

# Questions and Answers

## 18 U.S.C. Chapter 40 and 27 CFR Part 55

### Introduction

The following 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 55 – 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 only intended 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. Please also be aware that the law

and regulations are subject to change. For the most up-to-date information, please contact your nearest ATF office.

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

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

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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 receive explosive materials in interstate or foreign commerce. See **Question 46** on the applicability of State and local requirements. Also, see 18 U.S.C. 845 and 27 CFR 55.141 for exemptions.

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

Yes. ATF maintains a website on the Internet at [www.atf.treas.gov](http://www.atf.treas.gov).

### 3. 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 21 years of age;
- (b) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (c) Is under indictment for a crime punishable by imprisonment for a term exceeding one year;
- (d) Is a fugitive from justice;
- (e) 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)); or
- (f) Has been adjudicated a mental defective. [18 U.S.C. 842(d), 843(b); 27 CFR 55.49]

### 4. 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 class of person listed in **Question 3** above. [18 U.S.C. 842(d); 27 CFR 55.106]

### 5. What other distributions of explosive materials by licensees are prohibited?

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

- (a) is not a licensee or permittee and who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located (unless the "contiguous State"

exception applies. See **Questions 7, 8, and 54**. [18 U.S.C. 842(b), 27 CFR 55.105, 55.106];

(b) is in any State where the purchase, possession, or use of 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 55.106];

(c) the licensee has reason to believe intends to transport 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 55.106]; or

(d) the licensee has reasonable cause to believe intends to use the explosive materials for other than a lawful purpose. [27 CFR 55.106]

### 6. 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 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)); or
- (d) has been adjudicated as a mental defective or who has been committed to a mental institution. [18 U.S.C. 842(i); 27 CFR 55.26(b)]

### 7. May a licensed manufacturer, importer, or dealer distribute explosive materials to nonlicensees and nonpermittees who are not residents of the same State as the licensee?

Generally, no. However, a licensed manufacturer, importer, or dealer may distribute explosives to a nonlicensee or nonpermittee who is a resident of a State contiguous to the State in which the licensee's place of business is located **only** if the nonlicensee's or nonpermittee's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, and the purchaser and the licensee comply with all the requirements applicable to intrastate transactions occurring on the licensee's business premises. [18 U.S.C. 842(b); 27 CFR 55.105, 55.106]

**8. What States allow their citizens to purchase explosive materials in contiguous or bordering States?**

State attorneys general or State fire marshals should be contacted to determine whether their particular States have enacted such legislation.

**9. When a person purchases explosive materials, must he or she sign anything?**

Yes. ATF Form 5400.4 must be executed by the buyer for purchases of explosive materials. A Federal explosives licensee or permittee who purchases explosive materials is not required to complete Form 5400.4 (see also **Question 61**). [27 CFR 55.126]

**10. Does Federal law provide penalties for purchasers who give false information to a licensee at the time of purchase?**

Yes. The penalty for 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)]

**11. 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)]

**12. 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 1-800-800-3855 (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 need only forward a report in writing to the nearest ATF office. 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 55.30 for the specific information required to be reported in connection

with a theft or loss. [18 U.S.C. 842(k); 27 CFR 55.30]

**13. 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 Summary of Magazine transactions, invoices, and delivery sheets, we still cannot reconcile the discrepancy. What do we do now?**

This should be considered to be a theft or loss of explosive materials. As stated in the answer to **Question 12**, you must report the theft or loss of explosive materials, within 24 hours of discovery, to ATF by telephone (toll free: 1-800-800-3855). 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 55.30]

**14. May ATF conduct warrantless inspections of licensees' and permittees' records of explosive materials, stocks of such materials, and magazines?**

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. [18 U.S.C. 843(d), (f); 27 CFR 55.24, 55.74]

**15. Will anyone 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; 27 CFR 55.31]

**16. 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, it should be noted that 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), (d), 845(a)(5); 27 CFR 55.11: definitions of “explosives” and “explosive materials”, 55.141(b)]

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

No. The law specifically exempts small arms ammunition and components thereof; therefore, primers and smokeless propellants designed for use in small arms ammunition are exempt from regulation under Chapter 40 (see also **Question 75**). However, it should be noted that persons engaged in the business of importing and manufacturing smokeless powder must have a Federal explosives license. [18 U.S.C. 845(a)(4); 27 CFR 141(a)(4)]

**18. 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 considered to be “explosive materials” and are subject to all applicable Federal requirements. A person who regularly combines compounds of binary explosives to manufacture such explosives for the purpose of sale or distribution or for the person’s own business use is a “manufacturer” of explosives materials and must be licensed as a manufacturer under the law. [18 U.S.C. 841(h); 27 CFR 55.11: definition of “manufacturer”]

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

Federal explosives laws and regulations administered by ATF generally prohibit any person from transporting explosive materials interstate unless the person has a Federal explosives license or permit. Also, the transportation of stolen explosives materials is a Federal crime (see also **Question 11**). However, the law exempts from regulation under 18 U.S.C. Chapter 40 and 27 CFR Part 55 any aspect of the transportation of explosive materials via railroad, water, highway, or air which

are regulated by the United States Department of Transportation and agencies thereof and which pertain to safety. [18 U.S.C. 842(a)(3), (h), 845(a)(1); 27 CFR 55.26, 55.28, 141(a)(1)]

**20. What is the “Explosives List”?**

The Explosives List is a comprehensive (but not all-inclusive) listing of the more common explosive materials which have been determined to be within the coverage of Chapter 40. The list is published annually by ATF (the 1999 Explosives List can be found in the “General Information” section of this publication). [18 U.S.C. 841(d); 27 CFR 55.23]

**21. Are common and contract carriers subject to ATF regulation?**

No. Common and contract carriers only provide a delivery service with respect to explosive materials and are, therefore, not subject to the requirements to obtain licenses or permits. However, if an employee of a carrier hired by an explosives purchaser takes possession of the explosives materials at the distributor’s premises, the carrier must complete ATF Form 5400.8. The actual transportation of explosive materials by carriers is subject to Department of Transportation regulations. [18 U.S.C. 845(a)(1); 27 CFR 55.103]

**22. 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 selling explosive materials to persons under 21 years of age. However, it does not prohibit the delivery of explosive materials to persons under the age of 21 who are receiving the materials on behalf of their employers to whom the materials were lawfully sold. Nor does Federal explosives law prohibit a person under the age of 21 from possessing or using explosive materials. [18 U.S.C. 842(d); 27 CFR 55.26, 55.106(b)(1)]

**23. 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?**

A public highway is defined in 27 CFR 55.11 under the term “highway” 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 55.11: definition of “highway”]

**24. 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.

**25. How is shock tube regulated by ATF?**

Shock tube is a high explosive. However, it may be stored as a low explosive when not attached to a detonator. [27 CFR 55.202(b)]

**26. What is an EX number? What is a UN 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.

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 55 also use UN numbers to identify certain explosives. [27 CFR 55.141(a)(7)]

**27. How are airbags regulated by ATF?**

Unless the product has been classified by ATF as a special explosive device and exempted from regulation under 27 CFR 55.32, an airbag device containing explosive initiators, igniters, or inflators is subject to regulation as containing explosive

materials, i.e., low explosives, and must comply with all applicable requirements under 27 CFR Part 55.

**28. 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. See also **Question 53** relating to convicted or indicted licensees and permittees. [18 U.S.C. 841(l), 842(d),(i), 845(b); 27 CFR 55.11: definition of “crime punishable by imprisonment for a term exceeding one year”, 55.26(b), 55.142]

## Licenses and Permits

**29. What persons qualify for a Federal explosives license or permit?**

The Chief, National 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 21 years of age or over;

(b) Is not a person to whom distribution of explosive materials is prohibited under 18 U.S.C. Chapter 40 (see also **Question 4**);

(c) Has not willfully violated any provision of Chapter 40 or the regulations in 27 CFR Part 55;

(d) Has not knowingly withheld information and has not made any false or fictitious statement intended or likely to deceive concerning the application;

(e) Has premises in the State from which he or she intends to conduct business or operations;

(f) Has storage for the class (as described in 27 CFR 55.202) of explosive materials described on the application, unless it is established that the business or operations to be conducted will not require the storage of explosive materials;

(g) Has certified that he or she is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he or she intends to do business; and

(h) 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 55.49(b)]

### **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 permit allows the acquisition and transportation of explosive materials in interstate or foreign commerce. [27 CFR 55.11: definitions of "importer", "manufacturer", and "dealer", 55.41]

A separate license is needed for each premises where an explosives business or activity is conducted (but see **Questions 42 and 43**). Only one permit is needed by a permittee who uses explosives in more than one location. [27 CFR 55.41]

### **31. For what period of time are licenses and permits valid?**

An original license or permit, as well as a renewal license or permit, is issued for a period of 3 years. However, a user-limited permit and a user-limited display fireworks permit are valid only for a single purchase transaction. [27 CFR 55.51]

### **32. 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 55.42]

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 55.43]

### **33. Will the Government investigate an application for a license or permit?**

ATF may investigate any applicant and inspect all places of storage of explosive materials before issuing a license or permit. [27 CFR 55.49(a)]

### **34. 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 55.11: definition of "dealer"]

### **35. What may a licensed explosives importer do?**

A licensed importer may engage in the business of importing or bringing explosives materials into the United States for sale or distribution. [27 CFR 55.11: definition of "importer"]

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. [27 CFR 55.41(b)(3)]

### **36. When is a manufacturer's license required?**

A manufacturer's license is needed only by persons engaged in the business of manufacturing explosive materials for sale, distribution, or for 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 would not need a manufacturer's license. [27 CFR 55.11: definition of "manufacturer", 55.41]

### **37. What may a licensed explosives manufacturer do?**

Licensed manufacturers may engage in the business of manufacturing explosive materials for purposes of sale or distribution or for their own use. They may also engage in on-site manufacture. [27 CFR 55.11: definition of "manufacturer", 55.41(b)(2)]

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. [27 CFR 55.41(b)(3)]

### **38. I want to buy a small quantity of dynamite from my local dealer to use on my property. Do I need a Federal user's permit?**

No, provided the dynamite is purchased in your State of residence and not transported across State lines. A user's permit is required when a nonlicensee acquires or transports explosive

materials in interstate or foreign commerce (see **Question 30**).

Except for those items and activities given exempt status under 18 U.S.C. 845 (also see 27 CFR 55.141), all persons who store explosive materials must have storage facilities that meet the requirements of 27 CFR Part 55, Subpart K, "Storage". [18 U.S.C. 842(j); 27 CFR 55.29, 55.201(a)]

**39. May black powder be sold without a license?**

Anyone who engages in the business of selling black powder, regardless of quantity, must be licensed as an explosives dealer. [27 CFR 55.41(a)]

**40. Is a manufacturer's license required for agricultural use of binary explosives?**

No, as long as the user is not engaged in the business of manufacturing explosive materials. For example, if a farmer buys binary explosives for use in blowing tree stumps on his farm, he or she does not need a manufacturer's license. However, if the farmer uses binary explosives in a business of blasting stumps/rocks, etc., for other persons, he or she would be required to have a manufacturer's license. See also **Questions 18, 36 and 37**. [27 CFR 55.11: Definition of "manufacturer", 55.41(a)]

**41. 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 and mixed immediately prior to use and intended for use in theatrical shows, stage plays, band concerts, magic acts, thrill shows, and clown acts in circuses. A type 19 (manufacturer of theatrical flash powder) license allows on-site manufacturers to operate nationally on one license issued to their principal place of business. The license must be posted at each site where theatrical flash powder is mixed and used. Manufacture of flash powder from larger quantities of base chemicals is not covered by this license. [27 CFR 55.11: definitions of "flash powder" and "theatrical flash powder", 55.41(b)(4)]

**42. 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 55.41]

**43. 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 55.41]

**44. Are companies having headquarters in one State but doing business in another State required to have a permit in order to acquire explosive materials in the latter State?**

No. Companies engaged in business within a State typically acquire residency in that State by virtue of the work being performed. (Applicable State and local residency requirements should be verified in each case.) Explosives purchases made by these companies in the State where work is being performed are considered by ATF to have been made within their State of residence; therefore, no permit is required. [ATF Ruling 76-4]

**45. Does a licensed dealer need a permit to use explosive materials outside the State in which the dealer's licensed business premises is located?**

No. The dealer, by virtue of his or her dealer's license, is authorized to acquire and transport explosive materials in interstate commerce. [27 CFR 55.41(b)]

**46. 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 55.62]

**47. How may I import explosive materials?**

Any licensed importer or permittee may import explosive materials by providing the Customs Service 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 Customs Service (see also **Question 75**). [27 CFR 47.21, 55.108(a), 55.183, 178.113]

**48. How do employees of an explosives licensee or permittee qualify to purchase explosive materials for the employer?**

The employee must be on the current certified list of representatives or agents authorized to acquire explosives on behalf of the employer. [27 CFR 55.105(e)]

**49. When an explosives licensee or permittee sends his or her truck driver to the distributor's premises for explosive materials that have been purchased by the licensee or permittee, will the driver be required to sign any forms?**

Yes. The driver is required to identify himself or herself and complete and sign Section A of Form 5400.8. [27 CFR 55.103(a)(4), 55.105(f)]

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

Generally, prior to expiration of the license or permit, a licensee or permittee will be notified by way of ATF Form 5400.14/5400.15, Part III, "Renewal of Explosives License or Permit." This application form must be completed and filed with ATF before expiration of the current license or permit for the renewal to be considered timely. If a licensee or permittee does not receive notification, it is still that licensee or permittee's responsibility to ensure that a renewal application is filed prior to expiration of the current license or permit. [27 CFR 55.46]

**51. 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]

**52. Can a license or permit be revoked?**

Yes. The Division Director for the ATF 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 acquire explosive materials under 18 U.S.C. 842(d). [18 U.S.C. 843(d); 27 CFR 55.71, 55.74]

**53. 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 3**, 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 permitted 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 permit 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 (see also **Question 28**). [18 U.S.C. 845(b); 27 CFR 55.142]

**54. When may sales of explosive materials by licensed dealers be made to residents of adjoining States who do not hold Federal explosives licenses or permits?**

Sales may be made to such out-of-State residents only if their State of residence has enacted specific legislation allowing its residents to purchase explosive materials in a "contiguous" or bordering State and the sale otherwise meets the requirements of the law and regulations. (see also **Question 8**). [18 U.S.C. 842(b); 27 CFR 55.26(a)(1), 55.105(c)]

## Recordkeeping

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

Yes. A licensee or permittee must keep records of all acquisitions, dispositions, and storage of explosive materials. [18 U.S.C. 842(f), 847; 27 CFR 55.107, Subpart G]

**56. How do licensees and permittees account for explosive materials in their records?**

If acquisitions are recorded by weight, then disbursements must also be recorded by weight. If acquisitions are recorded by physical count, then disbursements must also be recorded by physical count.

**57. 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 55.127]

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

The records must either be kept at each magazine or at a centrally located area on the business premises, provided a separate record of daily transactions is maintained for each magazine. [27 CFR 55.127]

**59. When and how must a report be made of a shortage or theft of explosive materials?**

See Questions 12 and 13.

**60. Where may additional copies of ATF Form 5400.4, "Explosives Transaction Record", be obtained?**

Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153, or requested by telephone at (703) 455-7801. [27 CFR 55.21(c)]

**61. What forms will a buyer of black powder have to sign 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. If the powder is being purchased for any other purpose (regardless of quantity), ATF Form 5400.4 shall be signed by the buyer. [18 U.S.C. 845(a)(5); 18 U.S.C. 926(c); 27 CFR 55.141(b)]

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

An inventory is required to be taken at least once a year. [27 CFR 55.122-125]

**63. Must ATF Form 5400.4, "Explosives Transaction Record", be executed at the time of delivery?**

ATF F 5400.4 must be executed **before** explosive materials are distributed to nonlicensees or nonpermittees. "Distribute" is defined as "sell, issue, give, transfer, or otherwise dispose of." Therefore, an ATF F 5400.4 must be executed at the time the materials are sold, even if they are delivered after purchase. [27 CFR 55.126(b)]

**64. Who must complete and sign ATF Form 5400.4 for the distributor?**

Section B of ATF Form 5400.4 contains the following statement:

"On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) my knowledge of Federal and State laws and local ordinances relating to explosive materials, it is my belief that it is not unlawful for me to sell, deliver, or otherwise dispose of the explosive materials described in Item 21, or on the attached list, to the person identified in Section A."

Therefore, the person who must sign ATF Form 5400.4 for the distributor is the person who examined the purchaser's statements in Section A of the form and verified the purchaser's identity. [27 CFR 55.126]

**65. May I keep computerized records?**

Explosives licensees and permittees wishing to use an automated data processing system to keep the required Federal explosives records must first obtain an approved variance in accordance with 27 CFR 55.22. In addition to meeting other requirements, the computerized records must contain the information required by the regulations in 27 CFR Part 55, Subpart G.

## Storage

### 66. Who must meet storage requirements?

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), 845; 27 CFR 55.29, 55.141, 55.164, 55.201(a)]

### 67. 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” classified as UN0333, UN0334, or UN0335 by U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes; and

(c) Blasting agents (for example, ammonium nitrate-fuel oil and certain water gels). [27 CFR 55.202]

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

No. [27 CFR 55.208(b), 55.210(b), 55.211(b)]

### 69. What is the “American 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 55.218.

### 70. 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 55.218 would be applied using the total weight of explosive materials in the magazine. [27 CFR 55.218]

### 71. 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 55.204]

### 72. 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 require that ATF be notified. 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 55.63 for details.

### 73. 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); 27 CFR 55.11: definition of “ammunition”, 55.141(a)(4), 55.141(b)]

### 74. 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.

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

No. Smokeless powder designed for use in small arms ammunition is exempt from regulation under 18 U.S.C. Chapter 40 and the regulations in 27 CFR Part 55. However, smokeless powder intended for this purpose is subject to control under 27 CFR Part 178, “Commerce in Firearms and Ammunition”, as a component of ammunition (see also **Question 17**). [18 U.S.C. 845(a)(4); 27 CFR 55.11: definition of “ammunition”, 55.141(a)(4)]

### 76. 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 a 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 an "inhabited building". [27 CFR 55.11: definition of "inhabited building", 55.218]

**77. I bought 12 sticks of dynamite to blast stumps on my property. I have 4 sticks left over. May I give them to my brother, who does not have a Federal explosives license or permit?**

Yes, if your brother resides in the same State in which you reside and he is not within any of the categories of persons to whom explosive materials may not be lawfully distributed. If either you or your brother store the dynamite, storage must be in conformity with Federal explosives regulations (see **Question 66**). [18 U.S.C. 842(j); 27 CFR 55.29, 55.201]

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

Yes. Any person who stores 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 55.11: Definition of "authority having jurisdiction for fire safety", 27 CFR 55.201(f)]

**79. What is 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.

**80. Can shock tube be stored with detonators?**

No. However, products which are manufactured with a detonator attached to the shock tube as an integral part need not be disassembled and stored separately. [27 CFR 55.213(b)]

**81. 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 55.213]

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

Generally, no. However, if ammonium nitrate is located within the sympathetic detonation distance of explosives, or blasting agents, it must be stored in accordance with the table of distances in 27 CFR 55.220.

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

Yes. Although Federal agencies are exempt from the storage requirements, there is no exemption in the law or regulations for the storage of explosive materials by State and local agencies. [18 U.S.C. 845(a)(6); 27 CFR 55.141(a)(3), (a)(5)]

## Fireworks

**84. Are "display fireworks" considered to be explosive materials subject to regulation under Federal explosives laws and regulations?**

Yes. "Display fireworks" includes, but is 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 setpieces containing components which together exceed 50

mg of salute powder. [27 CFR 55.11: definition of "display fireworks"]

**85. How must display fireworks be stored?**

Display fireworks are considered to be 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 for the storage of high explosives. [27 CFR 55.202(b), 55.203(d), 55.210]

**86. What fireworks are exempt from regulation under 18 U.S.C. Chapter 40 and 27 CFR Part 55?**

The importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by regulations of the U.S. Department of Transportation at 49 CFR 172.101, and generally known as "consumer fireworks" or "articles pyrotechnic", are exempt from these laws and regulations. [27 CFR 55.11: definitions of "articles pyrotechnic" and "consumer fireworks", 55.141(a)(7)]

**87. 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 55, Subpart K. [27 CFR 55.221]

**88. 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 55.11: definition of "fireworks process building"]

**89. What are the conditions necessary to receive approval to temporarily store display fireworks (including low explosives for choreographed shows) on trucks?**

Approval to temporarily store display fireworks (including low explosives for choreographed shows) on trucks is granted on a case-by-case basis pursuant to applications for an alternate procedure or variance under 27 CFR 55.22.

**90. What types of fireworks require an ATF license or permit in order to be lawfully transported or received in interstate commerce?**

Any fireworks defined as "display fireworks" in 27 CFR 55.11. No ATF license or permit is required to receive "consumer fireworks" in interstate commerce. [18 U.S.C. 842(a)(3); 27 CFR 55.26, 55.141(a)(7)]

## Plastic Explosives

**91. 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 25<sup>o</sup> 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 55.180(d)(4)]

**92. 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 96**. [18 U.S.C. 841(q), 842(n); 27 CFR 55.180]

**93. 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 55.180(d)(3).

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

No. [18 U.S.C. 842(l), 27 CFR 55.180(a)]

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

No. [18 U.S.C. 842(m); 27 CFR 55.180(b)]

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

No. 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 (see also **Question 97**). [18 U.S.C. 842(n); 27 CFR 55.180(c)]

**97. 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. Unmarked plastic explosives manufactured or imported prior to April 24, 1996, could only be lawfully possessed by persons other than Federal law enforcement agencies and the military until April 24, 1999. [18 U.S.C. 842(n); 27 CFR 55.180(c)]

**98. 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 55.180(c)(1)]

## **U.S. Military Explosives**

**99. 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 55 and no license or permit would be required. However, if title to the explosive materials has passed from the military to the demil operator, 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 55.141(a)(3), (a)(5)]

**100. 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, that manufacture and those explosive materials are subject to all requirements of the law and regulations. [18 U.S.C. 845(a)(3), (a)(6); 27 CFR 55.26, 55.41, 55.141(a)(3), (a)(5)]

**101. 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 55?**

All activities conducted outside the scope of a U.S. Government contract are subject to the requirements of Part 55, even if the activities are conducted on property owned by the military. [18 U.S.C. 845(a)(3), (a)(6); 27 CFR 55.26, 55.29, 55.41, 55.141(a)(3), (a)(5)]