

# Regulation of Explosives in Transit

The Pipeline and Hazardous Materials Safety Administration (PHMSA), within the U.S. Department of Transportation (DOT), has regulatory and civil enforcement authority over the transportation of explosive materials in commerce. The regulatory enforcement of explosive materials while they are not being transported falls under ATF jurisdiction. The following information is intended to help clarify when explosive materials are subject to DOT regulation and when they are subject to ATF regulation.

## **DOT's enforcement authority**

DOT regulates the transportation of hazardous materials in commerce. The primary mission of the Federal Hazardous Materials Transportation Law is "to protect [the nation] against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in...commerce." 49 U.S.C. § 5101. PHMSA promotes the safe and secure transportation of hazardous materials in commerce through the Hazardous Materials Regulations (HMR) found in 49 CFR Parts 171-180. These include, among other things, verification of product classifications, explosives approvals, ensuring that packaging meets rigorous performance standards, certification that hazmat employees have received required training, and ensuring that hazard communications are adequately displayed and fully support the needs of emergency responders. The Federal Motor Carrier Safety Administration's (FMCSA) regulations regarding the transportation of hazardous materials are in 49 CFR Part 397 and include the attendance and surveillance of motor vehicles, routing, parking, and vehicle safety and maintenance. As specified under 18 U.S.C. § 845(a)(1), aspects of transportation that are regulated by DOT or the Department of Homeland Security (DHS) that pertain to safety or security are not regulated by ATF.

## **When are materials considered in "transportation" according to DOT?**

The HMR defines "transportation" or "transport" as "the movement of property and loading, unloading, or storage incidental to that movement." "Loading incidental to movement" includes loading a hazardous material (by or in the presence of carrier personnel) onto a transport vehicle for the purpose of transporting it. In general, "unloading incidental to movement" means removing (by or in the presence of carrier personnel) a hazardous material from a transport vehicle after it is delivered to the consignee. 49 CFR § 171.8 (see § 171.8 for a more specific definition for private motor carriers). And "storage incidental to movement" is defined as follows:

Storage of a transport vehicle, freight container, or package containing a hazardous material...between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it [in commerce] until the package containing the hazardous material has been delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it [in commerce] until the driver relinquishes possession of the package at its destination and is no longer responsible for performing functions subject to the

HMR with respect to that particular package... Storage incidental to movement does not include storage of hazardous material at its final destination as shown on a shipping document. 49 CFR § 171.1(c)(4).

### **What does DOT require for explosive materials stored incidental to movement?**

FMCSA provides requirements for attending and parking explosive materials that are stored incidental to movement. FMCSA regulations under 49 CFR § 397.5 state that any motor vehicle containing Hazard Division 1.1, 1.2, or 1.3 explosive materials “must be attended at all times by its driver or a qualified representative of the motor carrier,” unless all of the following conditions are met:

- (1) The vehicle is located on the property of a motor carrier, on the property of the shipper or consignee of the explosives, in a safe haven, or, in the case of a vehicle containing 50 pounds or less of a Division 1.1, 1.2, or 1.3 material, on a construction or survey site; and
- (2) The lawful bailee of the explosive materials is aware of the nature of the materials in the vehicle and has been instructed in emergency procedures; and
- (3) The vehicle is within the bailee’s unobstructed view or is located in a safe haven.

The driver must also attend a vehicle containing Division 1.4, 1.5, or 1.6 explosives (or any hazardous material other than Division 1.1, 1.2, or 1.3 explosives) if it is located on a public street or its shoulder, unless the driver is performing a duty incident and necessary to his/her driving duties. 49 CFR § 397.5(c).

A vehicle is considered “attended” when the person in charge of the motor vehicle is alert and either on the vehicle (but not in a sleeper berth), or is within 100 feet of the vehicle and has it within his/her unobstructed view. 49 CFR § 397.5(d)(1). The term “consignee” means “the person or place shown on a shipping document, package marking, or other media as the location to which a carrier is directed to transport a hazardous material.” 49 CFR § 171.8. The term “bailee” refers to the person receiving delivery of products on behalf of another party, such as the carriers transporting the products, or the person temporarily storing the products on behalf of the carrier. Finally, the term “safe haven” means an area “specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.” 49 CFR § 397.5(d)(3).

Further, FMCSA regulations under 49 CFR § 397.7 prohibit any motor vehicle containing Division 1.1, 1.2, or 1.3 materials from being parked when the vehicle is:

- (1) On or within 5 feet of the traveled portion of a public street or highway (except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place;
- (2) On private property (including premises of fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

Similarly, vehicles containing Division 1.4, 1.5, or 1.6 explosives (or any hazardous materials other than Division 1.1., 1.2, or 1.3 explosives) may not be parked within five feet of a public road except for brief periods when operation necessities require the vehicle to be parked and it is impracticable to park elsewhere.

Since these activities fall under the definition of transportation in the HMR, they are also subject to the other requirements under the HMR (e.g., approvals, shipping papers, markings, labeling, placarding, and packaging).

### **ATF regulatory authority**

ATF enforces Title XI of the Organized Crime Control Act of 1970, and the implementing regulations at 27 CFR, Part 555. These regulations include licensing, storage, recordkeeping, and conduct of business requirements. ATF regulations at 27 CFR 555.205 require that all explosive materials be kept in locked magazines meeting the construction standards of 27 CFR, Subpart K—Storage, unless they are: In the process of manufacture; being physically handled in the operating process of a licensee or user; being used; or being transported to a place of storage or use by a Federal explosives licensee or permittee (FEL/P) or by a person who has lawfully acquired explosive materials. Note that in a situation where a vehicle is loaded with explosives but does not meet the criteria for a PHMSA “transportation function” as provided in § 171.1(c) of the HMR, the storage falls under ATF jurisdiction and must therefore comply with the Federal explosives storage requirements.

Note that, in addition to DOT and ATF requirements, there may also be local, State or Federal laws that apply to explosives-related activities.

### **Scenarios**

The following scenarios with questions and answers may be pertinent to your operations:

**Scenario #1:** A FEL/P, transporting display fireworks to be used commercially in a show, stops at a hotel to sleep while en route to the show site. He/she leaves the truck parked directly outside his/her hotel window and rests for 10 hours. He/she then proceeds to the out-of-State show. Do the fireworks in the parked vehicle fall under DOT or ATF regulations?

**Answer:** Parking a truck loaded with explosives, such as fireworks, overnight while the shipment is en route to its final destination for commercial purposes is considered a transportation function subject to both PHMSA and FMCSA regulations. Since this activity also relates to transportation safety, it is not subject to ATF storage regulations.

As previously stated, in accordance with 49 CFR § 397.5, all Division 1.1, 1.2, and 1.3 explosives, must be attended at all times, unless (1) the vehicle is located on the property of a motor carrier, on the property of the shipper or consignee, or at a safe haven (vehicles containing fifty pounds or less of Division 1.1, 1.2, or 1.3 materials may be located on a construction or survey site); (2) the lawful bailee of the explosive materials is aware of the nature of the materials in the vehicle and has been instructed in emergency procedures; and (3) the vehicle is in the bailee's unobstructed view or is located in a safe haven. A motor vehicle is considered by DOT to be attended if the person in charge of the vehicle is awake and on the vehicle (but not in a sleeper berth), or is within 100 feet of the vehicle and has an unobstructed view of the vehicle.

This vehicle is not located on one of the designated property-types and is not within the bailee's unobstructed view; therefore, this scenario does not comply with the attendance requirements of FMCSA.

In addition, as stated above, motor vehicles containing Division 1.1, 1.2, or 1.3 materials must never be parked:



(1) On or within 5 feet of the traveled portion of a public street or highway (except for brief periods when the necessities of operation require the vehicle to be parked and make it impractical to park the vehicle in any other place);

(2) On private property (including premises of fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble (except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place). 49 CFR § 397.7.

Since this vehicle is parked on private property (likely without the consent of a knowledgeable person) and within 300 feet of a place where people congregate and assemble, this is not permissible.

Failure to comply with the requirements in 49 CFR Part 397 is a violation of FMCSA regulations. Other federal regulations may also apply to this scenario. Further, the vehicle must be driven and parked in compliance with state and local laws. 49 CFR §§ 171.1(e) and 397.3. Therefore, in a scenario in which the Federal regulations permit parking, a FEL/P should contact the applicable State or local law enforcement agencies to ensure that the placement of the vehicle containing explosive materials is authorized. Moreover, ATF's position is that the practice of parking a motor vehicle carrying explosive materials, attended or otherwise, outside of a hotel and without a sufficient distance (as provided by the table of distances set forth in ATF regulations) from inhabited buildings, highways, passenger railways, and other vehicles containing hazardous materials poses a threat to public safety.

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**Scenario #2:** A FEL/P loads two separate commercial fireworks shows on the same vehicle for use on separate days. The FEL/P will drive the truck to the first show location and use a portion of the fireworks on the first day. The remaining portion, to be used for the second show, remains on the truck. A new shipping paper may be developed for the shipment to the second show location. Is the display fireworks inventory for the second show that remains on the truck throughout the first show still in transportation and subject to DOT requirements?

**Answer:** Transportation includes storage incidental to the movement of a hazardous material. 49 CFR § 171.8. This includes storage of the hazardous material between the time the carrier—the driver for a private motor carrier—takes possession of it and the time when it is delivered to its final destination. In this scenario, the fireworks for the second show that are offered for transportation from the location of the first show may be subject to DOT or ATF requirements depending upon the possession of the fireworks and the shipping documents. If carrier personnel are in physical possession and the final destination on the shipping paper is the second show location, then the fireworks are still in transportation and would be subject to the DOT requirements. If the driver relinquishes possession of the fireworks at the destination indicated on the shipping documents and new shipping documents will be developed for the movement from the first show location to the second, then the fireworks are not in transportation and would be subject to the ATF requirements.

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**Scenario #3:** A FEL/P arrives at the business premises at 4:00 AM and loads delivery vehicles with explosive materials. A second group of employees, who will transport and use the explosive materials at assigned locations, is not scheduled to arrive for another three to four hours. The explosive materials remain on the delivery vehicles, without movement, until the second group of employees arrive. The delivery vehicles would leave the premises the same workday that they were loaded. Are the explosives considered in transportation?

**Answer:** Delivery vehicles that are loaded with explosive materials, but do not immediately leave the business premises, are not yet in the possession of the driver or carrier. Therefore they are not considered in “transportation” and must comply with ATF explosives storage requirements.

In contrast, trucks loaded with explosive materials for commercial purposes, that are in the physical possession of the carrier, or for a private motor carrier the vehicle driver (i.e., when the driver signs off on the shipment and receives the paperwork for such), are considered in “transportation” and must comply with the DOT requirements. Most notably for this scenario are the requirements of 49 CFR § 397.5, which require that Division 1.1, 1.2, and 1.3, explosives be attended at all times, or comply with the three alternative requirements specified discussed in Scenario #1. Shipments of Division 1.1, 1.2, or 1.3 explosives that are in transportation, but stored at a shipper or carrier facility, do not require attendance. However, all other requirements of the HMR must be complied with, to include shipping papers, markings, labeling, placarding, packaging, security planning, etc.

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**Scenario #4:** A Federal explosives licensee manufactures display fireworks for both commercial and personal (non-commercial) use. Would DOT regulate this licensee's transportation of explosive materials manufactured for personal, non-commercial use?

**Answer:** DOT regulations apply only to the transportation of hazardous materials in commerce; the transportation of fireworks for personal use (e.g., fireworks purchased by a Federal explosives permittee for personal use on the permittee's property on the 4th of July) is not subject to the HMR. Because such materials are not subject to the exemption at 18 U.S.C. § 845(a)(1), they are subject to all ATF requirements. Note that the transportation of fireworks by a licensed manufacturer to a trade convention for marketing purposes is commerce; therefore, such transportation and incidental storage would be subject to the HMR, not ATF regulations.

ATF regulations at 27 CFR § 555.205 require, in part, that all explosive materials be stored in locked magazines unless they are being transported to a place of storage or use by a FEL/P. In the non-commercial transportation scenario above, when the FEL/P's vehicle comes to rest for the evening, the explosive materials would not be considered in-transit and must comply with all explosives requirements under the ATF storage regulations. The FEL/P would also be required to comply with all State and local regulations regarding the storage and transportation of explosives.

All persons are required to store explosives in a manner outlined under 27 CFR, Part 555, Subpart K - Storage, including the table of distance requirements. ATF has outlined alternate methods and procedures for the temporary storage of display fireworks in locked and attended vehicles at explosives magazine sites, as well as at fireworks display sites in [ATF Ruling-2007-2](#).

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**Scenario #5:** An unlicensed person manufactures display fireworks for a personal, non-commercial use. This person does not hold a Federal Explosives User Permit, and therefore is unable to ship or transport the explosives products to an off-site location. May the unlicensed person transfer his/her inventory to a FEL/P for transport to a shoot location?

**Answer:** Under Federal explosives law, persons who manufacture explosive materials or products for their own personal, non-commercial use (i.e., they do not engage in the business of manufacturing explosive materials for distribution or commercial purposes) do not need a Federal explosives manufacturer's license from ATF. However, under 18 U.S.C. § 842(a)(3), any person who wishes to transport, ship, cause to be transported, or receive explosive materials must first obtain a Federal explosives license or permit.

Although the unlicensed person may arrange to transfer his/her fireworks to a FEL/P, the FEL/P would be unable to transport or ship the explosives products back to the unlicensed person. Therefore, in order for the unlicensed person to handle the materials at the shoot, the FEL/P must oversee the unlicensed person's handling of the fireworks. In addition, because the person does not have a Federal explosives license or permit, the FEL/P receiving and transporting the materials to the shoot must come to the person to pick up the fireworks.

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**Scenario #6:** A FEL/P transports his/her display fireworks inventory to a show location for use. Once at the show location, the FEL/P does not immediately load the display fireworks into the shot tubes. Are the fireworks still in transportation?

**Answer:** Transportation ends when the fireworks are delivered to their final destination. When transportation ends the explosive materials or products are no longer covered by the HMR, they fall under ATF's jurisdiction and must be properly stored in explosive storage magazines in accordance with 27 CFR, Part 555, Subpart K – Storage. (Also see ATF Ruling 2007-2).

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**Scenario #7:** A perforating service company, using shape charges, detonating cord, and detonators, operates on an “as-needed” basis. A customer will call the company and specify the perforating intervals and the types of shape charges required. The customer may request the perforating company to arrive immediately, or place the company in an on-call status. At the time the perforating company receives the job request, the shape charges, detonating cord, and detonators are removed from the explosives storage magazine in their original shipping packages and placed in a work area, which contains the tools and equipment necessary to complete the customer's job request. When the explosive materials are removed from the magazine for placement in the work area, a bill of lading is created identifying all the explosive materials needed for each job and is placed with the materials intended for shipment. Do the explosive materials removed from the magazine and temporarily placed in a work area fall under DOT's or ATF's jurisdiction?

**Answer:** Placing explosives in a work area does not fall within the definition of transportation or storage incidental to transportation, under 49 CFR § 171.8. The creation of a bill-of-lading is not the determining factor as to whether the explosive materials are in transportation. Until the explosive materials or products are loaded onto a delivery vehicle, and in possession of the carrier or driver for immediate transport, the materials are not in transportation and DOT regulations regarding movement, attendance, and parking do not yet apply. In this scenario, the explosive materials are regulated by ATF and must be properly stored in explosive storage magazines meeting the requirements specified in 27 CFR §§ 555.201-.224, including the tables of distances. Nonetheless, in accordance with [ATF Ruling 2010-7](#), ATF has authorized perforating companies to store loaded perforating guns outside of an explosives storage magazine, provided all of the criteria specified in that ruling are met.

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Finally, please be advised that, in addition to Federal law and regulations, FEL/Ps must ensure their continued compliance with any applicable State and local ordinances relative to the transportation, storage, and use of explosives. As provided by 27 CFR § 555.62, a Federal license or permit “confers no right or privilege to conduct business or operations, including storage, contrary to State or other law.”



For questions pertaining to specific transportation operations, please contact PHMSA's Hazardous Materials Information Center at 800-467-4922.

Questions pertaining to explosives storage requirements may be sent to [eipb@atf.gov](mailto:eipb@atf.gov).