Effect of 18 U.S.C. Chapter 40 On the Fireworks Industry

[Caution! This item discusses Federal requirements only. Please contact your State or local authorities for any additional requirements.]

Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. Chapter 40) establishes controls over explosive materials, including black powder and other pyrotechnic compositions commonly used in fireworks. Part 555 of Title 27, Code of Federal Regulations (CFR), contains the regulations which implement Title XI. Section 555.141(a)(7) exempts "the importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as 'consumer fireworks' or 'articles pyrotechnic.'" Section 555.141(a)(7) does not exempt "display fireworks," as defined in 555.11.

With Respect to Fireworks: Who needs a license?

1. Manufacturers of black powder;

2. Manufacturers of any other explosive material used in manufacturing consumer fireworks or display fireworks; and

3. Importers of, or dealers in, display fireworks.

With Respect to Fireworks: Who needs a permit?

1. All persons transporting, shipping, causing to be transported, or receiving display fireworks, regardless of whether for their own use or for commercial display purposes (Certain exemptions apply, e.g. agencies of the United States or of any State or political subdivisions thereof are exempt from permit requirements); and

2. A person, other than a licensee, transporting, shipping, causing to be transported, or receiving explosive materials for use in manufacturing display fireworks or consumer fireworks.

With Respect to Fireworks: Who may not need a license or permit?

Frequently, persons contracting for display fireworks (e.g., for Fourth of July observances) from a Federal explosives licensee or permittee receive a total service, including the services of a pyrotechnician who transports display fireworks in interstate or intrastate commerce to the site of the display and conducts and supervises the display. In these instances, the customers purchase and receive the contractor's services and not the explosive materials themselves (i.e. the cost of the services includes the contractor's expense in providing the fireworks utilized), and the cost of the services includes the dealer's expense in providing the fireworks utilized. When business is transacted in this manner, the customers purchasing and receiving the services need not obtain Federal explosives licenses or permits under Part 555 as long as they are not transporting, shipping, causing to be transported, or receiving explosive materials. Note: the transportation of explosive materials to the display sites would be authorized by the Federal explosives license or permit of the licensee or permittee providing the services.

With Respect to Fireworks: Types of permits

1. User permit: Allows the permit holder to transport, ship, cause to be transported, and receive display fireworks in interstate or foreign commerce for his or her own use and not for resale. This permit is issued at a cost of $100 for a 3-year period and is renewable at a cost of $50 for a 3-year period.

2. User-limited permit: Identical to the user permit but issued for a single purchase transaction, only. The fee is $75; the permit is nonrenewable.

With Respect to Fireworks: Storage

The law prohibits any person from storing any explosive materials in a manner not in conformity with the regulations promulgated by the Attorney General (18 U.S.C. 842(j)). Pursuant to this section, the Attorney General has prescribed storage regulations in 27 CFR Part 555, Subpart K. Display fireworks must be stored in conformity with the regulations. Display fireworks generally contain perchlorate mixture explosives, potassium chlorate base explosive mixtures, and black powder, which are entered on the List of Explosive Materials with numerous others. (The List, which is not all-inclusive, is annually compiled and readily available without charge from the address set out in 27 CFR 555.23 or online at www.atf.gov.) Display fireworks must be stored as low explosives in magazines meeting, at a minimum, the requirements for type 4 storage magazines prescribed by 27 CFR 555.210 unless they contain other classes of explosives. Bulk salutes must be stored as high explosives in type 1 or type 2 magazines. The net weight of the explosive materials contained in the display fireworks may be used in determining compliance with table of distance requirements. To determine the actual weight of the materials, it may be necessary to contact their manufacturers. The manufacturer of exempt or nonexempt fireworks having stocks of explosive materials on hand to be used in the manufacture of fireworks must store the stocks in conformity with applicable storage requirements.

Explosives Dealer's and User's Guide to Federal Explosives Regulation

Explosives May Not be Distributed by Licensees (Or by Any Person) to Any Person Who:

1. Is under indictment for, or who has been convicted of a crime punishable by imprisonment for a term exceeding one year.

2. Is an unlawful user of, or addicted to, marijuana or any depressant or stimulant drug or narcotic drug (as these terms are defined in section 102 of the Controlled Substances Act).

3. Has been adjudicated as a mental defective or has been committed to a mental institution.

4. Is a fugitive from justice.

5. Is an alien (with certain exceptions)

6. Has been discharged from the armed forces under dishonorable conditions; or

7. Having been a citizen of the United States, has renounced citizenship.

8. Is less than 21 years of age.

Dealers in Explosives Must:

Have a current and valid Federal explosives license.

Have proper storage facilities.

Keep accurate and complete records.

Verify that each buyer has a Federal explosives license or permit.

Verify buyers' identities.

Users of Explosives

Federal permits are required of those who transport, ship, cause to be transported, or receive explosive materials. Among other things, the permittee must keep complete and accurate records of the acquisitions and dispositions of explosives materials. Unless otherwise exempted by law, no person may receive or transport any explosive materials without a permit.

No person shall store any explosive material in a matter not in conformity with applicable regulations.

All persons must report to ATF and local authorities any loss or theft of their explosive materials within 24 hours of discovery.

A Federal license or permit does not confer any right or privilege to violate any state law or local ordinance.

The above summary is general and does not purport to fully convey the Federal explosives law and regulations pertaining to dealers and users.

Black Powder Transactions

Public Law 93-639 (1975) allows nonlicensees/nonpermittees to purchase commercially manufactured black powder, in quantities of 50 pounds or less, solely for sporting, recreational or cultural purposes for use in antique firearms or antique devices. A nonlicensee or nonpermittee purchasing black powder under the exemption need not be a resident of the State in which the dealer is located. Also, the categories of persons to whom the distribution of explosive materials is prohibited do not apply to black powder transactions made under the exemption. Acquisitions of black powder not qualifying under this exemption are subject to the same regulatory requirements that govern any other low explosive.

All persons who distribute black powder, regardless of quantity, must be licensed as explosives dealers and, among other things, must provide adequate storage.

Explosives Security

Through prompt reporting of losses and thefts of explosives and increased emphasis on physical security, explosives licensees and permittees can contribute greatly to efforts by Federal, State and local authorities to reduce the incidence of bombings and other criminal misuse of explosives in the United States. The following actions are of prime importance and in some instances required:

Report . . . any thefts or losses of explosives within 24 hours of discovery, by telephone, to ATF (toll free: 1-800-800-3855) and to appropriate local authorities. Because the States and many municipalities have designated specific agencies to investigate the theft or loss of explosives, licensees and permittees are urged to be familiar with State and local reporting procedures and appropriate contact points.

Follow . . . telephone notification with a written report on ATF Form 5400.5, "Report of Theft or Loss—Explosive Materials," to the nearest ATF Division Office, and in accordance with the instructions on the form.

Observe . . . activity around magazines, within business premises, and on job sites, particularly if strangers appear to be loitering in the area in which explosives are being kept. On-site users should take special care to assure that explosives removed from storage for use on the job are either detonated or accounted for and unused items returned to storage.

Review . . . recordkeeping practices to assure that no discrepancies exist and that no figures in reported inventories have been manipulated, and correct any clerical errors promptly. Should any questions arise concerning explosives security procedures or any aspect of explosives regulation coming under the jurisdiction of ATF, do not hesitate to contact ATF.

Note: For Q&A's on regulatory requirements governing recordkeeping and storage, see "Questions and Answers" numbers 62-87.

Additional Information

The flow of useful information is an essential ingredient in the effective administration of regulatory programs. The Bureau of Alcohol, Tobacco, Firearms and Explosives is the Federal agency charged with the responsibility of administering laws impacting the explosives industry. We call your attention to the following publication distributed by ATF that merits your attention:

The Explosives Newsletter

During 1989 ATF developed the Explosives Newsletter, an information service for Federal explosives licensees and permittees which is intended to help explosives industry members better understand the Federal laws under which they must operate. It also includes other items of particular interest to the explosives industry. There is no charge for the Explosives Newsletter; licensees and permittees automatically receive copies when new editions are published.

Explosives industry members having questions on the Federal explosives laws and regulations may address their inquiries to:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Explosives Industry Programs Branch
99 New York Avenue, N.E.
Mailstop 6E405
Washington, DC 20226

Direct e-mail inquiries on general questions or variance requests may be sent to the branch at EIPB@atf.gov.

List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, U.S.C., and 27 CFR 555.23, the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, must revise and publish in the Federal Register at least annually a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, U.S.C. Accordingly, the following is the current List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage definitions in section 841 of title 18, U.S.C. Explosive materials are listed alphabetically by their common names, followed by chemical names and synonyms in brackets. This revised list is effective as of September 18, 2006.

List of Explosive Materials

A
Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium perchlorate explosive mixtures.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B
Baranol.
Baratol.
BEAF [1,2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C
Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D
DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E
EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.

Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F
Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G
Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H
Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated Nmethylaniline.
Hexolites.
HMTD
[hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I
Igniter cord.
Igniters.
Initiating tube systems.

K
KDNBF [potassium dinitrobenzofuroxane].

L
Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M
Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N
NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O
Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P
PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.

Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitratenitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

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Michael J. Sullivan, Acting Director.

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