatory conference this fall at ATF National Headquarters in Washington, DC. The conference will address a diversity of topics, such as current issues, explosives imports, licensing, pyrotechnics, field inspections, and U. S. Bomb Data Center activities. It will also include speakers from other Federal agencies with authority over various aspects of the explosives industry. Watch for additional information and registration opportunities in the coming months at <http://www.atf.gov/explosives/industry/>. (If you have issues or questions that you would like to see addressed at the conference or in the Explosives Industry Newsletter, please contact us at [eipb@atf.gov](mailto:eipb@atf.gov).)

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## Questions and Answers

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**Q**uestion: I am a dealer of display fireworks and have been contacted by a local fireworks club to purchase fireworks for use at their club event. What procedures must I follow to ensure compliance with Federal explosives law?

**A**nswer: Prior to transferring display fireworks to the fireworks club, you must:

1. Obtain a certified copy of the club's Federal explosives license or permit;
2. Obtain a list of names of persons authorized to accept delivery of explosive materials for the club (persons prohibited under 18 USC 842 may not possess explosives under any circumstances);
3. Obtain a certified statement of intended use of the explosive materials (e.g., fireworks club display show);
4. Create a record of disposition as required in 27 CFR 555, Subpart G – Records and Reports;
5. If delivery is made by a common or contract carrier, you must also:
  - a. Verify the identity of the person accepting possession for the carrier by examining their valid, unexpired driver's license;
  - b. Record the name of the common or contract carrier and the full name of the driver in your permanent records and retain such records pursuant to 27 CFR § 555.121.

**Question:** I am president of my local fireworks club and listed as a responsible person (RP) under the club's explosives license. Can I provide display fireworks to club members who are not RPs or employee possessors (EP)?

**Answer:** Fireworks club members (who are not listed as an RP or EP) may handle display fireworks and other regulated explosive materials (e.g., igniters, quick match, black powder) only if a RP or EP is physically present and provides direct oversight and control of the members' fireworks activities. Further, you must ensure that persons who you know are prohibited from possessing explosives pursuant to 18 USC 842(i) do not handle or possess explosives at any time.

**Question:** Can I keep my explosives records in a location that is different from my licensed/permitted premises (e.g., at my residence)?

**Answer:** The regulations at 27 CFR Part 555 Subpart G—Records and Reports generally require that records pertaining to explosive materials be maintained on the business premises for 5 years from the date a transaction occurs or until discontinuance of business or operations. The definition of "business premises" at 27 CFR § 555.11 includes property where the explosives records are kept if different than the premises where explosive materials are manufactured, imported, stored, or distributed (for manufacturers, importers, or dealers) or where explosive materials are received or stored (for users). Therefore, you may keep required records at an alternate location from where explosive materials are manufactured, imported, stored, or distributed

(for manufacturers, importers, or dealers) or where explosive materials are received or stored (for users); however, any location where you maintain required records is also your business premises and so is subject to ATF inspection.

**Question:** What procedures must I follow if I load display fireworks into mortars and the show is postponed until the following evening?

**Answer:** ATF has determined that display fireworks loaded into mortars are "in use" and therefore are not required to be kept in explosives storage magazines pursuant to the provisions in 27 CFR § 555.205. However, ATF recommends that licensees and permittees provide sufficient security to protect the loaded mortars from access by unauthorized persons. Any display fireworks removed from the mortars must be stored in accordance with Federal storage regulations.

**Question:** 27 CFR § 555.121(a)(2) states: "*Licensees and permittees shall keep records required by this part on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee.*" (See also § 555.128 for discontinuance of business or operations.) Because I will be using computer based records, these records will be located on a server off site from my current storage location. Do these records need to be backed up at my current business location?

**Answer:** Your computer based records may be backed up off site from your current storage location, provided that they can be made available for inspection by ATF at all reasonable times. The definition of "business premises" at 27 CFR § 555.11 includes property where the required records are maintained if it is different from where the explosive materials are manufactured, imported, stored or distributed (for manufacturers, importers, or dealers) or where the explosive materials are received and stored (for users).

**Question:** If I am mixing pyrotechnic materials or assembling firework items in open-air areas without a structure, do I have to meet any table of distance requirements?

**Answer:** Outdoor pyrotechnic mixing areas (e.g., areas used for mixing flash or black powder) are included in the definition of fireworks mixing buildings and are therefore considered "fireworks process buildings" which are subject to the distance and weight limitations addressed at 27 CFR §§ 555.222 and 555.223. However, ATF has determined that open outdoor areas used for assembly operations other than mixing would not fall within the definition of "fireworks process buildings" because the term "area" is only used for defining "fireworks mixing building". Keep in mind that all

pyrotechnic mixing and assembling operations in process buildings must meet the aforementioned distance and weight limitations in §§ 555.222 and 555.223.

**Question:** Would a volunteer fire department conducting fireworks displays require an ATF license or permit?

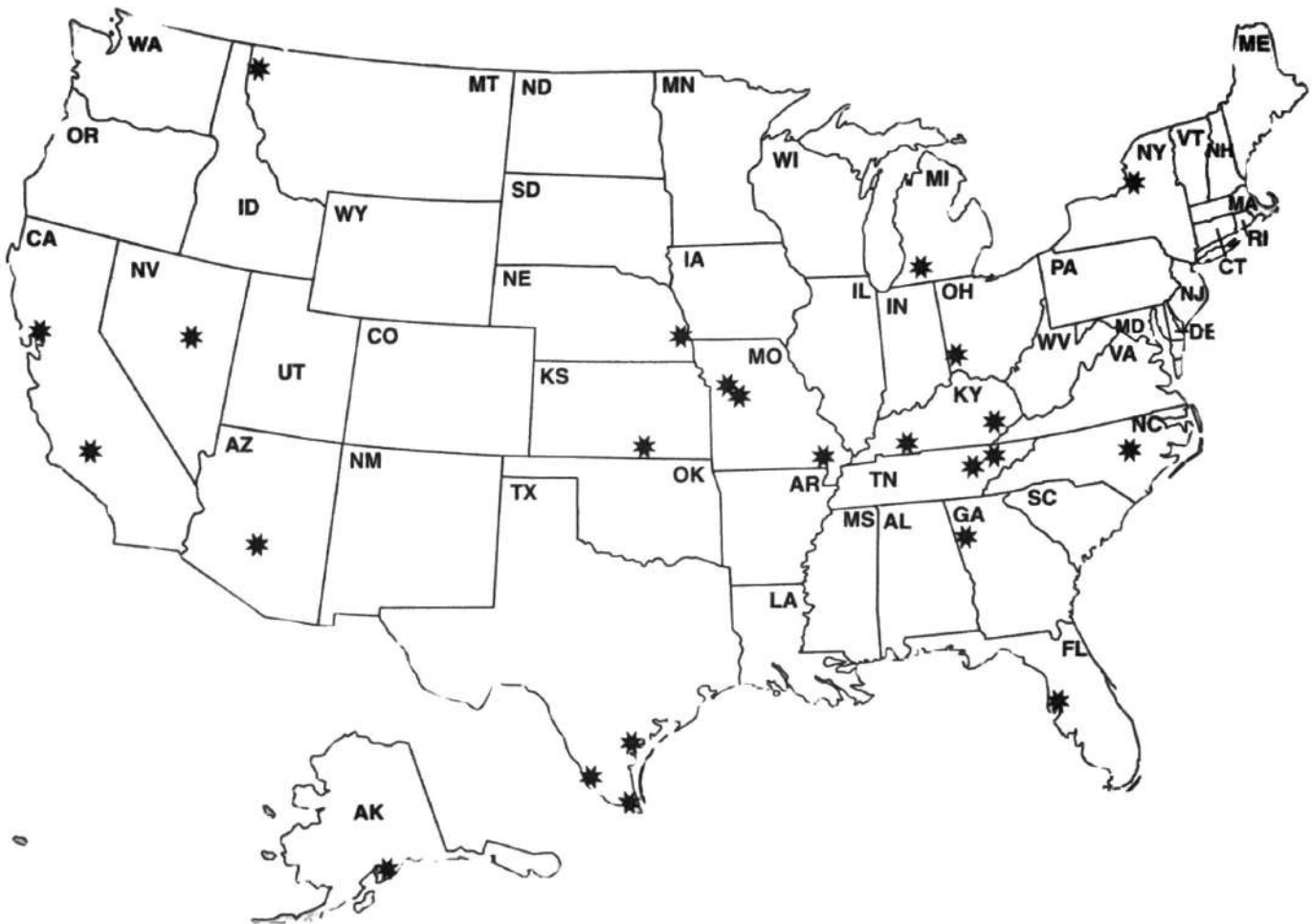
**Answer:** The Federal explosives laws (Title 18, U.S.C., Chapter 40), and the implementing regulation at 27 CFR § 555.141(a)(3), exempt from the provisions of 27 CFR, Part 555, "The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision." As such, the receipt of explosives by an agency meeting the aforementioned requirements would be exempt from the explosives licensing regulations in 27 CFR 555, Subpart D—Licenses and Permits. Several factors including, but not limited to, business structure and funding must be evaluated to determine if the volunteer fire department meets the 27 CFR § 555.141 exemption requirements. Furthermore, the agency would still be required to comply with the explosives storage regulations in 27 CFR Part 555, Subpart K—Storage. You may find information on obtaining a Federal Explosive License or Permit on the ATF website at: <http://www.atf.gov/explosives/how-to/become-an-fel.html>.

**Question:** Are there any marking requirements for display fireworks that are manufactured as a hobby and do not enter commerce?

**Answer:** Markings are only required if the fireworks are manufactured for sale or distribution. There are no marking requirements for fireworks manufactured for someone's personal, non-business use. However, Federal explosives licensees and permittees must still maintain a record of manufacture even if the fireworks do not enter into commerce.

*Note: If you have a topic or question that you would like to see addressed in the Explosives Industry Newsletter, please email us at [eipb@atf.gov](mailto:eipb@atf.gov).*

## Explosives Thefts Reported During 2011



Seward, AK  
Phoenix, AZ  
Bakersfield, CA  
San Jose, CA  
Tampa, FL  
Bremen, GA  
Douglass, KS  
Bowling Green, KY (Fireworks)  
Manchester, KY (2 thefts)  
Delton, MI  
Higginsville, MO (Fireworks)  
Hughesville, MO

Puxico, MO  
Troy, MT  
Wake Forrest, NC (Fireworks)  
Weeping Water, NE  
Eureka, NV  
Oswego, NY (Fireworks)  
Fairfield, OH (Fireworks)  
Crossville, TN (Fireworks)  
Lafollette, TN  
Corpus Christi, TX  
Port Isabel, TX (Fireworks)  
Zapata, TX

# Newsletter Distribution

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