

27 CFR 555.11: MEANING OF TERMS

ATF provides guidance on three different private roads and whether they are "highways" as defined in 27 CFR 555.11.

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The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received inquiries from members of the explosives industry as to the meaning of the term "highway" under 27 CFR 555.11.

The Federal explosives laws, 18 U.S.C. Chapter 40, require all persons to store explosive materials in a manner in conformity with regulations issued by the Attorney General. 18 U.S.C. 842(j). The Attorney General has delegated his authority to administer and enforce the Federal explosives laws to the Director, ATF. 28 CFR 0.130. Regulations in 27 CFR Part 555 implement the provisions of the Federal explosives laws. Storage regulations in 27 CFR Part 555, Subpart K, provide that outdoor magazines in which high explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored than the minimum distances specified in the table of distances for storage of explosive materials in section 555.218 of the regulations. 27 CFR 555.206.

Section 555.11 of the regulations defines the term "highway" as "[a]ny 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."

In Scenario A, a private road owned by a corporation is used by the general public as an access road to a parking lot owned by the corporation. The road is near an explosives magazine. The road does not have a gate, sign, or other means of restricting access to the road. The road is also used by the general public on a daily basis to gain access to other public streets.

In Scenario B, a company that manufactures display fireworks, a logging company, and an individual who owns buildings utilized to store his collection of automobiles all occupy property to which the only access is a privately owned road. A separate party that leases to these three entities owns the property. The road is located on private property, and a locked gate at the entrance to the road prevents access by the general public. The display fireworks company, the logging company, and the individual storing automobiles all have keys to unlock the gate and travel on the road when needed. The gate is locked at all times, and there is no evidence that the road is open to anyone other than the two businesses and one individual who require access to their property.

In Scenario C, an explosives company maintains explosives magazines in a quarry area that has a roadway traversing through the quarry. The quarry owns the property, and the road is maintained by the quarry. The road has a gate and there are signs advising no trespassing. However, when ATF officials visited the location on several occasions, the gate was left open and members of the public regularly utilized the roadway as a shortcut between two major highways. There were

no indications the owner of the property took any steps to prevent members of the public from utilizing the roadway.

Applying the regulatory definition of "highway" to the three scenarios, the road in Scenario A is clearly a highway that is subject to the tables of distance in Part 555. Although it is privately owned, it is regularly and openly traveled by members of the general public without restriction.

The roadway in Scenario B is not a "highway" as defined. Access is restricted at all times and there is no evidence the general public regularly travels on the roadway. Access to the road is provided to only a limited number of persons who have a legal right to travel the road. Accordingly, this road is not regularly and openly traveled by members of the general public.

ATF concludes that the roadway described in Scenario C is a "highway" as defined in 27 CFR 555.11. Although access to the roadway is restricted by a gate and "No trespassing" signs are posted, the gate is not closed at all times. Furthermore, ATF observation indicates that the roadway is regularly and openly traveled by members of the general public. Based on these facts, the roadway is a highway which is subject to the tables of distance in 27 CFR Part 555.

Held, a private road with no gate, signs, or other means of restricting access that is used by the general public as an access road to a parking lot and as access to other public streets is a "highway" as defined in 27 CFR 555.11.

Held further, a private road with a locked gate at the entrance that is locked at all times and used by a limited number of persons leasing or owning property accessed by the road is not a "highway" as defined in 27 CFR 555.11.

Held further, a private roadway traversing a quarry with a gate restricting access and a "no trespassing" sign is a "highway," as defined in 27 CFR 555.11, because the gate is not locked at all times and the general public regularly utilizes the roadway as a shortcut between two public highways.

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