

Questions and Answers (Revised 1/07)

18 U.S.C. Chapter 40 and 27 CFR Part 555

Introduction

The following list of Questions and Answers are intended to aid you in gaining a better understanding of:

18 U.S.C. Chapter 40 – Importation, Manufacture, Distribution and Storage of Explosive Materials and the implementing regulations issued within:

27 CFR Part 555 – Commerce in Explosives

This listing is not all-inclusive. However it contains some of the most frequently asked questions that ATF receives. These questions and answers are intended only as a general overview. To determine how the law and regulations apply to your specific circumstances, you must refer directly to the applicable law and regulation or contact your local ATF Office of

Industry Operations. Also, please be aware that both the law and regulations are subject to change. Please contact your local ATF office for the most up-to-date information. You can also find the latest Federal explosives regulations on the ATF website: www.atf.gov.

Unless otherwise stated, these Questions and Answers apply only to Federal law and regulations. States and local jurisdictions have, in many cases, enacted their own requirements relating to explosives. Check with appropriate State or local authorities for information on those requirements. Compliance with Federal law and regulations does not exempt any person from compliance with any State or local requirements.

A Table of Contents and a Subject Index has been included for your convenience. The Index is located at the end of the Questions and Answers section.

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General Questions

1. Who is affected by the Federal explosives law?

The law affects all persons who import, manufacture, deal in, purchase, use, store, or possess explosive materials. It also affects those who ship, transport or cause to be transported, or receive explosive materials. Also, see 18 U.S.C. 845 and 27 CFR 555.141 for exemptions.

2. What changes were brought about by the Safe Explosives Act?

Among other things, the Act mandated that all persons who wish to receive or transport explosive materials must first obtain a Federal explosives license or permit. In addition, the act imposed new restrictions on who may lawfully receive and possess explosive materials (See question 4). All Federal explosive licensees and permittees and their responsible persons and employees authorized to possess explosives are affected by the new requirements and background checks mandated by the Act.

3. Can I obtain general information from ATF on the Internet?

Yes. ATF maintains a website on the Internet at www.atf.gov.

4. Does the law make some classes of persons ineligible to receive a Federal license to import, manufacture, or deal in explosive materials or to receive a Federal explosives permit?

Yes. A license or permit will not be issued to any person who:

- (a) Is under indictment for, or who has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year;
- (b) Is a fugitive from justice;
- (c) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (d) Has been adjudicated a mental defective or who has been committed to a mental institution;
- (e) Is an alien (with certain exceptions);
- (f) Has been discharged from the armed forces under dishonorable conditions; or,
- (g) Having been a citizen of the United States, has renounced his citizenship. [18 U.S.C. 842(i), 843(b)(1); 27 CFR 555.49(b)(2)(i)]

5. Are there classes of persons to whom the distribution of explosive materials by licensees is prohibited?

Yes. No person shall knowingly distribute explosive materials to any individual listed in Question 4, or to an individual who is under 21 years of age. [18 U.S.C. 842(d); 27 CFR 555.26(d)]

6. What other distributions of explosive materials by licensees and permittees are prohibited?

A licensee or permittee shall not knowingly distribute any explosive materials to any person who:

- (a) Is not a licensee [18 U.S.C. 842(b), 27 CFR 555.105, 555.106];
- (b) Is not a holder of a user permit [18 U.S.C. 842(b); 27 CFR 555.105, 555.106];
- (c) Is not a holder of a limited permit who resides in the same State where distribution is made and in which premises of the transferor are located. [18 U.S.C. 842(b); 27 CFR 555.105, 555.106];
- (d) The licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into the State or to receive explosive materials in the State. [18 U.S.C. 842(c); 27 CFR 555.106]
- (e) Is in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution. [18 U.S.C. 842(e); 27 CFR 555.106(b)(2)]

7. Does Federal law prohibit certain persons from receiving or possessing explosive materials?

Yes. The law prohibits the receipt or possession of explosive materials by any person listed in question 4. [18 U.S.C. 842(i); 27 CFR 555.26, 555.49(b)]

8. May a licensed manufacturer, importer, or dealer distribute explosive materials to nonlicensees and nonpermittees?

No. Every person who receives explosive materials must first obtain a Federal explosives license or permit. Distribution of explosive materials to persons who do not hold a license or permit is unlawful. Also, see 18 U.S.C. 845 and 27 CFR 555.141 for exemptions. [18 U.S.C. 842(a), 842(b); 27 CFR 555.26(a), 555.106]

9. Does Federal law provide penalties for purchasers who give false information at the time of purchasing explosive materials?

Yes. The penalty for knowingly providing false information or misrepresented identification is a maximum 10 years' imprisonment and/or a fine not exceeding \$250,000. [18 U.S.C. 842(a)(2), 844(a)]

10. Is the theft of explosive materials, as well as the possession of stolen explosive materials, a Federal crime?

Yes. It is a Federal crime for any person to steal any explosive materials. It is also a Federal crime for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan any stolen explosive materials. [18 U.S.C. 842(h), 844(k), (l)]

11. Are thefts and losses of explosive materials required to be reported to ATF?

Yes. Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his or her stock shall, within 24 hours of discovery, report the theft or loss by telephoning 800-461-8841 (Monday-Friday 8:00a.m.– 5:00 p.m. Eastern Time) or 888-283-2662 (after hours and weekends) (nationwide toll free number) and on ATF Form 5400.5, “Report of Theft or Loss – Explosive Materials”, in accordance with the instructions on the form. The theft or loss shall also be reported to appropriate local authorities. The same requirements are imposed upon persons other than licensees and permittees, except that nonlicensees and nonpermittees, other than carriers, need not report a theft or loss on Form 5400.5, but must report the theft or loss by telephone, using the same numbers: 800-461-8841 (Monday-Friday 8:00a.m.–5:00 p.m. Eastern Time) or 888-283-2662 (after hours and weekends) and in writing to the nearest ATF office. The theft or loss shall also be reported to appropriate local authorities. Carriers of explosive materials must report a theft or loss by telephone but need not make the report on the ATF form or in writing. See 27 CFR 555.30 for the specific information required to be reported in connection with a theft or loss. [18 U.S.C. 842(k), 18 U.S.C. 844(p); 27 CFR 555.30]

12. My company holds a Federal explosives license and after conducting an inventory of our explosives on hand, we noticed one case of dynamite missing. After double-checking all Daily Summaries of Magazine Transactions, invoices, and delivery sheets, we still cannot reconcile the discrepancy. What are we required to do?

This should be considered a theft or loss of explosive materials. As stated in the answer to Question 11, you must report the theft or loss of explosive materials, within 24 hours of discovery, to ATF by telephone (toll free: 800-461-8841 (Monday-Friday 8:00 a.m.– 5:00 p.m. Eastern Time) or 888-283-2662 (after hours and weekends). ATF Form 5400.5, “Report of Theft or Loss – Explosive Materials”, must then be completed and forwarded in accordance with the instructions on the form. [18 U.S.C. 842(k); 27 CFR 555.30]

13. May ATF conduct warrantless inspections of licensees’ and permittees’ records of explosives materials, stocks of such materials, and magazines?

Except for limited permit holders, any ATF officer may, without a warrant, enter during business hours the premises, including places of storage, of any licensee or permittee for the purpose of inspecting or examining any records or documents required to be kept by the law and regulations and any explosive materials kept or stored at the premises. For inspection purposes, “business hours” includes hours during which business is actually conducted, not just those hours stated on license applications. Any licensee or permittee who refuses to permit the inspection or examination is subject to having his or her license or permit revoked, as well as to denial of an application to renew the license or permit. For limited permit holders, an ATF officer may inspect the places of storage for explosive materials of either an applicant for a limited permit or at the time of renewal of such permit, but in no event shall such inspection occur more than once every three years. [18 U.S.C. 843(b)(4), 18 U.S.C. 843(f)]

14. Will ATF investigate accidents involving explosive materials?

ATF is authorized to inspect the site of any accident or fire where there is reason to believe that explosive materials were involved. Other Federal agencies, or State or local agencies, may also investigate such incidents, depending on the circumstances. [18 U.S.C. 846(a); 27 CFR 555.31]

15. Is black powder subject to regulation under Federal explosives laws?

Black powder is an explosive material for purposes of Federal explosives laws and regulations. However, the law exempts from regulation commercially manufactured black powder in quantities not exceeding 50 pounds (as well as 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 18 U.S.C. 921(a)(16) or in antique devices exempted from the term “destructive device” in 18 U.S.C. 921(a)(4). However, persons engaged in the business of importing, manufacturing, or dealing in black powder in any quantity must have a Federal explosives license. [18 U.S.C. 841(c), 841(d), 845(a)(5); 27 CFR 555.11: definitions of “explosives” and “explosive materials”, 555.141(b)]

16. Is small arms ammunition subject to regulation under Federal explosives laws?

No. The law specifically exempts small arms ammunition and components thereof. (See also Question 81.) [18 U.S.C. 845(a)(4)]

17. Are binary explosives subject to regulation under Federal explosives laws?

Until the compounds are mixed, they are not classified as explosives and, therefore, are not subject to control. However, once mixed, binary explosives are “explosive materials” and are subject to all applicable Federal requirements. A person who mixes or combines compounds of binary explosives for the purpose of sale or distribution or for the person’s own business use is a “manufacturer” of explosive materials and must be licensed as a manufacturer under the law. [18 U.S.C. 841(h); 27 CFR 555.11: definition of “manufacturer”]

18. Does ATF have any regulations governing the actual transportation of explosive materials?

Federal explosives laws and regulations generally prohibit any person from transporting explosive materials interstate or intrastate unless the person has a Federal explosives license or permit. Also, the transportation of stolen explosives materials is a Federal crime (see also Question 10). However, the law exempts from regulation under 18 U.S.C. Chapter 40 and 27 CFR Part 555 aspects of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation, and the Department of Homeland Security, and agencies thereof and which pertain to safety and security. [18 U.S.C. 842(a)(3), 842(h), 845(a)(1); 27 CFR 555.26, 555.28, 555.141(a)(1)]

19. Are common or contract carriers required to obtain a Federal explosives license or permit to transport explosive materials?

No. The actual transportation of explosive materials by carriers is subject to Department of Transportation or Department of Homeland Security regulations. [18 U.S.C. 845(a)(1); 27 CFR 555.141(a)(1)]

20. What is the “Explosives List”?

The Explosives List is a comprehensive (but not all-inclusive) listing of explosive materials which have been determined to be within the coverage of Chapter 40. The list is published annually by ATF (the most recent list can be found under the Explosives Laws and Regulations link on the ATF website). [18 U.S.C. 841(d); 27 CFR 555.23]

21. May a person under the age of 21 be lawfully employed by an explosives business and lawfully receive, possess, and use explosive materials on behalf of the business?

Yes. Federal explosives law prohibits any person from distributing explosive materials to persons under 21 years of age. However, it does not prohibit the delivery to or possession of explosive materials by persons under the age of 21 who are receiving or using the materials on behalf of their employers to whom the materials were lawfully sold. [18 U.S.C. 842(d), (i); 27 CFR 555.11 (definition of “distribute”), 555.26, 555.106(b)(1)]

22. ATF regulations require explosive materials to be stored at certain minimum distances from a “public highway”. What is a “public highway” for purposes of the regulations?

The term “highway” is defined in 27 CFR 555.11 as “any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.” Privately financed, constructed, or maintained roads that are marked and barricaded in a manner that prevents access by the general public do not fall within the meaning of the term and would, therefore, be exempt from table of distance requirements. [27 CFR 555.11: definition of “highway”](See also ATF Ruling 2005-2)

23. Is an airport runway or taxiway considered a public highway for purposes of the Table of Distances for storage of explosive materials?

No. However, airport terminals are considered inhabited buildings for Table of Distance requirements.

24. How is shock tube regulated by ATF?

Shock tube contains highly explosive material. However, it may be stored as a low explosive when not attached to a detonator. [27 CFR 555.202(b), 555.213]

25. What is an EX number?

An EX number is a number, preceded by the prefix “EX-“, which is issued and used by the Department of Transportation (DOT) to identify an explosive which has been tested and classified by DOT. See U.S. Department of Transportation regulations at 49 CFR 171.8 and 49 CFR 173.56.

26. What is a UN number?

A UN (United Nations) number is used by DOT as a method of identification and classification of products for shipping purposes. UN numbers are different from the hazard class or division designations used by DOT (for example, 1.1, 1.2, 1.3, 1.4, and 1.5). ATF regulations in 27 CFR Part 555 also use UN numbers to help identify certain explosives. [27 CFR 555.11]

27. Can Federal explosives disabilities resulting from a conviction of a crime punishable by imprisonment for a term exceeding one year be removed if the conviction is expunged or set aside or the convicted person has received a pardon for the offense or has had his or her civil rights restored?

A person convicted of, or under indictment for, a “crime punishable by imprisonment for a term exceeding one year” may not lawfully receive or possess explosive materials or be issued a Federal explosives license or permit. The term “crime punishable by imprisonment for a term exceeding one year” does not include offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or any State offense (other than one involving a firearm or explosive) classified as a misdemeanor and

punishable by imprisonment for 2 years or less. There are only 3 means by which Federal explosives disabilities resulting from a conviction of, or indictment for, a “crime punishable by imprisonment for a term exceeding one year” can be removed:

- (a) A decision of a court invalidating a conviction on the basis that the conviction was unconstitutional;
- (b) In the case of a Federal conviction, a presidential pardon; and
- (c) The granting of relief from Federal explosives disabilities by ATF pursuant to the filing of a relief application with the Director. Information on how to apply for relief and contact information for the Relief of Disabilities Section is available on the ATF website. [18 U.S.C. 841(l), 842(d),(i), 845(b); 27 CFR 555.11: definition of “crime punishable by imprisonment for a term exceeding one year”, 555.26(c), 555.142]

Licenses and Permits

28. Who needs a Federal explosives license or permit?

All persons who wish to transport, ship, cause to be transported, or receive explosive materials must first obtain a Federal explosives license or permit. Certain exemptions apply. [18 U.S.C. 842(b); 18 U.S.C. 845; 27 CFR 555.26(a), 27 CFR 555.141]

29. Who is eligible for a Federal explosives license or permit?

The Chief, Federal Explosives Licensing Center, will approve a properly completed application for a license or permit on ATF Form 5400.13/5400.16 if the applicant:

- (a) Is not a person prohibited from possessing or receiving explosive materials under 18 U.S.C. 842(i) and none of the applicant’s “responsible persons” are prohibited under section 842(1); (see also Question 4 in General Q&A);
- (b) Has not willfully violated any provision of Chapter 40 or the regulations in 27 CFR Part 555;
- (c) Has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with the application,
- (d) Has premises in a State from which he intends to conduct business or operations;
- (e) Has storage for the class (as described in 27 CFR 555.202) of explosive materials described on the application;
- (f) Has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business;
- (g) Has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341) [18 U.S.C. 843(b); 27 CFR 555.49(b)];

- (h) None of the applicant’s employees authorized to possess explosives are prohibited persons under 18 U.S.C. 842(i); and
- (i) In the case of an applicant for a limited permit, the applicant has certified that the applicant will not receive explosive materials on more than 6 occasions during the 12-month period for which the limited permit is valid.

30. What activities are covered by licenses and permits?

Licenses allow persons to engage in the business of importing, manufacturing, or dealing in explosive materials. Any individual or business entity intending to engage in any of these activities must first obtain a license. A user permit allows the receipt and transportation of explosive materials. A limited permit allows the receipt of explosive materials from a licensee or permittee within the permittee’s state of residence only, and on no more than six occasions in the 12-month period during which the limited permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce. [27 CFR 555.11: definitions of “importer”, “manufacturer”, “dealer”, “limited permit”, and “user permit”, 555.41]

A separate license is needed for each business premises where an explosives business or activity is conducted. Only a single user permit is needed by a permittee who uses explosives in more than one location. [27 CFR 555.41]

31. What is a Limited Permit?

A limited permit is for persons who wish to transport, ship, cause to be transported, or receive explosive materials in intrastate commerce only. This permit is designed for the infrequent receipt of explosive materials by intrastate users. The limited permit will allow a purchaser to receive explosive materials on no more than six separate occasions from in-state licensees or permittees during the 12-month period of the permit. The limited permit does not allow the holder to transport, ship, cause to be transported, or receive explosive materials in interstate commerce.

32. What is the duration of a license or permit?

- (a) A user license or permit is valid for a period of 3 years.
- (b) The user-limited permit is valid only for a single purchase transaction.
- (c) Limited permits are valid for no more than six separate receipts of explosive materials during a 12-month period. [27 CFR 555.51]

33. What are the fees for licenses and permits?

Each license applicant must pay a fee of \$200 for obtaining a 3-year license, a separate license and fee being required for each business premises. The fee for renewal of a license is \$100 for a 3-year license. [27 CFR 555.42]

Each applicant for a user permit must pay a fee of \$100 for a 3-year permit, and each applicant for a user-limited permit (nonrenewable) must pay a fee of \$75. The fee for renewal of a user permit is \$50 for a 3-year permit. [27 CFR 555.43]

Each applicant for a limited permit must pay a fee of \$25 for a 1-year limited permit. The fee for renewal of a limited permit is \$12 for a 1-year limited permit. [27 CFR 555.43]

34. Will the Government investigate an application for a license or permit?

ATF will investigate any applicant before issuing a license or permit. Additionally, ATF must inspect places of storage and conduct background checks on responsible persons and employee possessors authorized to possess explosives [18 U.S.C. 843(b); 18 U.S.C. 843(h); 27 CFR 555.33, 27 CFR 555.49(b)]

35. What may a licensed explosives dealer do?

A licensed dealer may engage in the business of distributing explosive materials at wholesale or retail [27 CFR 555.11: definition of “dealer”]

36. What may a licensed explosives importer do?

A licensed importer may engage in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution. It is not necessary for a licensed importer to also obtain a dealer’s license to engage in business on his or her licensed premises as a dealer in explosive materials (see also Question 52 and 53) [27 CFR 555.11: definition of “importer”, 27 CFR 555.41(b)(2)]

37. When is a manufacturer’s license required?

A manufacturer’s license is required by persons engaged in the business of manufacturing explosive materials for sale, distribution, or for their own business use. For example, persons engaged in the business of providing a blasting service using explosives of their own manufacture would be required to have a manufacturer’s license. Persons who manufacture explosives for their personal, non-business use are not required to have a manufacturer’s license. However, no person may ship, transport, cause to be transported, or receive explosive materials unless such person holds a license or permit. [27 CFR 555.11: definition of “manufacturer”, 555.41(b)] A separate manufacturer’s license is not required by a licensed manufacturer for the purpose of on-site manufacture, for example, mixing binary explosives or making blasting agents at a quarry or other job site. It is not necessary for a licensed manufacturer to also obtain a dealer’s license to engage in business on his or her licensed premises as a dealer in explosive materials (see also Question 52 and 53) [27 CFR 555.11: definition of “manufacturer”, 555.41(b)(2)]

38. How do I apply for a Federal explosives license or permit?

You can request an application for a Federal explosives license or permit from the Federal Explosives Licensing Center at 877-283-3352 or from the ATF Distribution Center at 703-455-7801. As part of the application process, you must complete and submit an ATF Form 5400.13/5400.16, Application for Explosives License or Permit. You must also submit the names, identifying information, fingerprints, and photographs of all responsible persons. In addition, you must submit the names and identifying information of all employees who are authorized to possess explosive materials in the course of their employment on ATF Form 5400.28, Employee Possessor Questionnaire. [27 CFR 555.45(c)]

39. Who is a “responsible person”?

Federal explosives laws define a “responsible person” as an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Responsible persons generally include sole proprietors and explosives facility site managers. In the case of a corporation, association, or similar organization, responsible persons generally include only those corporate directors/officers, and stockholders, who have the power to direct management and policies as they pertain to explosive materials.

For example, a corporate vice president whose duties include acquiring and approving contracts with explosives distributors would be considered a responsible person. Other corporate officials whose duties do not include the power to direct the management and policies of the applicant pertaining to explosive materials, for example, a vice president responsible solely for human resources, would not typically be considered a responsible person. Each applicant for a license or permit must assess the corporate and other management responsibilities for all key personnel and determine whether or not these duties place the individual in the position of being a responsible person. [18 U.S.C. 841(s), 27 CFR 555.11: definition of “responsible person”]

40. Who is a “possessor of explosives”?

A possessor of explosives is any employee of a license or permit holder or any employee of an applicant for a license or permit who has or will have actual physical possession of explosive materials or who has or will have constructive possession of explosive materials. For example, persons who physically handle explosive materials would be considered to be actual possessors of explosive materials. This would include employees who directly handle explosive materials as part of the production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees, such as blasters and their helpers who actually use explosive materials. A constructive possessor is any

person who has access to explosive materials, without physically handling them. For example, a supervisor at a construction site who keeps keys for storage magazines in which explosives are stored or who directs the use of explosive materials by other employees has constructive possession of explosives.

41. Why is it necessary to provide new and additional information on responsible persons and employee possessors of explosives?

The law requires this information for ATF to conduct background checks on all responsible persons and employee possessors to restrict the availability of explosives to authorized persons only and to reduce the risk of prohibited persons acquiring explosive materials. [18 U.S.C. 843(h); 27 CFR 555.33, 555.45(c)]

42. When will I need to submit the identifying information for my responsible persons and employee possessors of explosives?

(a) All license and permit applicants and any renewal applicants must submit identifying information for responsible persons and employee possessors (and fingerprints and photographs for responsible persons) upon submission of an original or renewal application.

(b) Any new responsible person added after a license or permit has been issued by ATF must be reported to ATF within 30 days. However, the submission of fingerprints and photographs by the new responsible person is required only at the time of any subsequent renewal.

(c) For all licenses and permits (new and renewal), any new employee possessors must be reported to ATF within 30 days of hire on the Employee Possessor Questionnaire form (ATF F 5400.28). [27 CFR 555.45(c), 27 CFR 555.57(b)]

43. How do I get my fingerprints taken?

Fingerprints must be submitted on Fingerprint Identification Cards, FD-258 that have been issued by ATF. The fingerprint cards must contain the following ORI information: WVATF0900; ATF-NATL EXPL LIC, MARTINSBURG WV. These fingerprint cards may be obtained by contacting the Federal Explosives Licensing Center at 877-283-3352 or the ATF Distribution Center at 703-455-7801. The fingerprint cards must be completed by your local law enforcement authority.

44. Will ATF notify me whether or not my responsible persons and employee possessors have passed their background checks?

Yes. A “Notification of Clearance” will be issued directly to all license or permit holders advising whether their responsible persons and employee possessors have been cleared to possess explosive materials, or are or may be prohibited from possessing explosives. These notices must be retained as part of the license

or permit holders permanent records. In addition, letters of clearance or denial will be issued directly to responsible persons and employee possessors. [27 CFR 555.33]

45. What notification will I receive if one of my responsible persons or employee possessors does not pass their ATF background check?

If an individual does not pass the background check, a letter will be sent to the licensee or permittee who submitted the individual’s name indicating that the individual was denied. A letter will also be sent to that individual explaining the prohibition and outlining appeal and relief procedures, as may be applicable. Unless and until an appeal overturns the denial or relief from disabilities is granted, that individual may not lawfully possess explosives. [27 CFR 555.33]

46. Who will conduct the background checks on applicants, responsible persons, and possessors?

ATF will perform the background checks. If employers wish to require their own background checks as a condition of employment, they may do so. However, such a background check will not be accepted in place of the ATF background check. [27 CFR 555.33]

47. May I sell black powder without a license?

No. Anyone who engages in the business of selling black powder, regardless of quantity, must be licensed as an explosives dealer. [27 CFR 555.41(b)]

48. Is a manufacturer’s license required to acquire and mix binary explosives?

If the individual purchasing the binary explosives is engaged in the business of manufacturing explosives, i.e., mixes and uses them in the operation of a commercial business (for example, operating a quarry, or providing the service of removing stumps or boulders from a farm field), then a manufacturer’s license is required.

An individual farmer who merely wishes to mix the binary explosives to remove obstacles from his field and provides no other outside service would not need a manufacturer’s license.

Please note, however: A Federal explosives license or permit would be required to obtain any explosive device, such as detonators, used to initiate the mixed binary explosives. In addition, transportation of any explosive material, including mixed binary explosives, without a Federal license or permit is prohibited. [27 CFR 555.11: Definition of “manufacturer”; 27 CFR 555.26, 555.41(b)]

49. What is theatrical flash powder and is there a license for its manufacture?

Theatrical flash powder is flash powder commercially manufactured in premeasured kits not exceeding 1 ounce in weight, and mixed immediately prior to use and intended for use in events

such as theatrical shows, stage plays, band concerts, magic acts, thrill shows, and clown acts in circuses. A manufacturer's license allows on-site manufacturers to operate nationally on one license issued to their principal place of business. [27 CFR 555.11: definitions of "flash powder" and "theatrical flash powder", 555.41(b)]

50. Is a separate license required for each location where business is conducted?

Yes. A separate license is required for each location where business is conducted. However, a separate license is not required for:

- (a) Facilities used only for the storage of explosive materials;
- (b) Locations used solely for the storage of records relating to the business; and
- (c) Licensed manufacturers' on-site manufacturing. [27 CFR 555.41(b)]

51. Must a person who engages in the business of both manufacturing and importing at the same location have both licenses?

Yes. The licenses for manufacturing and importing allow a person to engage in separate and distinct activities and a separate license is required for each activity. However, a manufacturer or an importer does not need a separate dealer's license to also distribute explosive materials from the licensed premises. [27 CFR 555.41(b)]

52. Does a licensed manufacturer, importer, or dealer need a permit to use explosive materials?

No. No licensee will be required to obtain a user permit to lawfully transport, ship, or receive explosive materials in interstate or foreign commerce. [27 CFR 555.41(b)(2)]

53. Does a Federal license or permit exempt the holder from State or local requirements?

No. A license or permit confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. All legal requirements must be followed, whether Federal, State, or local. [18 U.S.C. 848; 27 CFR 555.62]

54. Who is authorized to import explosive materials?

Any licensed importer is authorized to engage in the business of importing explosive materials for sale, distribution, or their own use. Any licensed manufacturer, dealer, or holder of a user permit may import explosive materials for their own use only. Licensees and user permittees importing explosive materials must provide to the U.S. Customs and Border Protection (CBP) a copy of the license or permit. Note, however, that in the case of certain military explosives or propellant powder or other components of

small arms ammunition, Federal firearms regulations require the importer to provide an approved ATF Form 6 to the CBP. [27 CFR 555.41(b)(2), 555.41(b)(3), 447.21, 555.108(a), 555.183, 478.113]

55. How may an employee of an explosives licensee or permittee qualify to accept delivery of explosive materials for the employer?

The employee must be on the current list of representatives or agents authorized to accept delivery of explosive materials on behalf of the employer and be an authorized employee possessor of explosives. [27 CFR 555.103(b), 555.105(b)]

56. When an explosives licensee or permittee sends one of their truck drivers to the distributor's premises to pick up explosive materials that have been purchased by the licensee or permittee, will the driver be required to sign any forms?

No, however the driver is required to furnish the seller with an identification document as defined in 27 CFR Part 555.11. [27 CFR 555.103(b), 555.105(b)]

57. Will a licensee or permittee be notified in advance when the license or user permit needs to be renewed?

Generally, prior to expiration of the license or permit, a licensee or permittee will be notified. The application form must be completed and filed with ATF before expiration of the current license or permit for the renewal to be considered timely. However, if a licensee or permittee does not receive a renewal notification, it is still that licensee's or permittee's responsibility to ensure that an application is filed prior to expiration of the current license or permit. [27 CFR 555.46]

58. I have timely filed my application for renewal of my license (or user's permit) but I have not received my new license (or permit). May I continue in business even though the expiration date shown on my license or permit has passed? If so, how long?

Yes. You may continue to operate the business pursuant to your current license or permit until the application for renewal is acted upon. [5 U.S.C. 558]

59. Can a license or permit be revoked?

Yes. The Director, Industry Operations for the ATF Field Division in which a licensee or permittee is located may revoke a license or permit if the holder has violated any provision of 18 U.S.C. Chapter 40 or its implementing regulations or has become ineligible to receive explosive materials under 18 U.S.C. 842(i). [18 U.S.C. 843(d); 27 CFR 555.71, 555.74]

60. If a Federal explosives licensee or permittee is indicted for or convicted of a “crime punishable by imprisonment for a term exceeding one year”, may he or she continue operations under the license or permit?

As stated in the answer to Question 4 in General Q&A, a person under indictment for, or convicted of, a crime punishable by imprisonment for a term exceeding one year is not eligible to be issued a license or permit. However, a licensee or permittee who is indicted for, or convicted of, such a crime during the term of his or her existing license or permit is not barred from licensed or permit operations for 30 days after the date of the indictment or the date the conviction becomes final. If the licensee or permittee files an application for relief from disabilities within such 30-day period, he or she may continue licensed or permit operations while the application is pending. If a relief application is not filed during that period, the licensee or permittee may not continue operations beyond such 30-day period. The right of a licensee to continue licensed or permitted operations beyond such 30-day period is also conditioned on the licensee or permittee timely filing a license or permit renewal application disclosing that the applicant has been indicted for, or convicted of, the crime. A licensee or permittee may not continue operations beyond 30 days following the date the Director issues notification that the relief application has been denied. [18 U.S.C. 845(b); 27 CFR 555.142]

61. May a licensed dealer make a sale to a holder of a limited permit in an adjoining State?

No. Sales may not be made to limited permittees who are out-of-State residents. [18 U.S.C. 842(a); 27 CFR 555.11: definition of “limited permit”, 555.41(b)(3)]

Recordkeeping

62. Does a licensee or permittee have to keep records of the acquisition, distribution, and storage of explosive materials?

Yes. Licensees and permittees must keep records of acquisitions, dispositions, and storage of explosive materials. [18 U.S.C. 842(f), 847; 27 CFR 555.107, 555.122-.125, and 555.127, Subpart G]

63. How do licensees and permittees account for explosive quantities in their records?

If acquisitions are recorded by weight, then distribution must also be recorded by weight. If acquisitions are recorded by physical count (e.g., by units), then distribution must also be recorded by physical count. [27 CFR 555.122-.125]

64. Must a licensee or permittee maintain a daily summary of magazine transactions?

Yes. After the initial inventory required by regulations has been taken, the inventory shall be entered in a record of daily transactions. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer’s name or brand name the total quantity received in and removed from each magazine during the day and the total remaining on hand at the end of the day. [27 CFR 555.127]

65. Where must a licensee or permittee keep the daily summary of magazine transactions?

The records must either be kept at each magazine or at one central location on the business premises, provided a separate record of daily transactions is maintained for each magazine. [27 CFR 555.127]

66. How can I obtain additional copies of ATF Forms?

Forms are available on-line at www.atf.gov/forms/5000.htm#explosives. Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. You may also have forms mailed to you by submitting an on-line request at www.atf.gov/dcof/index.htm, or by telephoning your request to 703-455-7801. [27 CFR 555.21(b)]

67. Does a purchaser of black powder have to sign any forms at the time of purchase?

If 50 pounds or less of commercially manufactured black powder is being purchased, and the powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16) or in antique devices exempt from the term “destructive device” in 18 U.S.C. 921(a)(4), no form is required. However, if the black powder is being purchased for any other purpose (regardless of quantity), the purchaser or other transferee must possess a Federal explosives license or permit. [18 U.S.C. 845(a)(5); 18 U.S.C. 926(c); 27 CFR 555.141(b), 555.26(a)]

68. Is there a requirement for licensees and permittees to make an annual inventory of explosive materials on hand?

Yes. An inventory is required to be taken at least once a year. [27 CFR 555.122-.125]

69. When must ATF Form 5400.4, “Limited Permittee Transaction Report (LPTR)” be executed?

Before distribution of explosive materials to a limited permittee, the licensee or permittee must obtain an executed ATF F 5400.4 from the limited permittee with an original unaltered and unexpired Intrastate Purchase of Explosives Coupon (IPEC) attached. Except when delivery of explosive materials is made by a common or contract carrier who is an agent of the limited permittee, the licensee or permittee must verify the identity of the holder of the limited permit by examining an identification document (as defined in 555.11) and noting on the ATF F 5400.4 the type of document presented. The licensee or permittee must complete the appropriate section on ATF F 5400.4 to indicate the type and quantity of explosive materials distributed, the license or permit number of the seller, and the date of the transaction. The licensee or permittee must sign and date the form. [27 CFR 555.126(b)]

70. Do the ATF Forms 5400.4 have to be maintained by the licensee or permittee making the sale?

Yes. One copy of ATF F 5400.4 must be retained by the seller as part of his permanent records in chronological order by date of disposition, or in alphabetical order by name of limited permittee. They must be maintained for a period of five years. [27 CFR 555.126]

71. May I keep computerized records?

Yes. See ATF Ruling 2007-1.

Storage

72. Who must comply with the storage requirements?

Except for those items and activities given exempt status under 18 U.S.C. 845 (also see 27 CFR 555.141), or exempted under 27 CFR 555.32, Special Explosives Devices, all persons who store explosive materials must store them in conformity with the provisions of Subpart K of the regulations, unless the person or the materials are exempt from regulation. [18 U.S.C. 842(j); 27 CFR 555.29, 555.141, 555.201(a)]

73. What are the classes of explosive materials for storage purposes?

There are 3 classes of explosive materials:

- (a) High explosives (for example, dynamite, flash powders, and bulk salutes);
- (b) Low explosives (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and “display fireworks”, except for bulk salutes); and
- (c) Blasting agents (for example, ammonium nitrate-fuel oil and certain water gels). [27 CFR 555.202]

74. May a person store explosive materials in a residence or dwelling?

No. Storage of explosive materials in a residence or dwelling is prohibited. [27 CFR 555.208(b), 555.210(b), 555.211(b)]

75. What is the “Table of Distances”?

This table lists the minimum acceptable distances separating explosives magazines from inhabited buildings, passenger railroads, public highways, and other explosives magazines. The table is contained in 27 CFR 555.218.

76. When low and high explosives are stored together, how is the distance determined to meet the table of distance requirements?

The table of distances at 27 CFR 555.218 would be applied using the total weight of explosive materials in the magazine. [27 CFR 555.218]

77. Is it necessary to inspect my explosives magazines on a regular basis?

Yes. Any person storing explosives must inspect the magazines at least once every 7 days to determine whether there has been unauthorized entry or attempted entry into the magazines or unauthorized removal of the contents of the magazines. [27 CFR 555.204]

78. What are the requirements for making changes or additions to an approved storage facility?

Making changes in construction to an approved explosives magazine or adding a magazine requires that ATF be notified. However, mobile or portable type 5 magazines and magazines used for the temporary (under 24 hours) storage of explosive materials are exempt from this requirement. See 27 CFR 555.63 for details.

79. Is any type of black powder fuse exempt from storage requirements?

Yes, 3/32-inch and other external burning pyrotechnic hobby fuses are exempt from the requirements of Federal explosives laws and regulations. [18 U.S.C. 845(a)(4-5); 27 CFR 555.11: definition of “ammunition”, 555.141(a)(4), 555.141(b)]

80. With the exception of 3/32-inch pyrotechnic safety fuse for use in small arms, must black powder fuses generally be stored in approved explosives magazines?

Yes. Generally igniter fuses, time fuses, blasting fuses, safety fuses, or other black powder fuses by whatever name known, must be stored in approved magazines.

81. Is smokeless powder designed for use in small arms ammunition subject to the explosives storage requirements?

Smokeless propellants designed for use in small arms ammunition are exempt from regulation under 18 U.S.C. Chapter 40 and the regulations in 27 CFR Part 555. However, it should be noted that persons engaged in the business of importing or manufacturing smokeless propellants must have a Federal explosives license. Additionally, smokeless propellant designed for use other than small arms ammunition is not exempt. Therefore, explosives products such as squibs, fireworks, theatrical special effects, or other articles that may be utilizing smokeless propellants are regulated and must be stored accordingly.

82. My office building, in which several company employees work during the day in connection with my explosives business, is located in the general area of my explosives magazine. Do the regulations and the Table of Distances apply to this building as an “inhabited building”?

No. A building such as an office building or repair shop which is part of the premises of an explosives business and is used by the business in connection with the manufacture, transportation, storage, or use of explosive materials is not considered to be an “inhabited building”. [27 CFR 555.11: definition of “inhabited building”, 555.218]

83. Am I required to notify my State or local authorities about my explosives storage magazines?

Yes. All persons who store explosive materials must notify the fire department having jurisdiction over the site where explosive materials are manufactured or stored. Notification must be made orally by the end of the day on which storage begins and in writing within 48 hours from the time storage began. The notification must include the type of explosive materials, magazine capacity, and the location of each storage site. [27 CFR 555.11: Definition of “authority having jurisdiction for fire safety”, 27 CFR 555.201(f)]

84. What is the definition of a “case hardened shackle”?

Case hardening involves putting carbon (or a combination of carbon and nitrogen) into the surface of the steel to make it a high-carbon steel, which can be hardened by heat treatment. Only the outer skin gets hard in this manner. The center is still tough and malleable. This makes for a strong lock with a tough surface.

85. Can detonators be stored with detonating cord?

No. However, products which are manufactured with a detonator attached to the detonating cord as an integral part need not be disassembled and stored separately. [27 CFR 555.213]

86. Are there storage requirements for oxidizers, such as ammonium nitrate?

In general, no. However, when a magazine or bin containing ammonium nitrate is located within the sympathetic detonation distance of other explosives or blasting agents, it must be stored in accordance with the table of distances in 27 CFR 555.220.

87. Are State and local government agencies required to store their explosive materials in conformity with Federal storage regulations?

Yes. There is no exemption in the law or regulations for the storage of explosive materials by any State or political subdivision thereof. [18 U.S.C. 842(j), 845(a)(6); 27 CFR 555.141(a)(3), (a)(5)]

Fireworks

Fireworks are defined in the Federal explosives regulations as any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation. Fireworks are further divided into two broad classifications, consumer fireworks or display fireworks as defined at 27 CFR Part 555.11.

88. Are “consumer fireworks” subject to regulation under the Federal explosives laws?

No. The importation, distribution, and storage of fireworks defined as consumer fireworks are exempted from the provisions of the Federal explosives laws. However, because they contain pyrotechnic compositions classed by ATF as explosive materials, the manufacture of consumer fireworks requires a manufacturer’s license. In addition, pyrotechnic compositions used in the manufacture of consumer fireworks must be stored in accordance with regulations in 27 CFR Subpart K. Consumer fireworks are defined as “any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336 and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101. This term does not include fused set pieces containing components which together exceed 50 mg of salute powder.” [27 CFR 555.11: definition of “consumer fireworks”; definition of “licensed manufacturer”, 555.141(a)(7)]

89. Are “display fireworks” considered to be explosive materials subject to regulation under Federal explosives laws and regulations?

Yes. Display fireworks include, but are not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as “consumer fireworks”. These fireworks are classified as fireworks UN0333, UN0334, or UN0335 by regulations of the U.S. Department of Transportation at 49 CFR 172.101. Display fireworks also include fused set pieces containing components which together exceed 50 mg of salute powder. [27 CFR 555.11: definition of “display fireworks”]

90. How must display fireworks be stored?

Display fireworks, with the exception of bulk salutes, are considered low explosives and, at a minimum, must be stored in type 4 storage magazines. They may also be stored in type 1 or type 2 magazines. Bulk salutes, which are defined as either salute components prior to final assembly into aerial shells, (or) finished salute shells held separately prior to being packed with other types of display fireworks, are classified as high explosives. As such, bulk salutes may only be stored in type 1 or type 2 magazines specifically constructed for the storage of high explosives. [27 CFR 555.11, 555.202(b), 555.203(d), 555.207, 555.208, 555.210]

91. Are “Articles Pyrotechnic” subject to the requirements of the Federal explosives regulations?

The importation, distribution, and storage of fireworks defined as “Articles Pyrotechnic”, are exempt from the Federal explosives laws and regulations. However, because they contain pyrotechnic compositions classed by ATF as explosive materials, the manufacture of items defined as “articles pyrotechnic” requires an ATF manufacturer’s license. In addition, pyrotechnic compositions used in the manufacture of articles pyrotechnic must be stored in accordance with regulations in 27 CFR Subpart K. [27 CFR 555.11: definitions of “articles pyrotechnic” and “consumer fireworks”, 555.141(a)(7)]

92. Must partially assembled display fireworks be removed from a drying building for overnight storage?

Yes. At the end of a day’s manufacturing operations, all dry explosive powders and mixtures and partially assembled and finished display fireworks must be removed from fireworks process buildings and stored in a magazine meeting the storage requirements in 27 CFR Part 555, Subpart K. [27 CFR 555.205, 555.221]

93. What areas of a fireworks manufacturing plant are considered to be “fireworks process buildings?”

Fireworks process buildings include any buildings in which pyrotechnic compositions or explosives materials are mixed, pressed, finished, or assembled. Fireworks process buildings do not include plant warehouses, office buildings, or other buildings and areas in which no fireworks, pyrotechnic compositions, or explosive materials are processed or stored. [27 CFR 555.11: definition of “fireworks process building”]

94. Under what conditions may I temporarily store display fireworks (including low explosives for choreographed shows) on trucks?

See ATF Ruling 2007-2.

95. What types of fireworks require an ATF license or permit in order to be lawfully transported or received?

Any fireworks defined as “display fireworks” in 27 CFR 555.11 may be lawfully received or transported only by persons who hold a valid license or permit. No ATF license or permit is required to receive or transport “consumer fireworks” or “articles pyrotechnic”. [18 U.S.C. 842(a)(3); 27 CFR 555.26, 555.141(a)(7)]

Plastic Explosives

96. What is a plastic explosive?

A plastic explosive is defined as “an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 250 C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.” [18 U.S.C. 841(q); 27 CFR 555.180(d)(4)]

97. What plastic explosives are required to contain detection agents?

All plastic explosives manufactured or imported on or after April 24, 1996, must contain a detection agent. Federal law enforcement agencies and the military may possess unmarked plastic explosives if they meet the requirements of the use-up period described in Question 103. [18 U.S.C. 841(q), 842(n); 27 CFR 555.180]

98. What are the permissible detection agents for marking plastic explosives?

These agents are listed in the law and regulations at 18 U.S.C. 841(p) and 27 CFR 555.180(d)(3).

99. Is it lawful to manufacture plastic explosives that do not contain a detection agent?

No. [18 U.S.C. 842(l); 27 CFR 555.180(a)]

100. Is it lawful to import into the United States plastic explosives that do not contain a detection agent?

No. The importation of plastic explosives into the United States requires that the importer file ATF Form 6 certifying that the imported plastic explosives contain the required detection agent, or is exempted from the marking requirements as provided in the regulations. [18 U.S.C. 842(m); 27 CFR 555.180(b), 555.182, 555.183]

101. Is it lawful to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent?

No. However, a 15-year use-up period is provided for Federal law enforcement agencies and the military for unmarked plastic explosives imported into or manufactured in the U.S. prior to April 24, 1996. [18 U.S.C. 842(n); 27 CFR 555.180(c)]

102. If a person acquired plastic explosives not containing a detection agent before April 24, 1996, may he or she continue to lawfully possess the explosives?

No. With the exception of the use-up period provided by law for Federal law enforcement agencies or the military, the time period for lawful possession of unmarked plastic explosives terminated on April 24, 1999. [18 U.S.C. 842(n); 27 CFR 555.180(c)]

103. Are police departments exempt from the prohibition against possessing unmarked plastic explosives after April 24, 1999?

No. Police departments and other State or local law enforcement agencies could lawfully possess unmarked plastic explosives acquired on or before April 24, 1996, until April 24, 1999. Such agencies still possessing unmarked plastic explosives should destroy them or abandon them to ATF. Contact the nearest ATF field office for information. [18 U.S.C. 842(n); 27 CFR 555.180(c)(1)]

U.S. Military Explosives

104. Would an ATF license or permit be needed to demilitarize (demil) U.S. military explosives?

As long as the demil operator has a valid Department of Defense contract to perform such operations, the operations would be exempt from 27 CFR Part 555 and no license or permit would be required. However, if title to the explosive materials has passed from the military to the demil operator and the operator intends to resell the explosives on the commercial market, then such operations may be regulated by ATF (e.g., storage, sales, manufacturing) and an ATF license or permit may be needed. Contact the nearest ATF field office for further information. [18 U.S.C. 845(a)(3), (a)(6) and 27 CFR 555.141(a)(3), (a)(5)]

105. Would a civilian contractor who is manufacturing explosive materials pursuant to a government contract for or on behalf of the United States military be entitled to the exemptions from the explosives laws and regulations?

Yes, provided that all the explosive materials in question are manufactured under a government contract. Any explosive materials manufactured in anticipation of receiving a government contract would not qualify for this exemption.

If the contractor manufactures any explosive materials not pursuant to a U.S. military contract, the manufacture and the explosive materials are subject to all requirements of the law and regulations. [18 U.S.C. 845(a)(3), (a)(6); 27 CFR 555.26, 555.41, 555.141(b)]

106. Is an ATF licensee or permittee, whose licensed premises are located on a U.S. military installation, subject to the regulations in 27 CFR Part 555?

All activities conducted outside the scope of a U.S. Government contract are subject to the requirements of Part 555, even if the activities are conducted on property owned by the military. [18 U.S.C. 845(a)(3), (a)(6); 27 CFR 555.26, 555.29, 555.41, 555.141(a)(3), (a)(5)]