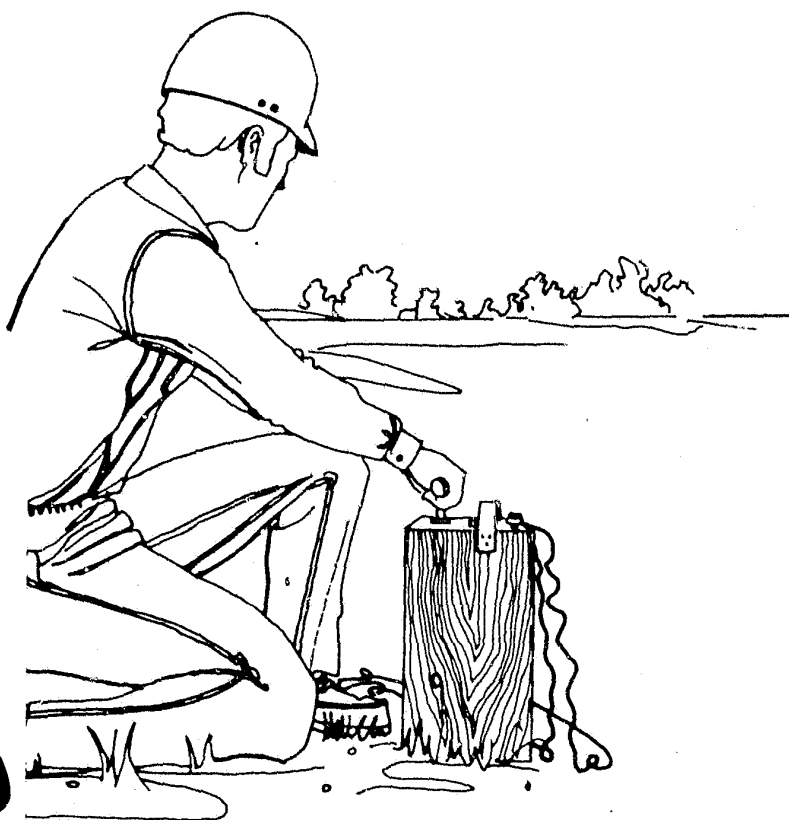


# ✓ ATF: Explosives Law and Regulations



63884

✓ BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS • DEPARTMENT OF THE TREASURY

# Federal Law Relating to Explosives

Reproduced below is Federal law relating to explosives, taken from 18 U.S.C. Chapter 40, as amended.

**Editor's Note:** Chapter 40 added by Title XI of Public Law 91-452, October 15, 1970. Congressional purpose of Title: "The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

## Chapter 40.—Importation, Manufacture, Distribution and Storage of Explosive Materials

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### Section 841. Definitions

As used in this chapter—

(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) 'Explosive materials' means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating

cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purpose of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term 'explosive' is defined in subsection (j) of such section 844.

(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

(f) 'Detonator' means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a

user permit under the provisions of this chapter.

(k) 'Secretary' means the Secretary of the Treasury or his delegate.

(l) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) 'Licensee' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) 'Distribute' means sell, issue, give, transfer, or otherwise dispose of.

#### Section 842. Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly—

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

(1) a licensee;

(2) a permittee; or;

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who 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 it or to receive explosive materials in it.

(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or

(6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person 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.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

(i) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana (as defined in Section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution; to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into considera-

tion the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

### Section 843. Licenses and user permits

(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed \$200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e) (2) of this section.

(e) (1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701—706 of title 5, United States Code.

(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the

contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

#### Section 844. Penalties

(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or

fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than \$20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than \$5,000, or both.

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than \$20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than \$1,000, or both.

(h) Whoever—

(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment

for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than \$20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

#### Section 845. Exceptions; relief from disabilities

(a) Except in the case of subsections (d), (e), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) 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;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed 50 pounds, 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 section 921(a) (16) of title 18 of the United States Code, or in antique devices as exempted from the term 'destructive device' in section 921 (a) (4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations

under his license or permit pending final action on an application for relief filed pursuant to this section.

#### **Section 846. Additional powers of the Secretary**

The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations or provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

#### **Section 847. Rules and regulations**

The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

#### **Section 848. Effect on State law**

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

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Authority: The provisions of this Part 181 issued under 84 Stat. 952-960, 18 U.S.C. 841-848, unless otherwise noted.

**Subpart A—Introduction****Section 181.1 Scope of regulations.**

(a) In general. The regulations contained in this part relate to commerce in explosives and are promulgated to implement title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922).

(b) **Procedural and substantive requirements.** This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in explosive materials;

(2) The licensing of manufacturers and importers of, and dealers in, explosive materials;

(3) The issuance of user permits;

(4) The conduct of business by licensees and operations by permittees;

(5) The storage of explosive materials;

(6) The records and reports required by licensees and permittees;

(7) Relief from disabilities under this part; and

(8) Exemptions, unlawful acts, penalties, seizures and forfeitures.

(c) **Persons engaged in business or operations in black powder on January 4, 1975.** This part fully applies to persons engaged in business or operations in black powder on January 4, 1975, requiring a license or permit under this part, who have filed an application for such license or permit prior to April 28, 1977, and who are continuing such business or operations pending final action on such application.

#### **Section 181.2 Relation to other provisions of law.**

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable

to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), and regulations in Part 180 of this chapter and in Parts 121-128 of Title 22, Code of Federal Regulations. For statutes applicable to non-mailable materials, see 18 U.S.C. 1716 and regulations thereunder. For statutes applicable to water quality standards, see 33 U.S.C. 1171(b).

## **Subpart B—Definitions**

#### **Section 181.11 Meaning of terms.**

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The term "includes" and "including" do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. Chapter 40 of title 18 of the United States Code.

### **Editor's Note**

The terms regional director and Assistant Regional Commissioner, as found in the text of Part 181, refer to the Regional Regulatory Administrator, which is defined in 181.11.

**Ammunition.** Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, and shall include percussion caps and 3/32-inch pyrotechnic safety fuses. The term shall not include black powder.

**Approved storage facility.** A facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under this part.

**Army-type structure.** A structure approved by the Department of Defense for the storage of explosive materials.

**Blasting agent.** Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined. A numbered 8 test blasting cap is one containing 2 grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a blasting cap of equivalent strength.

**Business premises.** When used with respect to a manufacturer, importer or dealer the property on which explosive materials are or will be manufactured, imported, stored or distributed. Such premises shall include the property where the records of a manufacturer, importer or dealer are or will be maintained if different than the premises where explosive materials are or will be manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are or will be received or stored. Such premises shall include the property where the records of such user are or will be maintained if different than the premises where explosive materials are or will be received or stored.

**Crime punishable by imprisonment for a term exceeding 1 year.** Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include

(a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices or restraints of trade, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

**Customs officer.** Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

**Dealer.** Any person engaged in the business of distributing explosive materials at wholesale or retail.

**Detonator.** Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

**Director.** The Director, Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury, Washington, D.C.

**Distribute.** To sell, issue, give, transfer, or otherwise dispose of. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

**District Director.** A District Director of Internal Revenue.

**Executed under penalties of perjury.** Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this-(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

**Explosive materials.** Explosives, blasting agents, and detonators. Such materials shall include all items in the Explosives List provided for in Section 181.23.

**Explosives.** Any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes dynamite and other high explosives, black powder, pellet powder, initiating

explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

**Fugitive from justice.** Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid imprisonment.

**Importer.** Any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

**Indictment.** Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

**Inhabited building.** Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials.

**Internal revenue district.** An internal revenue district under the jurisdiction of a District Director of Internal Revenue.

**Interstate or foreign commerce.** Commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

**Licensed dealer.** A dealer licensed under the provisions of this part.

**Licensed importer.** An importer licensed under the provisions of this part.

**Licensed manufacturer.** A manufacturer licensed under the provisions of this part to engage in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

**Licensed manufacturer-limited.** A manufacturer licensed under the provisions of this part to engage in the business of manufacturing explosive materials for his own use and not for sale or distribution.

**Licensee.** Any importer, manufacturer, or dealer licensed under the provisions of this part.

**Manufacturer.** Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

**Manufacturer-limited.** Any person engaged in the business of manufacturing explosive materials for his own use and not for sale or distribution.

**Permittee.** Any user of explosives for lawful purpose, who has obtained a user permit under the provisions of this part.

**Person.** Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

**Region.** A Bureau of Alcohol, Tobacco, and Firearms Region.

**Regional regulatory administrator.** The principal ATF regional official responsible for administering regulations in this part.

**Service Center Director.** A director of an internal revenue service center.

**State.** A State of the United States. The term shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

**State of residence.** The State in which an individual regularly resides or maintains his home. Temporary sojourn in a State does not make the State of temporary sojourn the State of residence.

**U.S.C.** The United States Code.

**User-limited permit.** A user permit valid only for a single purchase transaction, a new permit being required for a subsequent purchase transaction.

**User permit.** A permit issued to a person authorizing him (1) to acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and (2) to transport explosive materials so acquired in interstate or foreign commerce.

## Subpart C—Administrative and Miscellaneous Provisions

### Section 181.21 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

### Section 181.22 Alternate methods or procedures; and emergency variations from requirements.

(a) **Alternate methods or procedures.** The permittee or licensee, on specific approval by the Director as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that such alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and

will not result in an increase in cost to the Government or hinder the effective administration of this part.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(b) **Emergency variations from requirements.** The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations—

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the licensee or permittee thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such variation. Where the licensee or permittee desires to employ such variation, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons therefor. Variations shall not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) **Retention of approved variations.** The licensee or permittee shall retain, as part of his records available for examination by alcohol, tobacco and firearms officers, any application approved by the Director under the provisions of this section.

#### **Section 181.23 Explosives list.**

The Director shall compile and publish in the Federal Register an Explosives List. This list shall be published and revised at least annually.

#### **Section 181.24 Right of entry and examination.**

Any internal revenue officer may enter during business hours the premises, including places of storage, of any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee for the purpose of inspecting or examining any records or documents required to be kept by such importer, manufacturer, dealer, or per-

mittee under this part, and any explosive materials kept or stored by such importer, manufacturer, dealer, or permittee at such premises.

#### **Section 181.25 Disclosure of information.**

Upon receipt of written request of any State or any political subdivision thereof, the Assistant Regional Commissioner may make available to such State or any political subdivision thereof, any information which the Assistant Regional Commissioner may obtain by reason of the provisions of the Act with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

#### **Section 181.26 Prohibited shipment, transportation, or receipt of explosive materials.**

(a) No person, other than a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials: *Provided*, That the provisions of this paragraph shall not apply to

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser'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, (ii) the provisions of 181.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed fifty pounds. if (i) the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and (ii) the provisions of 181.105(g) are fully complied with.

(b) No person may ship or transport any explosive material in interstate or foreign

commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

#### **Section 181.27 Out-of-State disposition of explosive materials.**

No nonlicensee or nonpermittee shall distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

#### **Section 181.28 Stolen explosive materials.**

No person shall receive, conceal, transport, ship, store, barter, sell, or dispose of any stolen explosive materials knowing or having reasonable cause to believe that the explosive materials were stolen.

#### **Section 181.29 Unlawful storage.**

No person shall store any explosive materials in a manner not in conformity with the provisions of Subpart J.

#### **Section 181.30 Reporting theft or loss of explosive materials.**

Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone to the nearest ATF office and on Form 4712 in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities. Any other person who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone and in writing to the nearest ATF office. Such theft or loss shall also be reported to appropriate local authorities.

#### **Section 181.31 Inspection of site of accidents or fires; right of entry.**

Any internal revenue officer may inspect the site of any accident or fire in which there is reason to believe that explosive materials were involved. Any internal revenue officer may enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location.

## **Subpart D—Licenses and Permits**

#### **Section 181.41 General.**

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials including black powder, shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under the provisions of this subpart: *Provided*, That it is not necessary to obtain such permit if the user intends to lawfully purchase—

(1) Explosive materials from a licensee, in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifi-

cally authorizing a resident of that State to purchase explosive materials in a contiguous State, or

(2) Commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(b) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer shall file an application, with the required fee (see Section 181.42), with the Service Center Director for the internal revenue district in which his business premises are to be located. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials: *Provided*, That a separate license shall not be required for storage facilities operated by the



licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part: *Provided further*, That a separate license shall not be required of a licensed manufacturer with respect to his on site manufacturing. A license shall, subject to the provisions of law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license (and in the case of a licensed manufacturer, on site within the same internal revenue region), for the period stated on the license: *Provided*, That it shall not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(c) Except as provided in paragraph (a) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall file an application, with the required fee (see Section 181.43), with the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business. A permit shall, subject to the provisions of the Act and other applicable provisions of law, entitle the permittee to acquire, transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by his permit. Only one permit is required under the provisions of this part.

#### **Section 181.42 License fees.**

(a) Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business premises, as follows:

- (1) Manufacturer—\$50.
- (2) Manufacturer—limited (nonrenewable)—\$5.
- (3) Importer—\$50.
- (4) Dealer—\$20.

(b) Each applicant for a renewal of a license shall pay a fee equal to one-half of the fee prescribed under paragraph (a).

#### **Section 181.43 Permit fees.**

(a) Each applicant shall pay a fee for obtaining a permit as follows:

- (1) User—\$20.
- (2) User-limited (nonrenewable)—\$2.

(b) Each applicant for a renewal or a user permit shall pay a fee of \$10.

#### **Section 181.44 License or permit fee not refundable.**

No refund of any part of the amount paid as a license or permit fee shall be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit shall be refunded if that application is denied.

#### **Section 181.45 Original license or permit.**

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with the service center director for the internal revenue district in which the applicant is to do business an application, Form 4705, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4705 may be obtained from any regional director or from any district director.

(b) Any person, except as provided in 181.41(a), who intends to acquire explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file with the service center director for the internal revenue district in which is located his legal residence or principal place of business an application, Form 4707, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal

Revenue Service. Forms 4707 may be obtained from any regional director or from any district director.

(c) Any person engaged in business or operations as a dealer in, or as an importer or manufacturer or user of, black powder requiring a license or permit under this part, and who was engaged in such business or operations on January 4, 1975, and who has filed an application for a license or permit under the provisions of this part prior to April 28, 1977, may continue such business or operations pending final action on his application.

#### **181.46 Renewal of license or permit.**

If a licensee or permittee intends to continue the business or operation described on a license or permit issued under this part after the expiration date of the license or permit, he shall, unless otherwise notified in writing by the Assistant Regional Commissioner, execute and file prior to the expiration of his license or permit an application for license renewal, Form 4706 (Part III), or an application for permit renewal, Form 4708 (Part III), accompanied by the required fee, with the Service Center Director for the internal revenue district in which the business premises are located, or in the case of a permittee, in which is located his legal residence or principal place of business: *Provided*, That a license issued to a manufacturer-limited is not renewable and is only valid for 30 days from date of issuance, and a user-limited permit is not renewable and is only valid for a single purchase transaction. All applications for manufacturer-limited licenses or user-limited permits must be filed on Form 4705 or Form 4707 in the manner required by Section 181.45. In the event the licensee or permittee does not timely file a renewal application, he must file an original application as required by Section 181.45, and obtain the required license or permit in order to continue business or operations. If a licensee or permittee does not timely receive renewal application forms through the mails, he should so notify his Assistant Regional Commissioner.

#### **Section 181.47 Procedure by Service Center Director.**

Upon receipt of an application for an original license or an original permit or an application for renewal of a license or renewal of a permit, the Service Center Director shall deposit the fee accompanying the license or per-

mit application and forward the application to the Assistant Regional Commissioner. Where an application is filed with an insufficient fee, the application and any fee submitted shall be returned.

#### **Section 181.48 Abandoned application.**

Upon receipt of an incomplete or improperly executed application, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned and the license or permit fee returned.

#### **Section 181.49 Issuance of license or permit.**

(a) Upon receipt of a properly executed application for a license or permit, the Assistant Regional Commissioner shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is entitled thereto, issue the appropriate license or permit and a copy thereof: *Provided*, That in the case of a user-limited permit, the original only shall be issued. Each license or permit shall bear a serial number and such number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity or renewal in the same internal revenue region.

(b) The Assistant Regional Commissioner shall approve a properly executed application for license or permit, if:

- (1) The applicant is 21 years of age or over;
- (2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom distribution of explosive materials is prohibited under the provisions of the Act;
- (3) The applicant has not willfully violated any of the provisions of the Act or this part;
- (4) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;
- (5) The applicant has in a State business premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct such business or operations;
- (6) The applicant has storage facilities for the class of explosive materials described on

the application which facilities meet the standards prescribed by Subpart J of this part, unless he establishes to the satisfaction of the Assistant Regional Commissioner that the business or operations to be conducted will not require the storage of explosive materials;

(7) The applicant 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; and

(8) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1171(b)).

(c) The Assistant Regional Commissioner shall approve or deny an application for license or permit within the 45-day period beginning on the date a properly executed application was received by the Service Center Director: *Provided*, That when an applicant for license or permit renewal is a person who is, pursuant to the provisions of Section 181.83 or Section 181.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Commissioner on an application for relief submitted pursuant to Section 181.142, as the case may be.

#### **Section 181.50 Correction of error on license or permit.**

(a) Upon receipt of a license or permit issued under the provisions of this part, each licensee or permittee shall examine same to insure that the information contained thereon is accurate. If the license or permit is incorrect, the licensee or permittee shall return the license or permit to the Assistant Regional Commissioner with a statement showing the nature of the error. The Assistant Regional Commissioner shall correct the error, if the error was made in his office, and return the license or permit. However, if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Assistant Regional Commissioner shall require the licensee or permittee to file an amended application setting forth the correct information and a statement explaining the error contained in the application. Upon receipt of the amended application and a

satisfactory explanation of the error, the Assistant Regional Commissioner shall make the correction on the license or permit and return the same to the licensee or permittee.

(b) When the Assistant Regional Commissioner finds through any means other than notice from the licensee or permittee that an incorrect license or permit has been issued, (1) the Assistant Regional Commissioner may require the holder of the incorrect license or permit to return the license or permit for correction, and (2) if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Assistant Regional Commissioner shall require the licensee or permittee to file an amended application setting forth the correct information, and a statement satisfactorily explaining the error contained in the application. The Assistant Regional Commissioner then shall make the correction on the license or permit and return same to the licensee or permittee.

#### **Section 181.51 Duration of license or permit.**

Licenses and permits shall be issued for a period of 1 year; *Provided*, That a manufacturer-limited license shall be issued for a period of 30 days and a user-limited permit shall be valid only for a single purchase transaction.

#### **Section 181.52 Limitations on license or permit.**

(a) The license covers the business and class of explosive materials specified in the license at the licensee's business premises (see Section 181.41(b)).

(b) The permit is valid with respect to the type of operations and class of explosive materials specified in the permit.

#### **Section 181.53 License and permit not transferable.**

Licenses and permits issued under this part are not transferable to another person. In the event of the lease, sale, or other transfer of the business or operations covered by the license or permit, the successor must obtain the license or permit required by this part prior to commencing such business or operations. However, for rules on right of succession, see Section 181.59.

#### **Section 181.54 Change of location; change in construction.**

(a) **Other than storage facilities.** Except as provided in paragraph (b), a licensee or permittee may during the term of his license or

permit remove his business or operations to a new location at which he intends regularly to carry on such business or operations, without procuring a new license or permit. However, in every case, whether or not the removal is from one internal revenue region to another, notification of the new location of the business or operations must be given not less than 10 days prior to such removal to the Assistant Regional Commissioner for the internal revenue region from which or within which the removal is to be made, and the Assistant Regional Commissioner for the internal revenue region to which the removal is to be made. In each instance, the license or permit and any copies thereof furnished with the license or permit must be submitted for endorsement to the Assistant Regional Commissioner having jurisdiction over the internal revenue region to which or within which removal is to be made. After endorsement of the license or permit and the copies thereof to show the new location, and the new license or permit number, if any, the Assistant Regional Commissioner will return same to the licensee or permittee.

(b) **Storage facilities.** A licensee or permittee who intends to change the location of his approved storage facility described in his application (other than a change of location of a portable approved storage facility) during the term of his license or permit shall make written application, in duplicate, to the Assistant Regional Commissioner who issued the license or permit, describing the location, the type of construction, and the class of explosive materials as prescribed in Subpart J. Such application may include a request for approval of specific successive changes in location of an approved storage facility. Storage of explosive materials may not be commenced at the new location prior to receipt of the copy of such application stamped "Approved."

(c) **Additions to or changes in storage facilities.** A licensee or permittee who intends to make additions to or changes in construction of approved storage facilities described in his application, shall file an application on Form 4705 or on Form 4707 with the Assistant Regional Commissioner for an amended license or permit, describing the proposed additions or changes. Additions to or changes in construction of approved storage facilities may not be made prior to issuance of the amended license or permit. Upon receipt of the amended license or amended permit, the licensee or permittee

shall submit his superseded license or superseded permit and any copies thereof to the Assistant Regional Commissioner.

#### **Section 181.55 Change in class of explosive materials.**

A licensee or permittee who intends to change the class of explosive materials described in his license or permit from a lower to a higher classification (see Subpart J) shall file an application on Form 4705 or on Form 4707 with the Assistant Regional Commissioner for an amended license or permit. If the change in class or explosive materials would require a change in storage facilities, the amended application shall include a description of the type of construction as prescribed in Subpart J. Business or operations with respect to the new class of explosive materials may not be commenced prior to issuance of the amended license or amended permit. Upon receipt of the amended license or amended permit, the licensee or permittee shall submit his superseded license or superseded permit and any copies thereof to the Assistant Regional Commissioner.

#### **Section 181.56 Change in trade name.**

A licensee or permittee continuing to conduct business or operations at the location shown on his license or permit is not required to obtain a new license or permit by reason of a mere change in trade name under which he conducts his business or operations: *Provided*, That such licensee or permittee furnishes his license or permit and any copies thereof for endorsement of such change to the Assistant Regional Commissioner for the internal revenue region in which the licensee or permittee conducts his business or operations, within 30 days from the date the licensee or permittee begins his business or operations under the new trade name.

#### **Section 181.57 Change of control.**

In the case of a corporation or association holding a license or permit under this part, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of change in stock ownership or control (in the corporation holding a license or permit or in any other corporation), by operation of law, or in any other manner, the licensee or permittee shall, within 30 days of such change, give written notification thereof executed under the penalties of perjury, to

the Assistant Regional Commissioner. Upon expiration of the license or permit, the corporation or association must file a Form 4705 or a Form 4707 as required by Section 181.45 and pay the fee prescribed in Section 181.42(b) or Section 181.43 (b).

#### **Section 181.58 Continuing partnerships.**

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to conduct the business or operations under the license or permit of the partnership. If such surviving partner acquires the business or operations on completion of settlement of the partnership, he shall obtain a license or permit in his own name from the date of acquisition, as provided in Section 181.45. The rule set forth in this section shall also apply where there is more than one surviving partner.

#### **Section 181.59 Right of succession by certain persons.**

(a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same business premises for the remainder of the term of license or permit. Such persons are:

(1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and

(2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.

(b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit and copies thereof for that

business or operations for endorsement of such succession to the Assistant Regional Commissioner for the internal revenue region in which the business or operations is conducted within 30 days from the date on which the successor begins to carry on the business or operations.

#### **Section 181.60 Certain continuances of business or operations.**

A licensee or permittee who furnishes his license or permit to the Assistant Regional Commissioner for correction, amendment or endorsement in compliance with the provisions contained in this subpart may continue his business or operations while awaiting its return.

#### **Section 181.61 Discontinuance of business or operations.**

Where an explosive materials business or operations is either discontinued or succeeded by a new owner, the owner of the business or operations discontinued or succeeded shall within 30 days thereof furnish to the Assistant Regional Commissioner for the internal revenue region in which his business or operations was located notification of the discontinuance or succession and his license or permit and any copies thereof. (See also Section 181.128.)

#### **Section 181.62 State or other law.**

A license or permit issued under this part confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. The holder of such a license or permit is not by reason of the rights and privileges granted by that license or permit immune from punishment for conducting an explosive materials business or operations in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

## **Subpart E—License and Permit Proceedings**

#### **Section 181.71 Opportunity for compliance.**

Except in cases of wilfulness or those in which the public interest requires otherwise, and the Assistant Regional Commissioner so alleges in the notice of denial of an application or revocation of a license or permit, no license or permit shall be revoked or renewal application denied without first calling to the atten-

tion of the licensee or permittee the reasons for the contemplated action and affording him an opportunity to demonstrate or achieve compliance with all lawful requirements and to submit facts, arguments, or proposals of adjustments. The notice of contemplated action, Form 4715, shall afford the licensee or permittee 15 days from the date of receipt of

the notice to respond. If no response is received within the 15 days or after consideration of relevant matters presented by the licensee or permittee, the Assistant Regional Commissioner finds that the licensee or permittee is not likely to abide by the law and regulations, he will proceed as provided in Section 181.74.

#### **Section 181.72 Denial of initial application.**

Whenever the Assistant Regional Commissioner has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of Section 181.49, he shall issue a notice of denial on Form 4716. The notice shall set forth the matters of fact and law relied upon in determining that the application should be denied, and shall afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the applications, marked "Disapproved," will be returned to the applicant.

#### **Section 181.73 Hearing after initial application is denied.**

If the applicant for an original license or permit desires a hearing, he shall file a request therefor, in duplicate, with the Assistant Regional Commissioner, within 15 days after receipt of the notice of denial. The request should include a statement of the reasons therefor. On receipt of the request, the Assistant Regional Commissioner shall refer the matter to a hearing examiner and the examiner shall set a time and place (see Section 181.77) for a hearing and shall serve notice thereof upon the applicant and the Assistant Regional Commissioner at least 10 days in advance of the hearing date. The hearing shall be conducted in accordance with the hearing procedures prescribed in Part 200 of this chapter (see Section 181.82). Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the examiner shall render his recommended decision. He shall certify to the complete record of the proceedings before him and shall immediately forward the complete certified record, together with four copies of his recommended decision, to the Assistant Regional Commissioner for decision.

#### **Section 181.74 Denial of renewal application or revocation of license or permit.**

If, following or without opportunity for compliance under Section 181.71, as circum-

stances warrant, the Assistant Regional Commissioner finds that the licensee or permittee is not likely to comply with the law or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the Assistant Regional Commissioner will issue a notice of denial of the renewal application or revocation of the license or permit, Form 4716 or 4717, as appropriate. In either case, the notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The notice shall, in the case of revocation of a license or permit, specify the date on which such action is effective, which date shall be on or after the date the notice is served on the licensee or permittee. The notice shall also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

#### **Section 181.75 Hearing after denial of renewal application or revocation of license or permit.**

If a licensee or permittee whose renewal application has been denied or whose license or permit has been revoked desires a hearing, he shall file a request therefor, in duplicate, with the Assistant Regional Commissioner. In the case of the revocation of a license or permit, he may include a request for a stay of the effective date of the revocation. On receipt of the request the Assistant Regional Commissioner shall advise the licensee or permittee whether the stay of the effective date of the revocation is granted. If the stay of the effective date of the revocation is granted, the Assistant Regional Commissioner shall refer the matter to a hearing examiner. The hearing examiner shall set a time and place (see Section 181.77) for a hearing and shall serve notice thereof upon the licensee or permittee and the Assistant Regional Commissioner at least 10 days in advance of the hearing date. If the stay of the effective date of the revocation is denied, the licensee or permittee may request an immediate hearing. In such event, the Assistant Regional Commissioner shall immediately refer the matter to a hearing examiner who shall set a date and place for a hearing, which date shall be no later than 10 days from the date the licensee or permittee requested an immediate hearing. The hearing shall be

held in accordance with the applicable provisions of Part 200 of this chapter. Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the hearing examiner shall render his decision. He shall certify to the complete record of the proceeding before him and shall immediately forward the complete certified record, together with two copies of his decision, to the Assistant Regional Commissioner, serve one copy of his decision on the licensee or permittee or his counsel, and transmit a copy to the attorney for the Government.

**Section 181.76 Action by Assistant Regional Commissioner.**

(a) **Initial application proceedings.** If, upon receipt of the record and the recommended decision of the examiner, the Assistant Regional Commissioner decides that the license or permit should be issued, he shall approve the application, briefly stating, for the record, his reasons therefor. If he contemplates that the denial should stand, he shall serve a copy of the examiner's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof. If the Assistant Regional Commissioner, after consideration of the record of the hearing and of any proposed findings, conclusions, or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the examiner, he shall issue the license or permit or disapprove the application in accordance therewith. If he disapproves of the findings, conclusions, and recommendation of the examiner, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and the facts in the record. Any decision of the Assistant Regional Commissioner ordering the disapproval of an initial application for a license or permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion, and exception to the examiner's recommended decision, together with a statement of his findings and conclusions, and reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision shall be

served upon the applicant and the original copy containing certificate of service shall be placed in the official record of the proceedings. If the decision of the Assistant Regional Commissioner is in favor of the applicant, he will issue the license or permit, to be effective on issuance.

(b) **Renewal application and revocation proceedings.** Upon receipt of the complete certified records of the hearing, the Assistant Regional Commissioner shall enter an order confirming the revocation of the license or permit, or disapproving the application, in accordance with the examiner's findings and decision, unless he disagrees with the findings and decision. A signed duplicate original of the order, Form 4718, shall be served upon the licensee or permittee and the original copy containing certificate of service shall be placed in the official record of the proceedings. If the Assistant Regional Commissioner disagrees with the findings and decision of the examiner, he shall file a petition with the Director for review thereof as provided in Section 181.79. In either case, if the renewal application denial is sustained a copy of the application marked "Disapproved" will be returned to the applicant. If the renewal application denial is reversed a license or permit will be issued to become effective on expiration of the license or permit being renewed, or on the date of issuance, whichever is later. If the proceedings involve the revocation of a license or permit which expired before a decision is in favor of the licensee or permittee, the Assistant Regional Commissioner shall:

(1) If renewal application was timely filed and a stay of the effective date of the revocation was granted, issue a license or permit effective on the date of issuance;

(2) If renewal application was not timely filed but a stay of the effective date of the revocation had been granted, request that a renewal application be filed and, pursuant thereto, issue a license or permit to be effective on issuance; or

(3) If a stay of the effective date of the revocation had not been granted, request that an application be filed as provided in Section 181.45, and process it in the same manner as for an application for an original license or permit.

(c) **Curtailement of stay of revocation effective date.** If, after approval of a request for a stay of the effective date of an order revoking



a license or permit but before action are completed under this subpart, the Assistant Regional Commissioner finds that it is contrary to the public interest for the licensee or permittee to continue the operations or activities covered by his license or permit, the Assistant Regional Commissioner may issue a notice of withdrawal of such approval, effective on the date of issuance. Such notice shall be served upon the licensee or permittee in the manner provided in Section 181.81.

#### **Section 181.77 Designated place of hearing.**

The designated place of hearing set as provided in Section 181.73 or Section 181.75 shall be at the location convenient to the aggrieved party.

#### **Section 181.78 Representation at a hearing.**

An applicant, licensee or permittee may be represented by an attorney or other person recognized to practice before the Internal Revenue Service as provided in 31 CFR Part 10 (Treasury Department Circular No. 230) if he has otherwise complied with the applicable requirements or Sections 601.521-601.527 of this chapter. The Assistant Regional Commissioner may be represented in proceedings under Section 181.73 and 181.75 by an attorney in the office of the regional counsel who is authorized to execute and file motions, briefs, and other papers in the proceedings, on behalf of the Assistant Regional Commissioner, in his own name as "Attorney for the Government."

#### **Section 181.79 Appeal on petition to the Director.**

An appeal to the Director is not required prior to filing an appeal with the U.S. Court of Appeals for judicial review. An appeal may be taken by the applicant, licensee, or permittee to the Director from a decision resulting from a hearing under Section 181.73 or Section 181.75. An appeal may also be taken by an Assistant Regional Commissioner from a decision resulting from a hearing under Section 181.75 as provided in Section 181.76(b). Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of an examiner's decision or an order. The petition shall set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition shall be filed with the Assistant Regional Commissioner or

served on the applicant, licensee, or permittee, as the case may be. In the event of such appeal, the Assistant Regional Commissioner shall immediately forward the complete original record, by certified mail, to the Director for his consideration, review, and disposition in the manner provided in Subpart I of Part 200 of this chapter. When, on appeal, the Director affirms the initial decision of the Assistant Regional Commissioner or the examiner, as the case may be, such initial decision shall be final.

#### **Section 181.80 Court review.**

An applicant, licensee, or permittee may, within 60 days after receipt of the decision of the examiner or the final order of the Assistant Regional Commissioner or the Director, file a petition for a judicial review thereof, with the U.S. Court of Appeals for the district in which he resides or has his principal place of business. The Director, upon notification that such petition has been filed, shall have prepared, in triplicate, a complete transcript of the record of the proceedings. The Assistant Regional Commissioner or the Director, as the case may be, will certify to the correctness of such transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the U.S. Court of Appeals.

#### **Section 181.81 Service on applicant, licensee, or permittee.**

All notices and other formal documents required to be served on an applicant, licensee, or permittee under this subpart shall be served by certified mail or by personal delivery. Where service is by personal delivery, the signed duplicate original copy of the formal document shall be delivered to the applicant, licensee, or permittee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.

#### **Section 181.82 Provisions of Part 200 made applicable.**

The provisions of Subpart G of Part 200 of this chapter, as well as those provisions of Part 200 relative to failure to appear, withdrawal of an application or surrender of a permit, the conduct of hearings before a hearing examiner, and record of testimony are hereby made applicable to application, license,



and permit proceedings under this subpart to the extent that they are not contrary to or incompatible with the provisions of this subpart.

**Section 181.83 Operations by licensees or permittees after notice of denial or revocation.**

In any case where a notice of revocation has been issued and a request for a stay of the effective date of the revocation has not been granted, the licensee or permittee may not engage in the activities covered by the license or permit pending the outcome of proceedings under this subpart. In any case where notice of revocation has been issued but a stay of the

effective date of the revocation has been granted, the licensee or permittee may continue to engage in the activities covered by his license or permit unless or until formally notified to the contrary: *Provided*, That in the event the license or permit would have expired before proceedings under this subpart are completed, timely renewal application must have been filed to continue the license or permit beyond its expiration date. In any case where a notice of denial of a renewal application has been issued, the licensee or permittee may continue to engage in the activities covered by the existing license or permit after the date of expiration thereof until proceedings under this subpart are completed.

## **Subpart F—Conduct of Business or Operations**

**Section 181.101 Posting of license or permit.**

Licenses or permits issued under this part or copies thereof shall be kept posted and kept available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed and in each magazine of an approved storage facility.

**Section 181.102 Authorized operations by permittees and certain licensees.**

(a) *In general.* The license issued to a manufacturer-limited does not authorize such licensee to engage in another class of business required to be licensed under the Act or this part. Therefore if such licensee intends to manufacture explosive materials for purposes of sale or distribution or to deal in explosive materials, he shall so qualify. Similarly, a permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly if a permittee's operations bring him within the definition of a manufacturer, importer, or dealer under this part he shall qualify as such.

(b) *Distributions of surplus stocks.* Licensed manufacturers-limited and permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, such licensees or permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with the provisions of Section 181.103, and to nonlicensees or to nonpermittees in accordance with the provisions of Section 181.105(d).

**Section 181.103 Sales or distributions between licensees or between licensees and permittees.**

(a) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to another licensee or permittee, or a permittee or a licensed manufacturer-limited disposing of surplus stock to another permittee or licensee, shall verify the identity and the status as a licensee or permittee of the distributee prior to making the transaction. Such verification shall be established by the distributee furnishing to the distributor a certified copy (in the case of a user-limited, the original) of the distributee's license or permit and by such other means as the distributor deems necessary: *Provided*, That it shall not be required (1) for a distributee who has furnished a certified copy of his license or permit to a distributor to again furnish such certified copy to that distributor during the term of the distributee's current license or permit, and (2) for the licensees or multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization: *Provided further*, That a multilicensed business organization may furnish to a distributor in lieu of a certified copy of each license, a list certified to be true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the distributor may sell or otherwise dispose of explosive materials as provided by this section to any licensee

appearing on such list without requiring a certified copy of a license there from. A distributor licensee who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(b) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to another licensee or permittee, or a permittee or a licensed manufacturer-limited disposing of surplus stocks to another permittee or licensee, which is a business entity shall verify the identity of the representative or agent of the business entity who is authorized to acquire explosive materials on behalf of such business entity. Each business entity acquiring explosive materials shall furnish the licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee with a current certified list of representatives or agents authorized to acquire explosive materials on behalf of such business entity showing the name, address, and date and place of birth of each such representative or agent. A licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee shall not distribute explosive materials to a business entity on the order of a person who does not appear on such list.

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee acquiring explosive materials from another licensee or permittee shall furnish such licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee with a certified current statement of the intended use of the explosive materials by such licensee or permittee (such as resale, mining, quarrying, agriculture, construction, road building, oil well drilling, seismographic research, or other specified lawful activity) and specifying the name, address, date and place of birth, social security number of the distributee where the distributee is a natural person. In the case of a business entity such statement shall specify the intended use, taxpayer identification number, the identity and principal and local places of business of such business entity and the infor-

mation required by paragraph (b) of this section. A licensee or permittee who has furnished such statement to a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee shall not be required to again furnish such statement to that distributor if the information on the statement remains unchanged.

(d) Where possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing such possession. Prior to the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a carrier transporting explosive materials to a licensee or permittee, the distributor so delivering explosive materials shall obtain an executed Form 4721 from such employee before releasing the explosive materials. The form 4721 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(e) The user-limited permit issued under the provisions of this part is valid only for a single purchase transaction and is not renewable (see Section 181.51). Accordingly, each permittee holding a user-limited permit shall at the time he acquires explosive materials from a licensed importer, licensed manufacturer, or licensed dealer present his permit to such licensee. The licensed importer, licensed manufacturer, or licensed dealer shall write across the face of such permit "Transaction completed," the date, sign his name and indicate his license number, and return the permit to the permittee.

#### **Section 181.104 Certified copy of license or permit.**

Except as provided in Section 181.49(a), each person issued a license or permit under the provisions of this part shall be furnished together with his license or permit a copy thereof for his certification. If such a person desires an additional copy of his license or permit for certification and for use pursuant to Section 181.103, he shall:

(a) Make a reproduction of the copy of his license or permit and execute the certification thereon, or

(b) Make a reproduction of his license or permit, enter upon such reproduction the state-

ment: "I certify that this is a true copy of a (*insert the word license or permit*) issued to me to engage in the business or operations specified in Item 5" and sign his name adjacent thereto, or

(c) Submit a request, in writing, for certified copies of his license or permit to the Assistant Regional Commissioner for the Internal Revenue region in which the license or permit was issued. The request shall set forth the name, trade name (if any), and address of the licensee or permittee and the number of copies of the license or permit desired. There shall be imposed a fee of \$1 for each copy of a license or permit issued by the Assistant Regional Commissioner under the provisions of this paragraph. Fee payment shall accompany each such request for additional copies of a license or permit. Such fee shall be paid by (1) cash, or (2) money order or check made payable to the Internal Revenue Service.

#### **Section 181.105 Distributions to nonlicensees and nonpermittees.**

(a) The provisions of this section shall apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(b) Except as provided in Paragraph (c) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, Form 4710, required by Section 181.126. Disposition of Form 4710 shall be made in accordance with the provisions of Section 181.126 (c).

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser'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 have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (b) (e), and (f) of this section applicable to intrastate transac-

tions occurring on the licensee's business premises.

(d) A licensed manufacturer-limited or a permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which such licensee's or permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the licensee's or permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e), and (f) of this section are fully met.

(e) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity shall verify the identity of the representative or agent of the business entity who is authorized to acquire explosive materials on behalf of such business entity. Each business entity acquiring explosive materials shall furnish the licensed importer, licensed manufacturer, or licensed dealer with a current certified list of the names of representatives or agents authorized to acquire explosive materials on behalf of such business entity. A licensed importer, licensed manufacturer, or licensed dealer shall not distribute explosive materials to a business entity on the order of a person whose name does not appear on such list.

(f) Where the possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing such possession. Prior to the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor so delivering explosive materials shall obtain an executed Form 4721 from such employee before releasing the explosive materials. The Form 4721 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(g) Notwithstanding any other provision of this section, a licensed importer, licensed manufacturer, or licensed dealer, or a licensed manufacturer-limited or permittee disposing of surplus stocks, may sell or distribute com-

mercially manufactured black powder in quantities of fifty pounds or less to a nonlicensee or nonpermittee if:

(1) The black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and

(2) The nonlicensee or nonpermittee furnishes to the licensee the transaction record, Form 5400.3, required by Section 181.130.

#### **Section 181.106 Certain prohibited distributions.**

(a) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute explosive materials to any person not licensed or holding a permit under this part, 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: *Provided*, That the forgoing provisions of this paragraph shall not apply to:

(1) The distribution of explosive material to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of Section 181.105(c) are fully met, or

(2) The purchase of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of Section 181.105(g) are fully met.

(b) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute any explosive materials to any person (1) who the importer, manufacturer, or dealer knows is less than 21 years of age, or (2) 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, or (3) who the importer, manufacturer, or dealer 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 such State or to receive explosive materials in such State, or (4) who the importer, manufacturer, or dealer has reasonable cause to believe intends to use

such explosive materials for other than a lawful purpose.

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute any explosive materials to any person knowing or having reason to believe that such person (1) is, except as provided under Section 181.142(d) and (e), under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321 (v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

#### **Section 181.107 Record of transactions.**

Every licensee and permittee shall maintain records of explosive materials in such form and manner as is prescribed by Subpart G of this part.

#### **Section 181.108 Importation.**

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Such status shall be established by the licensed importer or permittee furnishing to the customs officer a certified copy of his license or permit (see Section 181.104).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed fifty pounds. Upon submitting to the customs officer completed Form 5400.3, certifying that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, black powder may be released from customs custody. The disposition of the executed Form 5400.3 shall be in accordance with the instructions on the form.

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

### **Section 181.109 Identification of explosive materials.**

Each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of

explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging: *Provided*, That with respect to explosive materials of small size not suitable for marking on the individual item (for example, blasting caps), it shall only be necessary to place such identification marks on the containers used for their packaging.

## **Subpart G—Records and Reports**

### **Section 181.121 General.**

(a) The records pertaining to explosive materials prescribed by this part shall be in permanent form, and shall be retained on the licensed or permit premises in the manner prescribed by this subpart for a period of not less than 5 years from the date the transaction occurs or until discontinuance of business or operations by the licensee or permittee. (See also Section 181.128.)

(b) Internal revenue officers may enter the premises of any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee for the purpose of examining or inspecting any record or document required by or obtained under this part (see Section 181.24). Section 843(f) of the Act requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to make such records available for such examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to submit such reports and information with respect to such records and the contents thereof as the regulations contained in this part prescribe.

(c) Each licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, and permittee shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations contained in this part prescribe. Section 842(g) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee knowingly to make any false entry in any record required to

be maintained pursuant to the Act and the regulations contained in this part.

### **Section 181.122 Records maintained by importers.**

(a) Each licensed importer of explosive materials shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of an importer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business, and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed importer. (See also Section 181.127.)

(b) Each licensed importer shall not later than the close of the next business day following the date of importation or other acquisition, record the quantity and class of explosive materials, as prescribed in the Explosives List, manufacturer, manufacturers' marks of identification (if any), and country of manufacture of explosive materials he imports or otherwise acquires, and the date such importation or other acquisition was made.

(c) A record of explosive materials distributed by a licensed importer to another licensee or permittee shall be maintained by the li-

censed importer on his licensed premises and shall show the quantity, class (as prescribed in the Explosives List), manufacturer, manufacturers' marks of identification (if any), country of manufacture, and license or permit number of the licensee or permittee to whom the explosive materials were distributed, and the date of the transaction. The information required by Section 181.103(b), (c) and (d) shall also be maintained as part of the records of the licensed importer. The information required by this paragraph shall be entered in the proper record book not later than the close of the next business day following the date of the transaction.

(d) Notwithstanding the provisions of paragraph (c) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed importer to record his distribution of explosive materials when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the Assistant Regional Commissioner.

(e) Each licensed importer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by Section 181.126.

(f) Each licensed importer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by Section 181.130.

#### **Section 181.123 Records maintained by licensed manufacturers.**

(a) Each licensed manufacturer shall take true and accurate inventories which shall in-

clude all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a manufacturer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed manufacturer. (See also Section 181.127.) (b) Each licensed manufacturer shall record the marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, he manufactures or otherwise acquires, and the date of such manufacture or acquisition. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such manufacture or acquisition.

(c) (1) A record of explosive materials distributed by a licensed manufacturer to another licensee or permittee shall be maintained by the licensed manufacturer on his licensed premises and shall show the marks of identification (if any), the quantity, class (as prescribed in the Explosives List), and manufacturer or importer, as applicable, if acquired other than by his manufacture, and license or permit number of the licensee or permittee to who the explosive materials were distributed, and the date of the transaction. The information required by Section 181.103(b), (c) and (d) shall also be maintained as part of the records of the licensed manufacturer. The information required by this paragraph shall be entered in the proper record book not later than the close of the next business day following the date of the transaction.

(2) Each licensed manufacturer who manufactures explosive materials for his own use shall record in a separate permanent record the quantity and class of explosive materials, as prescribed in the Explosives List, he daily uses and the date of such use. The information required by this subparagraph shall be record-

ed not later than the close of the next business day following the date of such use.

(d) Notwithstanding the provisions of paragraph (c) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed manufacturer to record his distribution or use of explosive materials when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the Assistant Regional Commissioner.

(e) Each licensed manufacturer shall maintain separate records of the sales or other distributions made of explosive materials to non-licensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by Section 181.126.

(f) Each licensed manufacturer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercial manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by Section 181.130.

#### **Section 181.124 Records maintained by dealers.**

(a) Each licensed dealer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a dealer in black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the region-

al director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed dealer. (See also Section 181.127.)

(b) Each licensed dealer shall enter into a permanent record each purchase or other acquisition of explosive materials. The purchase or other acquisition of explosive materials by a licensed dealer shall, except as provided in paragraph (c) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name, address and license or permit number of the person from whom received, the name of the manufacturer and importer (if any), the manufacturers' marks of identification (if any), and the quantity and class of explosive materials as prescribed in the Explosives List.

(c) When a commercial record is maintained by a licensed dealer showing his purchase or acquisition of explosive materials, and such record contains all acquisition information required by the permanent record prescribed by paragraph (b) of this section, the licensed dealer acquiring such explosive materials may, for a period not exceeding 7 days following the date of such acquisition, delay making the required entry into such permanent record: *Provided*, That the commercial record is, until such time as the required entry into the permanent record is made, (1) maintained by the licensed dealer separate from other commercial documents maintained by such licensee, and (2) readily available for inspection on the licensed premises.

(d) A permanent record of explosive materials sold or otherwise distributed by a licensed dealer to another licensee or permittee shall be maintained by the licensed dealer on his licensed premises and shall show the quantity, class of explosive materials, as prescribed in the Explosives List, the name of the manufacturer and importer (if any), the manufacturers' marks of identification (if any), the license or permit number of the licensee or permittee to whom the explosive materials were distributed, and the date of the transaction. The information required by Section 181.103(b), (c) and (d) shall also be maintained as part of the records of the licensed dealer. The information required by this paragraph shall be entered in the permanent record in the manner required in paragraphs (b) and (c)



of this section with respect to acquisition of explosive materials.

(e) Notwithstanding the provisions of paragraphs (b) and (d) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed dealer to record his acquisition or disposition of explosive materials, when it is shown by the licensed dealer that such alternate records will accurately and readily disclose the required information. A licensed dealer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer until approval in such regard is received from the Assistant Regional Commissioner.

(f) Each licensed dealer shall maintain separate records of the sales or other distributions made of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by Section 181.126.

(g) Each licensed dealer shall maintain separate records of the sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by Section 181.130.

#### **Section 181.125 Records maintained by licensed manufacturers-limited and permittees.**

(a) Each licensed manufacturer-limited and each permittee shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. Such inventory shall be made (1) at the time of commencing business, which shall be the effective date of the license or permit issued upon original qualification under this part, or in the case of a manufacturer-limited of black powder or a permittee using black powder who was not required to obtain a license or permit under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional direc-

tor may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensee or permittee. (See also Section 181.127.)

(b) A licensed manufacturer-limited disposing of surplus stocks of explosive materials to other licensees or to permittees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in Section 181.123(c)(1). Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by Section 181.126. Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by Section 181.130.

(c) Each permittee shall record in a permanent record the manufacturers' marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, he daily acquires, the date of such acquisition, and the name, address and license number of the person from whom explosive materials were obtained. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such acquisition. A permittee disposing of surplus stocks of explosive materials to other permittees or to licensees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in Section 181.124(d). Each permittee shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by Section 181.126. Each permittee shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by Section 181.130.



(d) Notwithstanding the provisions of paragraph (c) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that such alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the permittee until approval in such regard is received from the Assistant Regional Commissioner.

**Section 181.126 Explosives transaction record.**

(a) A licensee or permittee shall not sell or otherwise distribute, temporarily or permanently, explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an explosives transaction record, Form 4710.

(b) Prior to the sale or other distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises or who is not a resident of the State in which the licensee or permittee maintains his business premises and such nonlicensee or nonpermittee is acquiring explosive materials under the provisions contained in Section 181.105(c), the licensee or permittee so distributing the explosive materials shall obtain an executed Form 4710 from the distributee. The Form 4710 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 4710 shall be completed in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements in paragraph (d) of this section, and the copy shall be forwarded in accordance with the instructions on the form, on or before the close of business on the business day next succeeding that on which the transaction occurs.

(d) Each original Form 4710 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000," the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical

prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other record-keeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 4710 from the Director.

**Section 181.127 Daily summary of magazine transactions.**

In taking the inventory required by Sections 181.122, 181.123, 181.124, and 181.125, the inventory shall be entered in a record of daily transactions to be maintained at each magazine of an approved storage facility. At the close of business of each day each licensee and permittee shall record by class of explosive materials, as prescribed in the Explosives List, 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. Any discrepancy which might indicate a theft or loss of explosive materials shall be reported in accordance with the provisions of Section 181.30.

**Section 181.128 Discontinuance of business.**

Where an explosive materials business or operations is discontinued and succeeded by a new licensee or permittee the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business or operations is absolute, the records prescribed by this subpart shall be delivered within 30 days following the business or operations discontinuance to the Assistant Regional Commissioner for the internal revenue region in which the business was operated: *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Assistant Regional Commissioner may arrange for the delivery of the records required by this subpart to such authority. (See also Section 181.61.)

**Section 181.129 Exportation.**

Explosive materials shall be exported in accordance with the applicable provisions of section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting ex-

plosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity and class of explosive materials, as prescribed in the Explosives List, the name and address of the foreign consignee of the explosive materials and the date the explosive materials were exported.

**Section 181.130 Transaction record for black powder to be used in antique firearms or in antique devices.**

(a) A licensee or permittee shall not sell or otherwise distribute to a nonlicensee or nonpermittee commercially manufactured black powder in quantities of fifty pounds or less, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, unless he records the transactions on Form 5400.3.

(b) Prior to the sale or other distribution of the black powder in paragraph (a) of this section to a nonlicensee or nonpermittee who is acquiring it under the provisions contained in Section 181.105(g), the licensee or permittee so distributing the black powder shall obtain an executed

Form 5400.3 from the distributee. The Form 5400.3 shall contain all the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 5400.3 shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements of paragraph (d) of this section.

(d) Each Form 5400.3 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000," the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 5400.3 from the Director.

## Subpart H—Exemptions

**Section 181.141 Exemptions**

(a) **General.** The provisions of this part shall not apply with respect to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the U.S. Department of Transportation, and agencies thereof.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof.

(4) Small arms ammunition and components thereof.

(5) The manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States.

(6) Arsenal, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances.

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(b) **Black powder.** Except for the provisions applicable to persons required to be licensed under Subpart D, the provisions of this part shall not apply with respect to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers: *Provided*, That such black 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, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4),

and the provisions of Sections 181.105(g) and 181.130 are fully complied with.

**181.142 Relief from disabilities incurred by indictment or conviction.**

(a) Any person may make application for relief from the disabilities under the Act incurred by reason of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year.

(b) An application for such relief shall be addressed to the Commissioner and shall include such supporting data as the applicant deems appropriate. In the case of a corporation, the supporting data should include information as to the absence of culpability in the offense of which the corporation was indicted or convicted, or of any person having the power to direct or control the management of the corporation, if such be the fact. The application shall be filed, in triplicate, with the Assistant Regional Commissioner for the internal revenue region wherein the business premises are located or the applicant resides.

(c) The Commissioner may grant relief to an applicant if it is established to the satisfaction of the Commissioner that the circumstances regarding the indictment or conviction, and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(d) A person who has been granted relief under this section shall be relieved of any disabilities imposed by the Act with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials incurred by reason of such indictment or conviction.

(e) (1) A licensee or permittee who is indicted for or convicted of a crime punishable by imprisonment for a term exceeding 1 year during the term of a current license or permit or while he

has pending a license or permit renewal application shall not be barred from licensed or permit operations for 30 days after the date of indictment or 30 days after the date upon which his conviction becomes final, and if he files his application for relief as provided by this section within such 30-day period, he may further continue licensed or permit operations during the pendency of his application. A licensee or permittee who does not file an application within 30 days from the date of his indictment or within 30 days from the date his conviction becomes final, shall not continue licensed or permit operations beyond 30 days from the date of his indictment or beyond 30 days from the date his conviction becomes final.

(2) In the event the term of a license or permit of a person expires during the 30-day period following the date of indictment or during the 30-day period after the date upon which his conviction becomes final or during the pendency of his application for relief, he must file a timely application for renewal of his license or permit in order to continue licensed or permit operations. Such license or permit application shall show that the applicant has been indicted for or convicted of a crime punishable by imprisonment for a term exceeding 1 year.

(3) A licensee or permittee shall not continue licensed or permit operations beyond 30 days following the date the Commissioner issues notification that the licensee's or permittee's application for removal of the disabilities resulting from an indictment or conviction has been denied.

(4) When as provided in this section a licensee or permittee may no longer continue licensed or permit operations, any application for renewal of license or permit filed by the licensee or permittee during the pendency of his application for removal of disabilities resulting from an indictment or conviction, shall be denied by the Assistant Regional Commissioner.

## **Subpart I—Unlawful Acts, Penalties, Seizures, and Forfeitures**

**Section 181.161 Engaging in business without a license.**

Any person engaging in the business of importing, manufacturing, or dealing in explosive materials without a license issued under the Act, shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

**Section 181.162 False statement or representation.**

Any person who knowingly withholds information or makes any false or fictitious oral or written statement or furnishes or exhibits any false, fictitious, or misrepresented identification, intended or likely to deceive for the

purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the Act, shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

#### **Section 181.163 False entry in record.**

Any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee who knowingly makes any false entry in any record required to be kept pursuant to Subpart G of this part, shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

#### **181.164 Unlawful storage.**

Any person who stores any explosive material in a manner not in conformity with the provisions of Subpart J of this part, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

#### **Section 181.165 Failure to report theft or loss.**

Any person who has knowledge of the theft or loss of any explosive materials from his stock and fails to report such theft or loss within 24 hours of discovery thereof in accordance with Section 181.30, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

#### **Section 181.166 Seizure or forfeiture.**

Any explosive material involved or used or intended to be used in any violation of the provisions of the Act or of this part, or in any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 (Title 26, U.S.C.) relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code (26 U.S.C. 5845(a)), shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act.

## **Subpart J—Storage**

#### **181.181 General.**

(a) No person shall store any explosive materials in a manner not in conformity with the provisions of this subpart (see Section 181.29). Section 842(j) of the Act requires that the storage of explosive materials by any person must be in a manner conforming with the regulations contained in this subpart. The storage standards prescribed by this subpart confer no rights or privileges to store explosive materials in a manner contrary to State or other law.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Assistant Regional Commissioner may authorize alternate storage facilities for the storage of explosive materials when it is shown that such alternate facilities are or will be constructed in a manner substantially equivalent to the standards of construction contained in this subpart. Such alternate storage facilities shall not be used for the storage of explosive materials until approval is received from the Assistant Regional Commissioner.

(c) A licensee or permittee who intends to make additions to, modification of, or changes in his approved storage facilities shall follow the procedures and be subject to the requirements of Section 181.54(c).

#### **Section 181.182 Classes of explosive materials.**

For purposes of this part, there shall be three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows.

(a) **High explosives.** Explosive materials which can be caused to detonate by means of a blasting cap when unconfined. (For example, dynamite.)

(b) **Low explosives.** Explosive materials which can be caused to deflagrate when confined. (For example, black powder.)

(c) **Blasting agents.** (For example, ammonium nitrate-fuel oil.)

#### **Section 181.183 Types of storage facilities.**

For purposes of this part, there shall be five types of storage facilities. These types, together with the classes of explosive materials which shall be stored therein, are as follows:

(a) **Type 1 storage facilities.** Permanent storage facilities for the storage of high explosives, subject the limitations prescribed by Sections 181.186 and 181.193. Other classes may also be stored therein.

(b) **Type 2 storage facilities.** Portable indoor and outdoor storage facilities for the storage

of high explosives, subject to the limitations prescribed by Sections 181.186, 181.188(b), and 181.193. Other classes may also be stored therein.

(c) **Type 3 storage facilities.** Portable outdoor facilities for the temporary storage of high explosives while attended (for example, a "day-box"), subject to the limitations prescribed by Sections 181.186 and 181.193. Other classes may also be stored therein.

(d) **Type 4 storage facilities.** Facilities for the storage of low explosives, subject to the limitations prescribed by Sections 181.186(b), 181.190(b), and 181.193. Blasting agents may also be stored therein.

(e) **Type 5 storage facilities.** Facilities for the storage of blasting agents, subject to the limitations prescribed by Sections 181.186 (a) and (c), 181.191(b), and 181.193.

#### **Section 181.184 Inspection of storage facilities.**

Any person storing explosive materials shall open and inspect his storage facilities at intervals not greater than 3 days to determine whether the explosives therein are intact and to determine whether there has been unauthorized entry or attempted entry into the storage facilities or the unauthorized removal of facilities or their content.

#### **181.185 Movement of explosive materials.**

All explosive materials must be kept in storage facilities meeting the standards prescribed by this subpart unless they are:

- (a) In the process of manufacture, or
- (b) Being physically handled in the operating process of a licensee or user,
- (c) Being used, or
- (d) Being transported to a place of storage or use by a permittee or by a person who has lawfully acquired explosive materials pursuant to the requirements of Section 181.126.

#### **Section 181.186 Location of storage facilities.**

(a) (1) Except as otherwise provided in this subpart, storage facilities in which any explosive materials are stored shall be located at minimum distances from inhabited buildings, passenger railways, public highways, and from other storage facilities in which explosive materials are stored as specified in the American Table of Distances (see Section 181.198): *Provided*, That this table shall not apply to any indoor storage facility. When a storage facility is not barricaded, the distances shown in the American Table of Distances shall be

doubled. For purposes of this paragraph, a storage facility shall be deemed barricaded when it is effectually screened from inhabited buildings, passenger railways, public highways, and other storage facilities in which explosive materials are stored either by a natural or artificial barricade of such height that a straight line from the top of any sidewall of the storage facility to the eave line of such other inhabited building or storage facility, or to a point 12 feet above the center of a passenger railway or public highway, will pass through such intervening barricade.

(2) If any two or more storage facilities are separated from each other by less than the distances specified in Section 181.198, then such two or more storage facilities, as a group, shall be considered as one storage facility, and the total quantity of explosive materials stored in such group shall be treated as if stored in a single facility and shall comply with the minimum of distances specified in Section 181.198 from other storage facilities, inhabited buildings, passenger railways, and public highways.

(b) Storage facilities in which low explosives are stored shall be located at minimum distances from inhabited buildings, passenger railways, public highways, and from other storage facilities in which explosive materials are stored as specified in the table of distances for storage of low explosives (see Section 181.199): *Provided*, That this table shall not apply to any indoor storage facility. The distances shown therein shall not be reduced by the presence of barricades.

(c) Ammonium nitrate and storage facilities in which blasting agents are stored shall be located at minimum distances from storage facilities containing high explosives or blasting agents as specified in the Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents (see Section 181.200).

#### **Section 181.187 Construction of type 1 storage facilities.**

A type 1 storage facility shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and well ventilated.

(a) **Buildings.** All building type storage facilities shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances

and ventilation. Ground around such storage facilities shall slope away for drainage.

(1) **Masonry wall construction.** Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 6 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped coarse dry sand or weak concrete (a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be covered with a non-sparking material.

(2) **Fabricated metal wall construction.** Metal wall construction shall consist of sectional sheets of steel or aluminum not less than number 14 gauge, securely fastened to a metal framework. Such metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches in thickness, or shall have at least a 6-inch sand fill between interior and exterior walls. Interior walls shall be constructed of or covered with a nonsparking material.

(3) **Wood frame wall construction.** The exterior of outer wood walls shall be covered with iron or aluminum not less than number 26 gauge. An inner wall of nonsparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls, which space shall be filled with coarse dry sand or weak concrete.

(4) **Floors.** Floors shall be constructed of a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored.

(5) **Foundations.** Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings shall be enclosed with metal.

(6) **Roof.** Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than number 26-gauge iron or aluminum fastened to 7/8-inch sheathing.

(7) **Bullet-resistant ceilings or roofs.** Where it is possible for a bullet to be fired directly through the roof and into the storage facility at such an angle that the bullet would strike a point below the top of inner walls storage facilities shall be protected by one of the following methods:

(i) A sand tray shall be located at the tops of inner walls covering the entire ceiling area,

except that necessary for ventilation, lined with a layer of building paper, and filled with not less than 4 inches of coarse dry sand. (ii) A fabricated metal roof shall be constructed of 3/16-inch plate steel lined with 4 inches of hardwood. (For each additional 1/16-inch of plate steel, the hardwood lining may be decreased 1 inch.)

(8) **Doors.** All doors shall be constructed of 1/4-inch plate steel and lined with 2 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting or bolting (nuts on inside of door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) **Locks.** Each door shall be equipped with two mortise locks; or with two padlocks fastened in separate hasps and staples; or with a combination of mortise lock and a padlock; or with a mortise lock that requires two keys to open; or a three-point lock. Locks shall be five-tumbler proof. All padlocks shall be protected with 1/4-inch steel caps constructed so as to prevent sawing or lever action on the locks or hasps.

(10) **Ventilation.** Except at doorways, a 2-inch air space shall be left around ceilings and the perimeter of floors. Foundation ventilators shall be not less than 4 by 6 inches. Vents in the foundation, roof, or gables shall be screened and offset.

(11) **Exposed metal.** No sparking metal construction shall be exposed below the top of walls in the interior of storage facilities, and all nails therein shall be blind-nailed or countersunk.

(b) **Igloos, Army-type structures, tunnels, and dugouts.** Igloo, Army-type, tunnel, and dugout storage facilities shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earthmound covering of not less than 24 inches on the top, sides and rear. Interior walls and floors shall be covered with a non-sparking material. Storage facilities of this type shall also be constructed in conformity with the requirements of paragraph (a) (4) and paragraphs (a) (8) through (11) of this section.

#### **Section 181.188 Construction of type 2 storage facilities.**

A type 2 storage facility shall be a box, a trailer, a semitrailer or other mobile facility. It shall be bullet-resistant, fire-resistant,

weather-resistant, theft-resistant, and well ventilated. Except as provided in paragraph (c) of this section, hinges and hasps shall be attached to the covers or doors in the manner prescribed in Section 181.187 (a) (8) and the locking system shall be that prescribed in Section 181.187(a)(9).

(a) **Outdoor storage facilities.** Outdoor storage facilities shall be at least 1 cubic yard in size and supported in such a manner so as to prevent direct contact with the ground. The sides, bottoms, tops, and covers or doors shall be constructed of 1/4-inch steel and shall be lined with 2 inches of hardwood. Edges of metal covers shall overlap sides at least 1 inch. The ground around such storage facilities shall slope away for drainage. When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the Director.

(b) **Indoor storage facilities.** No indoor facility for the storage of high explosives shall be located in a residence or dwelling. When located in a warehouse, wholesale, or retail establishment, such storage facilities shall be provided with substantial wheels or casters to facilitate removal therefrom. No more than two indoor storage facilities shall be kept in any one building. Two storage facilities may be kept in the same building only when one is used for the storage of blasting caps, squibs, or similar items and the other facility is used for the storage of other high explosives. Each storage facility shall be located on the floor nearest the ground level and within 10 feet of an outside exit. Indoor storage facilities within one building shall be separated by a distance of not less than 10 feet. No indoor storage facility shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps. Indoor facilities shall be of wood or metal construction as prescribed in subparagraphs (1) or (2) of this paragraph.

(1) **Wood construction.** Wood indoor storage facilities shall have sides, bottoms, and covers or doors constructed of 2-inch hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than number 20 gauge. Nails exposed to the interior of such facilities shall be countersunk.

(2) **Metal construction.** Metal indoor storage facilities shall have sides, bottoms, and covers or doors constructed of number 12-gauge metal and shall be lined inside with a nonspark-

ing material. Edges of metal covers shall overlap sides at least 1 inch.

(c) **Cap boxes.** Storage facilities for blasting caps in quantities of 100 or less shall have sides, bottoms, and covers constructed of number 12-gauge metal and lined with a non-sparking material. Hinges and hasps shall be attached thereto by welding. A single five-tumbler proof lock shall be sufficient for locking purposes.

#### **Section 181.189 Construction of type 3 storage facilities.**

A type 3 storage facility shall be a "day-box" or other portable facility. It shall be constructed in the same manner prescribed for type 2 outdoor storage facilities in Section 181.188(a), except that it may be less than 1 cubic yard in size, and shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and well ventilated. Hinges, hasps, locks, and locks protection shall be in conformity with the requirements of Section 181.187(a) (8) and (9). The ground around such storage facilities shall slope away for drainage. No explosive materials shall be left in such facilities if unattended. The explosives materials contained therein must be removed to types 1 or 2 storage facilities for unattended storage.

#### **Section 181.190 Construction of type 4 storage facilities.**

A type 4 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a box, a trailer, or a semitrailer other mobile facility and shall be fire resistant, weather-resistant, and theft-resistant. They shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors of such storage facilities shall be lined with a non-sparking material. The doors or covers shall be metal or solid wood covered with metal. The foundations, locks, lock protection, hinges, hasps and interior shall be in conformity with the requirements of Section 181.187(a) (5), (8), (9), and (11).

(a) **Outdoor storage facilities.** The ground around such storage facilities shall slope away for drainage. When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the Director.

(b) **Indoor storage facilities.** No indoor facility for the storage of low explosives shall be



located in a residence or dwelling. When located in a warehouse, wholesale, or retail establishment, such storage facilities shall be provided with substantial wheels or casters to facilitate removal therefrom. No more than one indoor storage facility shall be kept in any one building. It shall be located on the floor nearest the ground level and within 10 feet of an outside exit. No indoor storage facility shall contain a quantity of low explosives in excess of 50 pounds.

#### **Section 181.191 Construction of type 5 storage facilities.**

A type 5 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a bin, a box, a trailer, or a semitrailer or other mobile facility and shall be theft-resistant. The doors or covers thereof shall be solid wood or metal. The hinges, hasps, locks, and lock protection shall be in conformity with the requirements of Section 181.187(a) (8) and (9).

(a) **Outdoor storage facilities.** The ground around such storage facilities shall slope away for drainage. When unattended, vehicular storage facilities shall have wheels removed or shall be otherwise effectively immobilized by kingpin locking devices or other methods approved by the Director.

(b) **Indoor storage facilities.** No indoor storage facility for the storage of blasting agents shall be located in a residence or dwelling.

#### **Section 181.192 Smoking and open flames.**

Smoking, matches, open flames, and spark-producing devices shall not be permitted in, or within 50 feet of, any outdoor storage facility.

#### **Section 181.193 Quantity and storage restrictions.**

Explosive materials in excess of 300,000 pounds and blasting caps in excess of 20 million shall not be stored in one storage facility. Blasting caps shall not be stored with other explosive materials in the same storage facility.

#### **Section 181.194 Storage within types 1, 2, 3, and 4 facilities.**

(a) Explosive materials within a storage facility shall not be placed directly against interior walls. Any devices constructed or placed within a storage facility shall not interfere with ventilation.

(b) Containers of explosive materials shall be stored by being laid flat with top sides up. Corresponding classes, grades, and brands shall be stored together within a storage facility in such a manner that class, grade, and brand marks are easily visible upon inspection. Stocks of explosive materials shall be stored so as to be easily counted and checked.

(c) Except with respect to fiberboard containers, containers of explosive materials shall not be unpacked or repacked inside a storage facility or within 50 feet thereof and shall not be unpacked or repacked in close proximity to other explosive materials. Containers of explosive materials shall be securely closed while being stored.

(d) Tools used for opening or closing containers of explosive materials shall be of non-sparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet shall be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors shall not be stored in any storage facility containing high explosives.

#### **Section 181.195 Housekeeping.**

Storage facilities shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors shall be regularly swept. Brooms and other utensils used in the cleaning and maintenance of storage facilities shall have no spark-producing metal parts. Floors stained by leakage from explosive materials shall be cleaned according to instructions of the manufacturer. When any explosive material has deteriorated to the extent that it is in a dangerous condition or if a liquid leaks therefrom, it shall be destroyed in accordance with the instructions of its manufacturer. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor storage facilities.

#### **Section 181.196 Repair of storage facilities.**

Prior to the interior repair of storage facilities, all explosive materials shall be removed and the interior shall be cleaned. Prior to the exterior repair of storage facilities, all explosive materials shall be removed if there exists a possibility that such repairs may produce sparks or flame. The explosive materials



removed from storage facilities under repair shall either be placed in other storage facilities appropriate for the storage of such materials under this subpart or placed a safe distance from the facilities under repair where they shall be properly guarded and protected until the repairs have been completed.

#### Section 181.197 Lighting.

No lighting shall be placed or used in a storage facility of type 1, 2, 3, or 4 except battery-activated safety lights or battery-activated safety lanterns.

#### Section 181.198 American table of distances for storage of explosive materials.

Explosives		Distances in feet when storage is barricaded			
Pounds over	Pounds not over	Inhabited buildings	Passenger railways	Public highways	Separation of magazines
2	5	70	30	30	6
5	10	90	35	35	8
10	20	110	45	45	10
20	30	125	50	50	11
30	40	140	55	55	12
40	50	150	60	60	14
50	75	170	70	70	15
75	100	190	75	75	16
100	125	200	80	80	18
125	150	215	85	85	19
150	200	235	95	95	21
200	250	255	105	105	23
250	300	270	110	110	24
300	400	295	120	120	27
400	500	320	130	130	29
500	600	340	135	135	31
600	700	355	145	145	32
700	800	375	150	150	33
800	900	390	155	155	35
900	1,000	400	160	160	36
1,000	1,200	425	170	165	39
1,200	1,400	450	180	170	41
1,400	1,600	470	190	175	43
1,600	1,800	490	195	180	44
1,800	2,000	505	205	185	45
2,000	2,500	545	220	190	49
2,500	3,000	580	235	195	52
3,000	4,000	635	255	210	58
4,000	5,000	685	275	225	61

Explosives		Distances in feet when storage is barricaded			
Pounds over	Pounds not over	Inhabited buildings	Passenger railways	Public highways	Separation of magazines
5,000	6,000	730	295	235	65
6,000	7,000	770	310	245	68
7,000	8,000	800	320	250	72
8,000	9,000	835	335	255	75
9,000	10,000	865	345	260	78
10,000	12,000	875	370	270	82
12,000	14,000	885	390	275	87
14,000	16,000	900	405	280	90
16,000	18,000	940	420	285	94
18,000	20,000	975	435	290	98
20,000	25,000	1,055	470	315	105
25,000	30,000	1,130	500	340	112
30,000	35,000	1,205	525	360	119
35,000	40,000	1,275	550	380	124
40,000	45,000	1,340	570	400	129
45,000	50,000	1,400	590	420	135
50,000	55,000	1,460	610	440	140
55,000	60,000	1,515	630	455	145
60,000	65,000	1,565	645	470	150
65,000	70,000	1,610	660	485	155
70,000	75,000	1,655	675	500	160
75,000	80,000	1,695	690	510	165
80,000	85,000	1,730	705	520	170
85,000	90,000	1,760	720	530	175
90,000	95,000	1,790	730	540	180
95,000	100,000	1,815	745	545	185
100,000	110,000	1,835	770	550	195
110,000	120,000	1,855	790	555	205
120,000	130,000	1,875	810	560	215
130,000	140,000	1,890	835	565	225
140,000	150,000	1,900	850	570	235
150,000	160,000	1,935	870	580	245
160,000	170,000	1,965	890	590	255
170,000	180,000	1,990	905	600	265
180,000	190,000	2,010	920	605	275
190,000	200,000	2,030	935	610	285
200,000	210,000	2,055	955	620	295
210,000	230,000	2,100	980	635	315
230,000	250,000	2,155	1,010	650	335
250,000	275,000	2,215	1,040	670	360
275,000	300,000	2,275	1,075	690	385

See footnotes at end of document.

(American Table of Distances for Storage of Explosives, as Revised and Approved by The Institute of Makers of Explosives, June 5, 1964)

### Section 181.199 Table of distances for storage of low explosives.

Pounds (over)	Pounds (not over)	Inhabited building distance (feet)	Public rail- road and highway distance (feet)	Above- ground magazine (feet)
(1)	(2)	(3)	(4)	(5)
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

(A portion of Table 5-4.1, as published in Department of Defense 4145.27 M, "DOD Ammunition and Explosives Safety Standards", March 1969.)

### Section 181.200 Table of recommended separation distances of ammonium nitrate and blasting agents from explosives or blasting agents.

Donor Weight		Minimum separation distance of receptor when barricaded <sup>1</sup> (ft.)		Minimum thickness of artificial barricades <sup>4</sup> (in.)
Pounds over	Pounds not over	Ammonium nitrate <sup>2</sup>	Blasting agent <sup>3</sup>	
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40

Donor Weight		Minimum separation distance of receptor when barricaded <sup>1</sup> (ft.)		Minimum thickness of artificial barricades <sup>4</sup> (in.)
Pounds over	Pounds not over	Ammonium nitrate <sup>2</sup>	Blasting agent <sup>3</sup>	
80,000	90,000	30	103	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

#### Note:

Recommended separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the Table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this Table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate should be included in the mass of the donor.

These distances apply to the separation of stores only. The American Table of Distances shall be used in determining separation distances from inhabited buildings, passenger railways and public highways.

<sup>1</sup> When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the Table shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where storage is in bullet-resistant magazines recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the American Table of Distances are not required.

<sup>2</sup> The distances in the Table apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer promulgated by the National Plant Food Institute; and ammonium nitrate failing to pass said test shall be stored at separation distances determined by competent persons and approved by the authority having jurisdiction.

<sup>3</sup> These distances apply to nitro-carbo-nitrates and blasting agents which pass the insensitivity test prescribed in the U.S. Department of Transportation (DOT) regulations.

<sup>4</sup> Earth, or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves are also acceptable.

(Reprinted from Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents, NFPA No. 492-1969 Edition, as approved by the Institute of Makers of Explosives.)

## Federal Explosives Storage Requirements

Following, in table form, are construction, housekeeping and storage requirements for Types 1 through 5 explosives storage facilities. These requirements are the minimum acceptable under Federal law and regulations (27 CFR, Part 181, Subpart J—Storage). In specific instances, variance from a particular requirement or requirements may be granted by the Regional Director.

This section includes (a) a table of the classes of explosives which may be stored in each of the five types of magazines; (b) a table of housekeeping and construction requirements that apply to all types of storage facilities; and (c) tables setting forth in detail the requirements that apply specifically to each of the five types of magazines.

### Types of Storage Facilities

(18 USC, Section 842(j))  
(27 CFR, Section 181.183)

Storage Type	Classes of Explosive Materials Which May Be Stored Therein
Type 1 (permanent)	High Explosives Low Explosives Blasting Agents
Type 2 (portable)	High Explosives Low Explosives Blasting Agents
Type 3 ("day-box" for temporary storage)	High Explosives Low Explosives Blasting Agents
Type 4	Low Explosives Blasting Agents *Electric Blasting Caps
Type 5	Blasting Agents

\*As a result of tests with electric blasting caps, it has been determined that these blasting caps are not subject to sympathetic detonation. Therefore, a Type 4 storage facility meets the necessary requirements for storage of electric blasting caps.

Note: 1. Blasting caps shall not be stored with other explosive materials in the same storage facility.

2. Explosives storage limitations and quantity restrictions are stated in 27 CFR Sections 181.186, 181.188(b), 181.188(c), 181.189, 181.190(b), and 181.193. For tables of distances for high explosives, low explosives, and blasting agents, see 27 CFR Sections 181.198, 181.199, and 181.200, respectively.

### Housekeeping and Construction Requirements Common to All Types of Storage Facilities

(18 USC, Section 842(j))  
(27 CFR, Sections 181.187, 181.194, and 181.195)

Item	Requirements
Hinges and Hasps	Shall be attached to doors by either Welding, OR Riveting, OR Bolting (nuts on inside of door).
Locks	Each door shall be equipped with either 2 mortise locks, OR 2 padlocks fastened in separate hasps and staples, OR A combination of a mortise lock and a padlock, OR Mortise lock requiring 2 keys to open, OR Three-point lock.  Locks shall be five-tumbler proof.  Padlocks shall be protected with 1/4" steel caps constructed to prevent sawing or lever action on locks or hasps.  Note: Outdoor-mobile storage facilities with one steel, case-hardened, five-tumbler padlock, having at least a 7/16" shackle diameter, have been determined by the Director to meet necessary requirements.
Lighting	No lighting shall be placed or used in a magazine of type 1, 2, 3, or 4 except battery-activated safety lights or battery-activated safety lanterns: Provided, That electrical illumination may be used when explosion-proof fixtures and wiring in rigid conduit are used inside and all electric switches are located outside the magazine.

## Type 1 Storage (Continued)

Item	Requirements
Housekeeping	<p>Storage facilities shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish.</p> <p>Explosive materials shall not be placed directly against interior walls of storage facility.</p> <p>Brooms and other cleaning utensils shall have no spark-producing metal parts.</p> <p>Only tools made of nonsparking materials shall be used in Types 1, 2, 3, and 4 magazines. (Metal slitters may be used for opening fiberboard containers. Metal tools other than nonsparking transfer conveyors shall not be stored in any magazine containing high explosives.)</p> <p>Area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than 25 feet in all directions.</p> <p>Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor storage facilities.</p>

## Type 1 Storage (18 USC, Section 842(j)) (27 CFR, Sections 181.187 and 181.197)

A type 1 storage facility shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout; and shall be bullet-resistant, weather-resistant, theft-resistant, and well-ventilated.

Item	Requirements
Masonry Wall	<p>Shall be constructed of either</p> <p>Brick, not less than 6" thick, OR</p> <p>Concrete, not less than 6" thick, OR</p> <p>Tile, not less than 6" thick, OR</p> <p>*Cement block, not less than 6" thick, OR</p> <p>*Cinder block, not less than 6" thick.</p> <p>*Hollow masonry units shall have all hollow spaces filled with well-tamped coarse dry sand or weak concrete.</p>

Item	Requirements
Metal Wall	<p>Sectional sheets of one of the following shall be securely fastened to a metal framework:</p> <p>Steel, not less than 14 gauge, OR</p> <p>Aluminum, not less than 14 gauge.</p> <p>Shall be lined with either</p> <p>Brick, OR</p> <p>Solid cement blocks, OR</p> <p>Hardwood, not less than 4" thick, OR</p> <p>Shall have at least 6" sand fill between inner and outer walls.</p>
Wood Wall	<p>Exterior shall be covered with either</p> <p>Iron, not less than 26 gauge, OR</p> <p>Aluminum, not less than 26 gauge.</p> <p>Inner wall shall be constructed to provide not less than 6" between outer and inner walls, space filled with either</p> <p>Coarse dry sand, OR</p> <p>Weak concrete.</p>
Foundations	<p>Shall be constructed of either</p> <p>Brick, OR</p> <p>Concrete, OR</p> <p>Cement block, OR</p> <p>Stone, OR</p> <p>Wood posts</p> <p>(If piers or posts are used, space under buildings shall be enclosed with metal).</p>
Floors	<p>Shall be constructed of nonsparking material.</p> <p>Shall be strong enough to bear weight of maximum quantity to be stored.</p>
Roof	<p>Outer roof (except fabricated metal roofs) shall be covered with either</p> <p>26-gauge iron, fastened to 7/8" sheathing, OR</p> <p>26-gauge aluminum fastened to 7/8" sheathing.</p> <p>Where possible for a bullet to be fired directly through roof and into storage facility, magazine shall be protected by either</p> <p>A sand tray, filled with not less than 4" of coarse dry sand, covering the entire ceiling area; except that necessary for ventilation, OR</p> <p>Fabricated metal roof construction of 3/16" plate steel, lined with 4" hardwood (for each additional 1/16" of plate steel, hardwood may be decreased 1").</p>

**Type 1 Storage (Continued)**

Item	Requirements
<b>Doors</b>	Shall be constructed of 1/4" steel. Shall be lined with 2" of hardwood.
<b>Hinges, Hasps, and Locks</b>	See construction requirements common to all types of facilities.
<b>Interior</b>	Shall be constructed of or covered with a nonsparking material.  No sparking metal construction shall be exposed below top of walls in interior.  All nails shall be blind-nailed or countersunk.
<b>Ventilation</b>	2" air space shall be left around ceiling and perimeter of floors, except at doorways.  Foundation ventilators shall be not less than 4"×6".  Vents in foundation, roof, or gables shall be screened and offset.
<b>Ground</b>	Ground around storage facility shall slope away for drainage.
<b>Igloos, Army-Type Structures, Tunnels and Dugouts</b>	Shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials.  Shall have an earthmound covering of not less than 24" on the top, sides and rear.  Interior walls and floors shall be covered with a nonsparking material.  Floor, door, lock, ventilation, exposed metal, and lighting requirements are as stated above.
<b>Lighting</b>	See construction requirements common to all types of facilities.
<b>Housekeeping</b>	See housekeeping requirements common to all types of facilities.

**Type 2 Storage**

**(18 USC, Section 842(j))  
(27 CFR, Sections 181.188 and  
181.197)**

A type 2 storage facility shall be a box, a trailer, a semi-trailer, or other mobile facility. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and well ventilated.

Item	Requirements
<b>Hinges, Hasps, and Locks</b>	See construction requirements common to all types of storage facilities.

**Type 2 Storage (Continued)**

Item	Requirements
<b>Lighting</b>	See construction requirements common to all types of storage facilities.
<b>Housekeeping</b>	See housekeeping requirements common to all types of storage facilities.
<b>Restrictions on Type 2 Outdoor Storage Facilities</b>	
<b>Size</b>	Shall be at least 1 cubic yard in size.
<b>Ground</b>	Outdoor storage facilities shall be supported in such a manner so as to prevent direct contact with the ground.  Ground around storage facility shall slope away for drainage.
<b>Construction</b>	Sides, bottoms, tops, and covers or doors shall be constructed of 1/4" steel and lined with 2" of hardwood.
<b>Unattended Storage</b>	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
<b>Restrictions On Type 2 Indoor Storage Facilities</b>	
<b>Location</b>	No indoor storage facility for storage of high explosives shall be located in a residence or dwelling.  Storage facilities located in a warehouse, or wholesale or retail establishment, shall be provided with substantial wheels or casters to facilitate removal therefrom.  No more than two indoor storage facilities shall be located in any one building. Two storage facilities may be kept in the same building only when one is used for storage of blasting caps and the other for storage of other high explosives.  Each storage facility shall be located on the floor nearest ground level and within 10 feet of an outside exit.  Indoor storage facilities within one building shall be separated by a distance of not less than 10 feet.
<b>Quantity Restrictions</b>	No indoor storage facility shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps.

### Type 2 Storage (Continued)

Item	Requirements
<b>Construction</b>	Shall be of either <i>Wood</i> (Shall have sides, bottoms, and covers or doors constructed of 2" hardwood and shall be well braced at corners. They shall be covered with sheet metal (not less than 20 gauge). Exposed nails shall be countersunk), OR <i>Metal</i> (Shall have sides, bottoms, and covers or doors constructed of 12-gauge metal and shall be lined inside with a nonsparking material. Edges of metal shall overlap sides at least 1").
<b>Cap Boxes</b>	
	Storage facilities for blasting caps in quantities of 100 or less shall have sides, bottoms, and covers constructed of 12-gauge metal, with hinges and hasps attached by welding. One five-tumbler proof lock shall be sufficient for locking purposes.

### Type 3 Storage

(18 USC, Section 842(j))  
(27 CFR, Sections 181.188(a), 181.189, and 181.197)

A type 3 storage facility shall be a "day-box" or other portable facility. It shall be constructed in the same manner prescribed for type 2 outdoor storage facilities in 181.188(a), except that it may be less than 1 cubic yard in size, and shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and well ventilated.

Item	Requirements
<b>Construction</b>	Doors or covers, sides, bottoms, and tops shall be constructed of 1/4" steel and lined with 2" of hardwood. Edges of metal covers shall overlap sides at least 1".
<b>Hinges, Hasps, and Locks</b>	See housekeeping and construction requirements common to all types of storage facilities.
<b>Ground</b>	Ground around storage facility shall slope away for drainage.

### Type 3 Storage (Continued)

Item	Requirements
<b>Unattended Storage</b>	No explosive materials shall be left in storage facility if unattended. Explosive materials must be removed to types 1 or 2 storage facilities for unattended storage.
<b>Lighting</b>	See construction requirements common to all types of storage facilities.
<b>Housekeeping</b>	See housekeeping requirements common to all types of storage facilities.

### Type 4 Storage

(18 USC, Section 842(j))  
(27 CFR, Sections 181.187(a)(5), (11); 181.190; and 181.197)

A type 4 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a box, a trailer, or a semitrailer or other mobile facility; and shall be fire-resistant, weather-resistant, and theft-resistant.

Item	Requirements
<b>Construction</b>	Shall be of either Masonry, OR Metal-covered wood, OR Fabricated metal, OR Combinations of these materials.
<b>Doors or Covers</b>	Shall be constructed of either Metal, OR Solid wood covered with metal.
<b>Foundations</b>	Shall be constructed of either Brick, OR Concrete, OR Cement block, OR Stone, OR Wood posts  (If piers or posts are used, space under buildings shall be enclosed with metal).
<b>Interior</b>	Shall be lined with nonsparking material.  No sparking metal construction shall be exposed below top of walls in interior.  All nails shall be blind-nailed or countersunk.

### Type 4 Storage (Continued)

Item	Requirements
Hinges, Hasps, and Locks	See construction requirements common to all types of storage facilities.
Lighting	See construction requirements common to all types of storage facilities.
Housekeeping	See housekeeping requirements common to all types of storage facilities.
<b>Restrictions On Type 4 Outdoor Storage Facilities</b>	
Ground	Ground around storage facility shall slope away for drainage.
Unattended Storage	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
<b>Restrictions On Type 4 Indoor Storage Facilities</b>	
Location	<p>No indoor facility for the storage of low explosives shall be located in a residence or dwelling.</p> <p>Storage facilities located in a warehouse, or wholesale or retail establishment, shall be provided with substantial wheels or casters to facilitate removal therefrom.</p> <p>No more than one indoor storage facility shall be kept in any one building.</p> <p>Storage facility shall be located on floor nearest ground level and within 10 feet of an outside exit.</p>
Quantity Restrictions	No indoor facility shall contain a quantity of low explosives in excess of 50 pounds.

### Type 5 Storage

(18 USC, Section 842(j))  
(27 CFR, Sections 181.191 and 181.197)

A Type 5 storage facility may be a building, an igloo or Army-type structure, a tunnel, a dugout, a bin, a box, a trailer, or a semitrailer or other mobile facility; and shall be theft-resistant.

Item	Requirements
Doors or Covers	Shall be constructed of either Solid wood, OR Metal.
Hinges, Hasps, and Locks	See construction requirements common to all types of storage facilities.
Housekeeping	See housekeeping requirements common to all types of storage facilities.
<b>Restrictions on Type 5 Outdoor Storage Facilities</b>	
Ground	Ground around storage facility shall slope away for drainage.
Unattended Storage	Unattended vehicular storage facilities shall have wheels removed or shall be immobilized by kingpin locking devices.
<b>Restrictions on Type 5 Indoor Storage Facilities</b>	
Location	No indoor storage facility for storing of blasting agents shall be located in a residence or dwelling.

# Questions and Answers

## 18 U.S.C. Chapter 40 and 27 CFR Part 181

### 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 thereunder (27 CFR Part 181—Commerce in Explosives). Although the listing is by no means all-inclusive, it does contain a selection of those questions that ATF receives most frequently concerning explosives. References following some answers refer to the regulations and publications with which they are concerned. Several new questions concern recent changes in law and regulations that directly affect black powder transactions. See the following editor's note and the more complete explanation to be found elsewhere in this publication. An asterisk, which is keyed to the editor's note, refers the reader to the special article concerning the black powder exemption and appropriate portions of regulations. A Table of Contents, which reflects the

broad categories into which questions have been grouped, and a Subject Index have been included for your convenience.

These questions and answers apply only to federal law and regulations. Numerous States, counties and municipalities have enacted their own requirements relating to explosives. Compliance with Federal law and regulations in no way exempts persons from compliance with State or local requirements.

### Editor's Note

Under Public Law 93-639 and implementing regulations, transactions involving commercially manufactured black powder, in quantities of 50 pounds or less, for sporting, recreational or cultural purposes in antique firearms or antique devices have been largely deregulated. For further information, see the special article headed "Black Powder Transactions." Regulation changes also affect licensing, recordkeeping and storage.

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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 or store explosive materials. It also affects those who ship, transport, or receive explosive materials in interstate or foreign commerce.

### 2. To whom is the distribution by licensees of explosive materials prohibited?

Explosive materials may not be distributed to a person: (1) who is under 21 years of age; (2) who is under indictment

for or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (3) who is a fugitive from justice; (4) who is an unlawful user of marijuana or any depressant or stimulant drug or addicted to a narcotic drug; (5) who has been adjudicated as a mental defective or who has been committed to a mental institution. [181.26]

### 3. Does the law prevent some persons from dealing in explosives?

Yes. The same classes of persons listed in the answer

to Question #2 may not obtain a Federal explosives license. In addition, prospective licensees must meet the other requirements set forth in 181.49.

### 4. How does the law affect your dispositions to persons who do not have a license or permit?

A person who has not acquired a permit from the Federal government may, if he is not barred as discussed in questions 2 and 3, purchase explosives only in the State in which he resides. There is one exception: interstate purchases without permits are al-

lowed if the purchaser's State of residence has passed specific legislation allowing its citizens to transport into or receive in that State explosive materials purchased in a bordering State. All persons, however, who purchase explosives, either intrastate or interstate, must have storage facilities which meet the requirements of law, if the explosives are to be stored.

**5. What States allow their citizens to purchase explosive materials in bordering States?**

Washington, Wyoming, Delaware and Vermont. Pennsylvania allows such purchases for black powder only.

**6. When a person purchases explosive materials, does he have to sign anything?**

Yes. Form 4710 will be executed by the buyer. This form is used in the purchase of high explosives, low explosives, and blasting agents. A licensee or permittee who purchases explosive materials is not required to complete Form 4710.

**7. Does Federal law and regulations provide for 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 of ten years imprisonment and/or \$10,000 fine.

**8. When a person purchases explosive materials, is the Government notified?**

Yes. The dealer furnishes a copy of Form 4710 to ATF on a daily basis. [181.126(c)]

**9. Are thefts of explosives covered by the law?**

Yes. Any person discovering a theft or loss of explosive materials from his stock must report it to ATF, and to the appropriate local authorities within 24 hours (See ATF Ruling 77-13). Also, it is unlawful to receive, conceal, transport, ship, store, barter, sell or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen. [181.30]

**10. Will anyone investigate accidents involving explosives?**

Yes. 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, might also investigate such incidents, depending on the circumstances. [181.31]

**11. Are small arms ammunition reloaders affected by this law?**

No. The law specifically exempts small arms ammunition and components thereof; therefore, the primers and smokeless propellants used in small arms ammunition are exempt from the provisions of the law. [181.141(d)]

**12. Are unmixed binary explosives subject to regulatory controls of the law?**

No. Until the compounds are mixed they are not classified as explosives and, therefore, are not subject to control. However, once mixed, binary explosives are subject to all applicable Federal requirements. A person who regularly and continually combines compounds of binary materials to manufacture an explosive is engaged in the business of manufacturing explosives and shall be required to be licensed as a manufacturer. (ATF Ruling 75-31)

**13. Is the rocket propellant in model rocket kits considered to be an explosive?**

No. Propellant-actuated devices if manufactured, imported, or distributed for their intended purposes, are exempt from the law. [181.141(i)]

**14. Does ATF have any regulations governing the actual transportation of explosives?**

ATF does not regulate the transportation of explosives. This authority is vested in the Department of Transportation under the Hazardous Materials Transportation Act (49 USC 1801) and other acts. [181.141(a)]

**15. What is the Explosives List?**

The Explosives List is a comprehensive, but not all-inclusive, listing of the more common explosive materials that have been determined to be within the coverage of Title XI. The list is published annually by the Director, ATF. [181.23]

## Licenses & Permits

**16. I want to buy five sticks of dynamite from my local dealer to use on my property. Do I need a Federal user's permit?**

No, provided they are purchased in your State of residence and are not transported across State lines. The Feder-

al user's permit has no effect upon the actual use of explosives, either within or outside of the State of residence. A

Federal user's permit is required when a nonlicensee acquires or transports explosives in interstate or foreign commerce. A permit allows such transactions for personal use only.

It is important to note, however, that Federal explosives storage requirements apply to nonpermittees and nonlicensees as well as to permittees and licensees. Therefore, unless the explosives are being used, appropriate storage will be required as set forth in Federal regulations. [181.181]

**17. What activities are covered by licenses and permits?**

Licenses are issued to explosives manufacturers, importers, and dealers. Any individual or business entity intending to engage in any of these activities must first obtain a license. A permit allows acquisition and transportation of explosives in interstate or foreign commerce. [181.41(e)]

Separate licenses are needed at each premises where the activity licensed is conducted. However, only one permit is needed by a permittee who uses explosives in more than one location. (See question 29)

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

No. Anyone who sells black powder, regardless of the quantity, must be licensed as an explosives dealer.

**19. How would a person qualify for a Federal license or permit?**

A person must be 21 years of age or over; must not be within a prohibited category (see Q & A #2); must not have willfully violated any of the provisions of the Act or the regulations; must have prem-

ises in the State from which he intends to conduct business; must have a place of storage for explosive materials which meets the standards of the Federal regulations regarding public safety and security against theft; and must be familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business. [181.49(a) & (b)]

A Form 4705 must be filed to obtain a license, and a Form 4707 must be filed to obtain a permit.

**20. 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. [181.62]

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

With two exceptions, permits and licenses are valid for one year. The two exceptions are manufacturer-limited licenses, which are valid for 30 days from the date of issuance; and user-limited permits, which are valid for a single purchase transaction only. [181.51]

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

Yes. The Regional Regulatory Administrator may revoke any license or permit if the holder has violated any provisions of the law or regulations.

**23. What are the fees for licenses and permits?**

The license fees are:

- 1.—Manufacturer—\$50
- 2.—Manufacturer-limited (nonrenewable)—\$5

3.—Importer—\$50

4.—Dealer—\$20

5.—The permit fees are:  
User —\$20; User-limited (nonrenewable)—\$2

The renewal fee for licenses and permits is one-half the original fee. [181.42 & .43]

**24. Will the Government investigate an application for license or permit?**

Yes. ATF will investigate all applications, and inspect all places of storage before issuing a license or permit. Mining operations will be inspected by the Mine Safety and Health Administration.

**25. What may a licensed dealer do?**

A licensed dealer may engage in the business of distributing explosives materials at wholesale or retail. [181.11 (Definition of dealers)]

**26. What may a licensed importer do?**

A licensed importer may engage in the business of importing or bringing explosive materials into the United States for sale or distribution. [181.11 (Definition of Importer)] It is not necessary for a licensed importer to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials. [181.41(b)]

**27. What may a licensed manufacturer do?**

Licensed manufacturers may engage in the business of manufacturing explosive materials for purposes of sale or distribution, or for their own use, except that a licensed manufacturer-limited may only manufacture explosive materials for his own use. [181.11]

It is not necessary for a licensed manufacturer to also obtain a dealer's license to engage in business on his licensed premises as a dealer in explosive materials. [181.41(b)]

**28. How long does it take to get a license or permit?**

The Regional Regulatory Administrator shall approve or deny a license or permit application within a 45-day period beginning on the date that a properly executed application is received from the Service Center Director. [181.49(c)]

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

Yes. A separate license is required for each location, but a separate license is not required for facilities used only for the storage of explosive materials. Also, a separate license is not required for a location used by the licensee solely for the storage of records relating to the business. [181.41(b)]

**30. Must a person who engages in the business of manufacturing and importing have separate licenses?**

Yes. The licenses for manufacturing and importing allow a person to do separate and distinct things; a separate license is required for each activity. However, a manufacturer or an importer does not need a separate dealer's license in order to distribute explosive materials from his licensed premises. [181.41(b)]

**31. Does a licensed manufacturer need a separate license for his own on-site manufacture?**

No. As long as the on-site manufacturing takes place in the internal revenue region in which the manufacturer's license is held. [181.41(b)]

**32. 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 acquire residency in that State by virtue of the work being performed. Explosives purchases made by these companies in State where work is being performed are considered to have been made within their State of residence; therefore, no permit is required. (ATF Ruling 76-4)

**33. Does a licensed dealer need a permit to use explosives outside the State in which his business premises is located?**

No. No permit is required to use explosives (see Q&A 16). The dealer, by virtue of his license, is authorized to acquire and to transport explosives in interstate commerce.

**34. Do I need a permit to transport explosives in my vehicle solely within my State of residence?**

No.

**35. How does the truck driver for an explosives licensee/permittee qualify to purchase explosives for his employer?**

The driver must be on the current certified list of representatives or agents authorized to acquire explosives on behalf of that employer. [181.105(e)]

**36. When an explosives licensee/permittee sends his truck driver to the distributor's premises for explosives which have been purchased by the licensee/permittee, will the driver be required to sign any forms?**

The driver will be required to identify himself and to complete and sign Section A of Form 4721. [181.103(d)]

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

Yes. Prior to expiration of the license or permit, a licensee or permittee will be notified by way of Form 4706, Application for License Renewal; or Form 4708, Application for Permit Renewal, which must be timely filed in order to effect renewal. [181.46]

**38. I have timely filed my application for renewal but I have not received my renewed license or permit. May I continue in business? If so, for how long?**

Yes. You may continue to operate pursuant to your current license or permit until the application for renewal is acted upon.

**39. When may sales of explosives by licensed dealers be made to residents of adjoining States?**

Sales may be made legally to the resident of a bordering State only if that State has enacted specific legislation allowing its residents to purchase explosive materials in a bordering State. (See Q&A 5) [181.26, 181.105(c)]

## Recordkeeping

**40. Does a person who obtains a license or permit have to keep records of explosive materials transactions?**

Yes. A licensee or permittee must keep records of all acquisitions and dispositions of explosive materials. [181.107]

**41. How does one account for explosive materials in his records?**

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

**42. Must a permittee or licensee 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. At the close of business each day, explosives shall be recorded by class, in accordance with the three classes set forth in

181.182, as to the total quantity received in and removed from each magazine during the day and as to totals remaining on hand at the end of each day. [181.127]

**43. Must I keep my explosives records on the site of the magazine to which these records pertain?**

No. A licensee or permittee proprietor of an approved explosives storage facility may keep the records required by 27 CFR 181.127 at a centrally located area on the licensed premises, provided a separate record of daily transactions for each magazine is maintained. (ATF Ruling 75-30)

**44. When must a report be made of a shortage or theft of explosive materials?**

Any discrepancy which might indicate a theft or loss shall, within 24 hours, be reported by telephone to ATF (toll free: 800-424-9555). Licensees and permittees must confirm the report by filing a

completed Form 4712 with the nearest ATF District Office. All other persons must confirm the report by letter to the nearest ATF office. A report must also be made to local authorities. [181.30, .165; ATF Ruling 77-13]

**45. Where may I obtain additional copies of Form 4710?**

They are available at no charge from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206.

**46. What forms will the buyer of black powder have to sign at the time of purchase?**

If 50 pounds or less is being bought, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices, Form 5400.3 will be signed. If black powder is being bought for any other purpose and in any amount, Form 4710 will be signed by the buyer.

## Storage

**47. Who must meet storage requirements?**

All persons who store explosive material shall store them in conformity with the provision of Subpart J of the regulations. [181.29, 181.164, 181.181(a)]

**48. What are the classes of explosives for storage purposes?**

There are three categories of explosives materials:

1. High explosives. (For example, dynamite.)

2. Low explosives. (For example, black powder.)

3. Blasting agents. (For example, ammonium nitrate-fuel oil, and certain water gels.) [181.182]

**49. May a person store explosives in a residence or dwelling?**

No. A person may not store explosive materials in a residence or dwelling. Under certain conditions storage facilities may be located in a warehouse or in a wholesale or retail establishment. An outdoor storage facility must be located at a minimum distance from inhabited build-

ings and other objects in accordance with the applicable table of distances. [181.186, 181.188(b), 181.190(b), 181.191(b); ATF Ruling 75-20]

**50. What is the "American Table of Distances?"**

This table lists the minimum acceptable distances separating high explosives storage facilities from inhabited buildings, passenger railroads, public highways, and other explosives storage facilities. This table is reprinted in Section 181.198 of the regulations.

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

The total weight is considered to be high explosive. The table in Section 181.198 would apply.

**52. Is it necessary to inspect one's storage facilities on a regular basis?**

Yes. Any person storing explosives must inspect his storage facilities at intervals not greater than three days to determine whether the contents are intact or if theft or unauthorized entry has occurred. [181.184]

**53. What are the requirements for relocating an approved storage facility or making changes or additions to the same?**

You must notify the Regional Regulatory Administrator in duplicate, of the change in location of permanent storage facilities. Complete Form 4705 or 4707 and submit it to the Regional Regulatory Administrator for an amended permit to include the changes or additions to storage. The change

may be made after receipt of the amended permit. [181.54(c)]

**54. Is any type of black powder fuse exempted from storage requirements?**

Yes, 3/32-inch pyrotechnic safety fuse for use in small arms is exempt from the explosives law and regulations.

**55. With the exception of 3/32-inch pyrotechnic safety fuse for use in small arms, must black powder fuses in general be stored in approved storage facilities?**

Yes. Igniter fuses, time fuses, blasting fuses, safety fuses, or other black powder fuses, by whatever name known, that are designed for use with high explosives in blasting operations must be stored in approved storage facilities.

**56. Is smokeless powder for use in small arms ammunition subject to storage requirements?**

No. Smokeless powder for use in small arms ammunition is exempt from the law and regulations. [181.141(d)]

**57. 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 storage facility. Do the regulations and the Table of Distances apply to this office 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 manufacturer and is used in connection with the manufacture, transportation, storage, or use of explosives materials is not an "inhabited building" as defined in 27 CFR 181.11. (ATF Ruling 75-20)

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

You may give them to your brother only if he resides in the same State in which you reside. If either you or your brother store the dynamite, storage must be in conformity with Federal regulations.

## Fireworks

(See ATF Ruling 79-8)

**59. Are display fireworks considered to be explosives?**

Yes. Display fireworks contain chemical mixtures which are classified as explosive in the Explosives List compiled by the Director, ATF. Such fireworks fall within the category of low explosives, and are regulated in the same manner as are other low explosives. The Department of Transportation classifies display

fireworks as Class B explosives.

**60. What fireworks are exempted from regulation?**

Common fireworks which are classified by the Department of Transportation as Class C explosives are exempted from regulation. Common fireworks are generally small, visible-effects fireworks, but also includes small firecrackers less than 1/2-inch in

length and 1/4-inch in diameter with a pyrotechnic charge of less than two grains. A list of common fireworks is contained in 49 CFR 173.100(r)

**61. Is a license required to manufacture fireworks?**

No. A manufacturer of fireworks need only have a license if he manufactures fireworks ingredients which constitute explosive materials. (See question 63)

**62. Are certain fireworks subject to Federal storage regulations?**

Yes. All special or display fireworks which are defined by the Department of Transportation as class B explosives in 49 CFR 173.88(d) are considered to be low explosives and must be stored in Type 4 storage facilities. This class includes all fireworks which are designed to produce an audible effect and contain a pyro-

technic charge in excess of two grains. Such items as cherry bombs, silver salutes, and M-80's are included in the display fireworks category because they normally contain more than two grains of pyrotechnic charge.

**63. Would a manufacturer of common fireworks, which are exempt from regulation, need a permit in order to acquire explosives ingredients for fireworks he manufactures?**

Yes, if he acquires such ingredients in interstate or foreign commerce.

**64. Although a manufacturer of display fireworks has no manufacturer's license because he does not manufacture explosives ingredients for such fireworks, does he need a license to deal in display fireworks?**

Yes, he would need a license to deal in display fireworks.

# ATF Explosives Rulings and Procedures

Following are digests of ATF rulings on explosives matters which are of special significance to explosives licensees and permittees. The full texts of these rulings can be found in the *ATF Bulletin*; the appropriate *Bulletin* citation is listed following the ruling number at the end of each digest item. Also included is a digest of ATF Procedure 75-4, which was incorporated in Industry Circular 75-10.

## Subject Index

1. Meaning of Terms, "Inhabited Buildings," (ATF Ruling 75-20)
2. Construction of Storage Facilities—Concrete Floors, (ATF Ruling 75-21)
3. Daily Summary of Magazine Transactions, (ATF Ruling 75-30)
4. Meaning of Terms, "Engaged in the Business," (ATF Ruling 75-31)
5. Identification of Explosive Materials, (ATF Ruling 75-35)
6. Meaning of Terms, "State of Residence," (ATF Ruling 76-4)
7. One Sale with Multiple Deliveries (ATF Ruling 76-10)
8. Reporting Theft or Loss of Explosives Materials (ATF Ruling 77-13)
9. Storage of Electric Blasting Caps with other Explosive Materials (ATF Ruling 77-24)
10. Alternate Recordkeeping and Storage Requirements for Licensees Involved with Special Fireworks (ATF Ruling 79-8)
11. Explosives Storage Facility Descriptions, (ATF Procedure 75-4)

## 27 CFR 181.11: Meaning of Terms "Inhabited Buildings"

ATF has held that a building, such as an office or repair shop, which is a part of the premises of an explosives manufacturer and is used in connection with the manufacture, transportation, storage, or use of explosive materials is not an "inhabited building" as defined in 27 CFR 181.11.

Regulations in 27 CFR 181.11 define "inhabited building" as any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage or use of explosive materials.

These provisions are intended to provide protection to persons who inhabit buildings located near premises where explosives are manufactured, stored, etc. However, it is the intent of section 181.11 to except buildings used by the explosives industry in connection with the manufacture, transportation, storage, or use of explosive material from the table of distance requirements on "inhabited buildings." ATF Ruling 75-20, 75 C.B. 64

## 27 CFR 181.187 & .190:

### Construction of Storage Facilities

ATF has held that explosives storage facilities with smooth-finished concrete floors that were constructed under contract for the use of the Department of Defense and that are presently being leased to licensees and permittees for the storage of commercial explosives are considered to be in compliance with the requirements for nonsparking floors, as set forth in 27 CFR 181.187 (a) (4), 181.187(b), and 181.190, for the storage of all types of fully packaged explosives, pyrotechnics and propellants, with the exception of black powder. Any other such magazines which have smooth finished concrete floors and which meet or exceed the Department of Defense construction specifications will also be considered to be in compliance with the requirements of Part 181 with respect to nonsparking floors.

It is the responsibility of the licensee or permittee to provide verification that such facilities were manufactured under the Department of Defense specifications or that the facilities meet or exceed such specification standards.

If the Regional Director determines that the concrete floors of Type 1 or Type 4 explosives storage facilities do not meet the preceding requirements, he will require such floors



to be covered with a nonsparking material, such as epoxy paint or mastic. ATF Ruling 75-21, 75 C.B. 67

## **27 CFR 181.127: Daily Summary of Magazine Transactions**

ATF has held that a licensee or permittee proprietor of an approved explosives storage facility may keep the records required by 27 CFR 181.127 at a centrally located area on the licensed premises, provided a separate record of daily transactions for each magazine is maintained.

Regulations in 27 CFR 181.127 dealing with daily transactions in explosives provide that the inventory shall be entered in a record of daily transactions to be maintained at each magazine of an approved storage facility. ATF Ruling 75-30, 75 C.B. 66

## **27 CFR 181.11: Meaning of Terms "Engaged in the Business"**

ATF has held that companies, such as public utility companies engaged in line and facility construction, which manufacture explosives on a regular or continual basis are considered to be engaged in the business of manufacturing explosive materials and must be appropriately licensed as required by 18 U.S.C. 842.

The term "Manufacturer" is defined in 18 U.S.C. 841 (h) as "any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution for his own use."

Although the term "engaged in the business" is not susceptible to a rigid definition, it is generally interpreted to imply an element of continuity or habitual practice; such an element is clearly present in the operations of companies as outlined in paragraph one. Therefore, these companies are considered to be "engaged in the business" and must be licensed as explosives manufacturers. See ATF Ruling 75-31, 75 C.B. 65

## **27 CFR 181.109: Identification of Explosive Materials**

The Bureau has held that any method, or combination of methods, for affixing the re-

quired marks to the immediate container of explosive materials, or outside container used in the packaging thereof, is authorized, provided the identifying marks (1) are legible, (2) show all required information and, (3) are not rendered undecipherable by extended periods of storage. Where it is desired to utilize a coding system and to omit printed markings on the container, a letterhead application displaying the coding to be used and the manner of its application shall be filed and approved by the Director, ATF, prior to the use of the proposed coding. Further, where a manufacturer operates his plant for only one shift during the day, the shift of manufacture need not be shown.

The above holding by ATF came in response to inquiries as to whether methods of affixing identifying marks to containers of explosive materials, other than the traditional stamping of the marks in ink or use of decals, could be authorized for use by licensed manufacturers under the provisions of 27 CFR 181.109.

It has been found that when explosive materials are stored for a period of time in polyethylene or other soft containers, the seepage of oil or other liquid components of the explosive material through the container walls will tend to render illegible the identifying marks on the container. A manufacturer proposed a more permanent method of marking plastic containers by using a system of perforated numbers and code symbols similar to that used on cancelled checks. This perforated coding would be in addition to other identifying marks stamped in ink on the container. The manufacturer contends that although the ink may become illegible, the perforated coding will continue to provide the identification required by 27 CFR 181.109.

Regulations in 27 CFR 181.109 provide in part that each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The marks shall identify the manufacturer, location, date, and shift of manufacture. The manufacturer shall place the required mark on each cartridge, bag or other immediate container of explosive materials manufactured for sale or distribution, and also on any outside container. ATF Ruling 75-35, 75 C.B. 65

## 27 CFR 181.11: Meaning of Terms "State of Residence"

ATF has held that, if a person is a corporation or other business entity, "State of residence" means the State in which such corporation or other business entity maintains a "place of business." A business entity establishing another "place of business" or "job site" in another State would acquire a "State of residence" in that State as well. For example, a company engaged in construction work would acquire a residence in each State wherein its work is performed. Its place of business in that State would be the job site at which business is carried on. It would not be essential to a determination of State of residence that a branch office be maintained in, or administrative work performed in, the States where job sites are located.

Such a company would not, therefore, need a permit to acquire explosive materials from a licensee in a State for use at job sites located therein. Form 4710, Explosives Transaction Record, would show the out-of-State address of the business entity as the principal place of business and the location of the job site as the local place of business.

ATF has also received inquiries as to whether licensees may lawfully distribute explosive materials to companies when the employees arranging the purchase and accepting delivery reside outside the distributor's State of residence.

The fact that an employee of a resident business entity does not reside in the same State as the distributor is immaterial. The purpose of the data requested on Form 4710 is to identify the person authorized by the business entity to make the purchase of explosive materials on the entity's behalf and to assure the distributor that such person appears on the required certified list of names of representatives or agents authorized by the business entity to acquire the materials. Regulations (27 CFR 181.105(e)), implementing in part Title 18, U.S.C. 842(f), provide that each business entity acquiring explosive materials shall furnish the \*\*\* licensed dealer with a current certified list of the names of representatives or agents authorized to acquire explosive materials on behalf of such business entity. The purpose of the data requested on Form 4721, Explosives Delivery Record, is to identify the

employee of the business entity or the employee of a carrier accepting delivery of explosive materials on behalf of the distributee at the distributor's business premises.

Thus, in the case of business entities, the information required on Forms 4710 and 4721 with respect to employees or agents arranging for the distribution is not for the purpose of establishing the residence of such persons but only for identification purposes. ATF Ruling 76-4, 76 C.B. 104

## 27 CFR 181.126:

### One Sale with Multiple Deliveries

Under the provisions of 27 CFR 181.126, a sale or other distribution by a licensee or permittee shall not be made to a nonlicensee or nonpermittee unless the transaction is recorded on a Form 4710, the duplicate of which shall be forwarded to ATF no later than the close of the next business day.

Under certain conditions, a single Form 4710 may be used to cover a series of deliveries. When an initial sale has been consummated, with partial deliveries to be made in the immediate future, the requirements of .126 will have been satisfied if the following steps are taken:

1. Form 4710 shall be executed at the time the initial sale is made although delivery of the explosive material is extended over a period of time not to exceed 30 days.
2. The duplicate Form 4710 shall be forwarded to the regional director on or before the close of business on the business day next succeeding that on which the initial sale is made. It shall include in the block provided for identifying the explosive materials (item 20 of Form 4710, Rev. 11-75) a statement that the Form 4710 covers delayed deliveries of the explosive materials specified therein.
3. The original Form 4710 retained by the licensee as part of his required records shall subsequently be noted to accurately reflect the date of each separate delivery and shall identify and describe each separate lot of explosive materials delivered.
4. In lieu of showing the separate deliveries on his retained copy of Form 4710,

the proprietor may attach to such retained record a copy of the delivery record or a copy of the bill of lading or commercial invoice covering each delivery, provided that, as to each such delivery, the attachment contains the date of the delivery and all the information required by item 20 of Form 4710.

5. All other regulatory requirements and instructions relating to the completion of the form must be complied with. ATF Ruling 76-10, 1976 C.B., page 105.

## **27 CFR 181.30:**

### **Reporting Theft or Loss of Explosive Materials**

Section 842(k) of Title 18, U.S.C., and implementing regulations require that theft or loss of explosive materials be reported to ATF and local authorities within 24 hours after discovery of the loss or theft. All persons, including licensees and permittees, who store explosives must report their loss or theft within the above time frame by telephone to the Bureau. In addition, licensees and permittees are required to confirm their report by the filing of a Form 4712 and all other persons are to confirm their report by letter to their nearest ATF office. ATF Ruling 77-13, 1977 C.B., page 190.

## **27 CFR 181.193**

### **Storage of Electric Blasting Caps with other Explosive Materials**

ATF has been requested to authorize the storage of electric blasting caps in a separate compartment of a type two portable magazine.

Under the provisions of 18 U.S.C. 842(j), it shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

Regulations in 27 CFR 181.193 restrict the storage of blasting caps with other explosive materials. Section 181.181(b) provides that alternate storage magazines may be authorized for the storage of explosive materials when it

is shown that such alternate magazines are or will be constructed in a manner substantially equivalent to the standards of construction contained in the applicable regulations.

The Bureau recognizes that the transportation and the storage of explosive materials in the same vehicle along with electric blasting caps is often desired. The Institute of Makers of Explosives has established a recommended standard for such transport in their Safety Library Publication No. 22, dated November 5, 1971 and revised July 1976. This standard prescribes the minimum construction criteria for (a) a container securely attached (1) above the cab of a vehicle (see Figure 1, Exhibit A), or (2) attached to the vehicle frame under the cargo compartment (see Figure 2, Exhibit A), or (b) a built-in compartment in the cargo space of the vehicle (see Exhibit B). In addition to motorized vehicles, consideration was also given for the use of similar criteria on portable wheeled trailers being used as magazines under section 181.188 (a) of the regulations (see Exhibit E).

In order to insure standards of safety and security in the storage of explosive materials while allowing the industry a proper latitude in the construction of magazines, it is held that vehicles used for transporting and for storing explosive materials that are constructed in conformity with the standards listed below, and in compliance with all other safety and security provisions contained in Part 181, i.e., effectively immobilized when unattended, will meet the requirements of ATF regulations. Even though constructed on the same vehicle, each compartment will be considered as a separate magazine. The two magazines on the vehicle will, however, be considered as one magazine when applying the American Table of Distances.

#### **Construction Standards for Storage of Electric Blasting Caps (Non Mass-Detonating)**

- a. The container or compartment must provide for total enclosure of the electric blasting caps.
- b. The partition between the explosives storage compartment and the electric blasting cap compartment must be of laminate construction consisting of a A/C grade or better exterior plywood, gypsum wall board and low carbon steel plates. In order of arrangement, the

laminate must conform to the following, with minimum thickness of each lamination as indicated: 1/2 inch plywood, 1/2 inch gypsum wall board, 1/8 inch low carbon steel, and 1/4 inch plywood, with the 1/4 inch plywood facing the explosives storage compartment. See Exhibit C for details of laminate construction. The door to the electric blasting cap compartment must be of metal construction or solid wood covered with metal, the outside walls and top must be of the same construction as the rest of the vehicle or trailer. If high explosives, or bullet sensitive explosive materials are stored in the vehicle, then the storage compartment of the vehicle must be constructed so as to be bullet resistant.

c. As an alternative to the construction requirements shown in paragraph b, a container for use only as illustrated in Exhibit A may be used when constructed as follows:

1. The top, lid or door, and the sides and bottom of each container must be of laminate construction consisting of A/C grade or better exterior plywood, solid hardwood, and sheet metal. In order of arrangement, the laminate must consist of the following with the minimum thickness of each lamination as indicated: 1/4-inch plywood, 1-inch solid hardwood, 1/2-inch plywood, and 22-gauge sheet metal constructed inside to outside in that order. See Exhibit D for detail of laminate construction.

2. The hardwood must be fastened together with wood screws, the 1/2-inch plywood must be fastened to the hardwood with wood screws, the inner 1/4-inch plywood must be fastened to the hardwood with adhesive and the 22-gauge sheet metal must be attached to the exterior of the container with screws.

- d. The laminate composite material must be securely bound together by waterproof adhesive or other equally effective means.
- e. The steel plates at the joints of laminations must be secured by continuous fillet welds.
- f. All interior surfaces of the container or compartment must be constructed so as to prevent contact of contents with any sparking metal.
- g. There must be direct access to the container or into a compartment from outside the vehicle.
- h. Each container or compartment must have a snug fitting continuous piano-type hinged lid or door equipped with a locking device (or devices).
- i. Without permitting direct access to contents under normal conditions, the locking or hinging mechanisms must permit at least one edge of the lid or door to rise or move outward at least 1/2-inch when subjected to internal pressure.
- j. The exterior of the container or compartment must be weather resistant.

ATF Ruling 77-24, 1977 C.B., page 191

EXHIBIT "A"

PERMANENTLY MOUNTED CONTAINERS

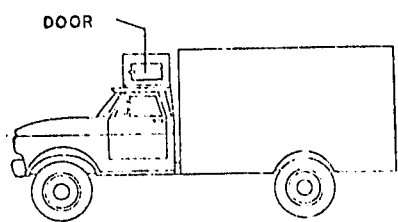


FIGURE 1

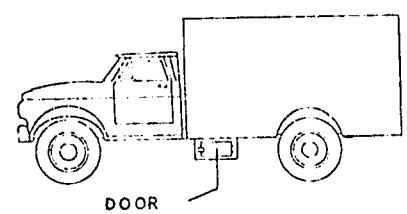


FIGURE 2

NOTE: THE CONFIGURATIONS SHOWN IN FIGURES 1 AND 2 ARE EQUALLY APPLICABLE TO MULTI-AXLE AND "CAB-OVER" VEHICLES.

EXHIBIT "B"  
COMPARTMENTS

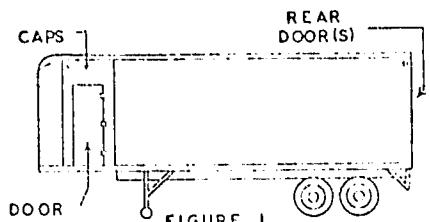


FIGURE 1

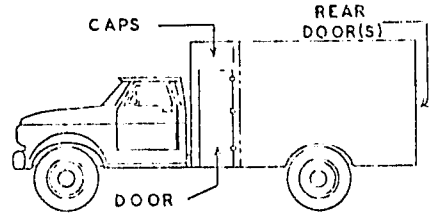


FIGURE 2

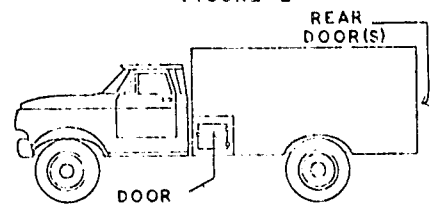
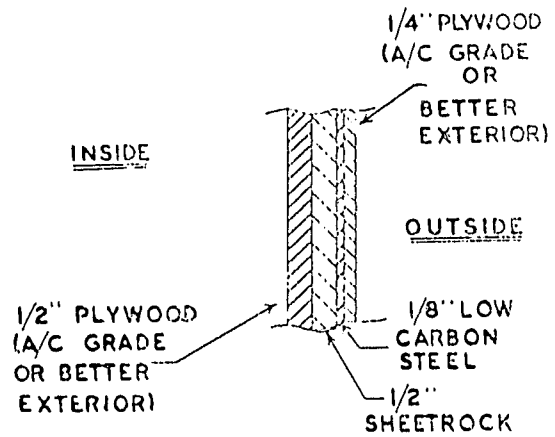


FIGURE 3

NOTE: THE CONFIGURATIONS SHOWN IN FIGURES 2 AND 3 ARE EQUALLY APPLICABLE TO MULTI-AXLE AND "CAB-OVER" VEHICLES.

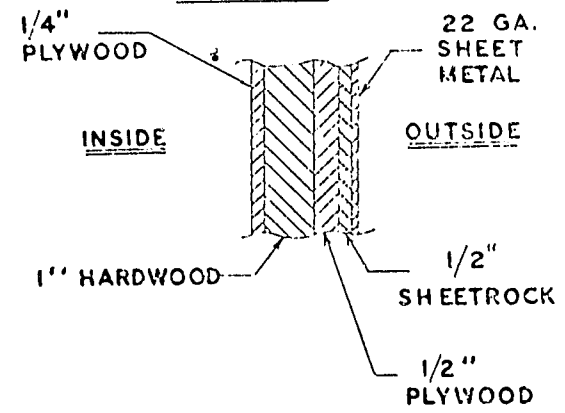
**Exhibits A-D  
Ruling 77-24**

EXHIBIT C



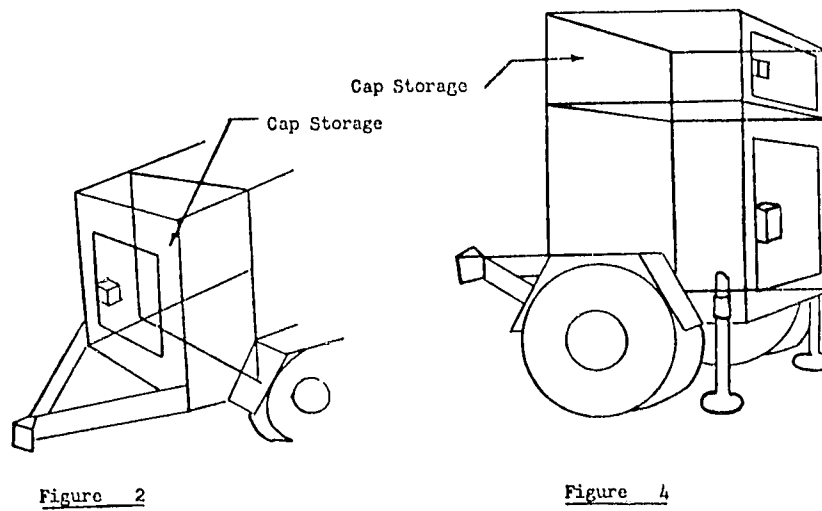
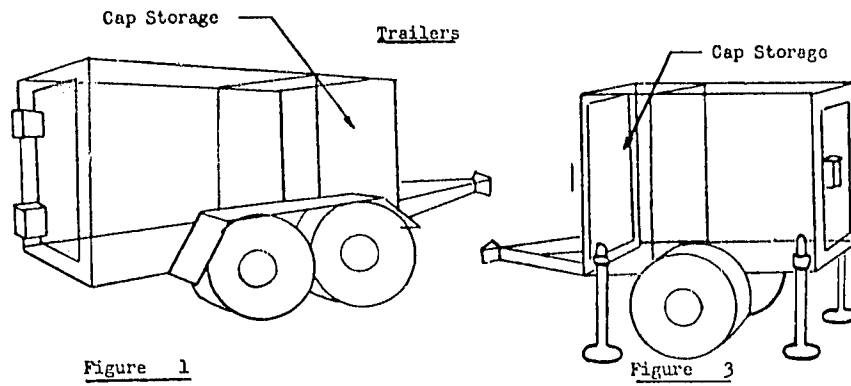
SKETCH OF LAMINATE CONSTRUCTION FOR CONTAINER OR COMPARTMENT FOR E.B. CAPS. USE AS ILLUSTRATED IN EXHIBIT A, B, AND E.

EXHIBIT D



SKETCH OF LAMINATE CONSTRUCTION FOR CONTAINER FOR E.B. CAPS RESTRICTED TO USE AS ILLUSTRATED IN EXHIBIT A.

EXHIBIT-E



**Exhibit E**  
**Ruling 77-24**

## 27 CFR 181.22, .122-.127, .185

### Alternate Recordkeeping and Storage for Special Fireworks

The Bureau has concluded a study of the effect of Federal explosives regulations on the operations of Federal explosives licensees who manufacture, import, and deal in special fireworks and Federal explosives permittees who use special fireworks. Special fireworks are classified by the Department of Transportation as Class "B" explosives and are regulated by the Bureau of Alcohol, Tobacco and Firearms as low explosives. Their manufacture and distribution require the manipulation of explosive materials in a manner that is utterly unique in the explosives industry.

#### A. Alternate Records

Regulations in 27 CFR 181.22 allow the Director to approve alternate methods or procedures subject to stated conditions when he finds that:

- (1) Good cause has been shown for the use of the alternate method or procedure;
- (2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and is substantially equivalent to that specifically prescribed method or procedure; and
- (3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

The regulations in 27 CFR 181.122, 181.123, 181.124 and 181.125 require the preparation of detailed, separate permanent records of explosive materials received and disposed of. The Bureau finds that entries on commercial records may, subject to the conditions of this ruling, be acceptable as alternative records instead of the separate records required by regulations. In addition the Bureau has determined that the requirement for recording the quantity of explosive materials may be met by recording the number and size of special fireworks articles. This determination applies to permanent records maintained by licensees

and permittees and to the alternate record-keeping provisions described below.

**Held**, licensees who manufacture, import and deal in special fireworks and permittees who use special fireworks may maintain records as described below, as an alternative to the requirements of 27 CFR Part 181. In order to comply with the regulations, licensees or permittees desiring to utilize the proposed alternate methods and procedures must submit an application to do so under the provisions of 27 CFR 181.22(a) regarding alternate methods and procedures.

1. **Production, acquisition, or importation of special fireworks; packaged complete displays; and packaged display segments such as grand finales.** In lieu of the record requirements of sections 181.122(b), 181.123(b), 181.124(b), and 181.125(c), the licensee or permittee may upon approval use invoices or other commercial records when such documents contain all information required by the regulations. Furthermore, the quantity of explosive materials produced, imported, or otherwise acquired may be recorded on the commercial record by showing the number and size of special fireworks articles. These invoices or other commercial records will be acceptable substitutes for required records if they are (a) filed in an orderly manner, (b) kept separate from records of materials other than fireworks, and (c) readily available for inspection on the licensed premises.
2. **Distribution of special fireworks; packaged complete displays; and packaged display segments.** In lieu of the record requirements of sections 181.122(c), 181.123(c) (1), 181.124(d), and 181.125(c), the licensee or permittee may upon approval use invoices or other commercial documents when such documents contain all information required by the regulations. Furthermore, the quantity of explosive materials distributed may be recorded on the commercial record by showing the number and size of special fireworks articles. These invoices or other commercial records will be acceptable substitutes for required records if they are (a) filed in an orderly manner, (b) kept separate from records of materials other than fireworks, and (c) readily available for inspection on the licensed premises.

## **B. Preparation of the Explosives Transaction Record, ATF Form 4710 (5400.4)**

The regulations in 27 CFR 181.126 provide that a licensee or permittee shall not sell or otherwise distribute explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an Explosives Transaction Record, Form 4710, which shall contain all of the information as indicated by the headings and instructions thereon:

**Held**, the item on Form 4710 requesting the identification of quantity, size and type of explosive materials including name of manufacturer and all manufacturer's marks of identification may be completed by identifying a commercial invoice. The identified commercial invoice must contain all the information required on the form and such invoice or a copy thereof must be attached to the Form 4710. Further, the requirement for identifying the quantity of explosive materials on Form 4710 may be met by recording the number and size of special fireworks articles.

## **C. Storage requirements**

Under 27 CFR 181.185 of the regulations, explosive materials that are in the process of manufacture or are being physically handled in the operating process of a licensee or permittee do not have to be kept in storage facilities meeting the standards of regulations. The Bureau has determined that explosive materials that have been entered into the manufacturing process for special fireworks, as well as those contained in special fireworks that are partially assembled, should be considered explosive material in the process of manufacture. In addition, as special fireworks in a finished state flow through display packing buildings or areas, they should be considered explosive materials that are being physically handled in the operating process of a licensee or permittee.

**Held**, the following explosive materials, subject to the stated conditions, are not considered subject to the storage requirements of 27 CFR Part 181 while they are on the premises of a licensee or permittee pursuant to 27 CFR 181.185.

1. Dry explosive powders and mixtures that have been entered into the manufacturing process for special fireworks articles;

2. Unfinished special fireworks articles; and

3. Individual special fireworks articles and packaged display segments that are received into designated packing buildings or areas for sorting, temporary storage, and packing into complete display units.

## **D. Preparation of the daily summary of magazine transactions**

The regulations in 27 CFR 181.127 provide that at the close of business each day each licensee and permittee shall record by class of explosive materials, as prescribed in the explosives list, 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.

**Held**, licensees and permittees may:

1. Maintain daily magazine summary records at any location on the business premises provided the records separately identify each magazine; and
2. Record the quantities of explosive materials received in and removed from the magazine during the day and the total remaining at the end of the day by showing, as applicable to the magazine contents:
  - (a) The number and size of individual special fireworks articles in a finished state; or
  - (b) The number of packaged display segments or packaged displays.

ATF Ruling 79-8, ATFB 1979-1, page 27

## **27 CFR 181.41: General**

### **Explosives Storage Facility Descriptions**

In ATF Procedure 75-4, which became effective November 1, 1975, the Bureau revised requirements for descriptions of explosives storage facilities that are filed by applicants intending to store explosive materials. (This Procedure is incorporated in Industry Circular 75-10.)

The Director, ATF, has determined that this additional descriptive information is required in order to insure compliance with the law and regulations. Accordingly, Form 4705, Application for License, and Form 4707, Application for Permit, have been revised. Follow-



ing is the text of the Procedure, beginning with Section 3.

**Sec. 3. Licenses.** A person intending to engage in business as an importer, a manufacturer of, or a dealer in, explosive materials shall complete Form 4705, Application for License, in accordance with the instructions on the form, and forward the forms with the license fee to the office specified on the form. If approved, the Regional Director (ATF) will issue a license and return a copy of the application to the applicant. At the time of renewal of a license the Regional Director may require the licensee to file a new or amended application, or additional descriptive pages to be attached to the application, upon a determination that the licensee's currently approved application is inaccurate or does not fully describe the storage facilities. If the application is denied, the applicant will be advised in writing of the reasons for the denial.

**Sec. 4. Permits.** A person intending to acquire, transport, ship, import or receive explosive materials in interstate or foreign commerce for his own use and not for resale shall complete Form 4707, Application for Permit, in accordance with the instructions on the form and forward the forms with the permit fee to the office specified on the form. If approved, the Regional Director (ATF) will issue a permit and return a copy of the application to the applicant. At the time of renewal of a permit the Regional Director may require the permittee to file a new or amended application, or additional descriptive pages to be attached to the application, upon a determination that the permittee's currently approved application is inaccurate or does not fully describe the storage facilities. If the application is denied, the applicant will be advised in writing of the reasons for the denial.

**Sec. 5. Storage.** .01 If explosive materials are to be stored, the requirements of 27 CFR Part 181, Subpart J—Storage, must be complied with before the application will be approved. An applicant for a license or permit who intends to store explosive materials shall

fully describe the intended storage facilities to support the applicant's affirmation that the storage facilities meet the requirements set forth in 27 CFR Part 181, Subpart J—Storage.

.02 The description should, as a minimum, include the following information:

- (a) The type of magazine (building, igloo, tunnel, portable box, portable trailer, etc.)
- (b) The location and distance from applicant's place of business.
- (c) The distance to the next nearest storage magazine.
- (d) A description of significant terrain features and physical structures, such as buildings, roads, utilities and other facilities which could be damaged if the magazine exploded. Indicate the distance between the magazine and the feature.
- (e) The materials (including dimensions and thicknesses) used for the structure (e.g. concrete, corrugated iron over wood, plywood, tin and earth, etc.)
- (f) The security, physical safeguards, locks, safety equipment, and anti-theft measures.
- (g) The dimensions and capacity of each magazine.
- (h) The class of explosive materials to be stored in each magazine.
- (i) The owner(s) of the magazine, if other than the applicant.
- (j) The names and telephone numbers of individuals who could open the magazines for inspection by ATF officers.
- (k) Any special conditions, such as inaccessibility in winter, etc.

**Sec. 6. Effective Date.** The effective date of this procedure is November 1, 1975.

**Sec. 7. Inquiries.** Inquiries regarding this ATF Procedure should refer to its number and be addressed to the office of your Regional Director.

ATF Procedure 75-4, 75 C.B. 79

# Explosives License/Permit Numbering System Expanded

The Bureau recently instituted a new explosives license numbering system. Through the use of these expanded license numbers, ATF can apply computer operations to increase the efficiency of the explosives licensing program. This procedure offers the potential for saving both money and manpower.

It is not necessary, however, for you as a licensee to use the expanded number in your

day-to-day operations. The basic license number previously issued to you has not been changed and may still be used on your letterheads, business cards, invoices, records, etc. This basic number is composed of digits 2 and 3, and 11 through 15; a key for interpreting the meaning of all the digits is shown below.

This same expanded numbering system will apply also to explosives permits.

## Digit

## Stands For

1	Alcohol, Tobacco and Firearms Region
2,3	State-Alpha designation
4,5,6	County of State where business is conducted
7,8	Type of License
9,10	Expiration Date code
11-15	Sequence Number of License

Name		License (18 U.S.C. Chapter 40, Explosives)	
1. License No. 9 CA 001 20 H9 00001		2. Expiration Date Aug. 1, 1979	
3. Employer Identification No. or Social Security No. 76 012 3456		4. County Alameda	
5. Class of License and Explosives <u>20</u>			
MANUFACTURER OF:		DEALER IN:	
20. High Explosives		26. High Explosives	
21. Low Explosives		27. Low Explosives	
22. Blasting Agents		28. Blasting Agents	
IMPORTER OF:		MANUFACTURER (LIMITED) OF:	
23. High Explosives		30. High Explosives	
24. Low Explosives		31. Low Explosives	
25. Blasting Agents		32. Blasting Agents	
6. Issued by Regional Director, ATF, at (Address) San Francisco, CA 94105			
7. Signature of Regional Director			

ATF Form 4706 (3-75) Part 1 PREVIOUS EDITIONS ARE OBSOLETE

SEE "WARNING" ON BACK



Department of the Treasury  
Bureau of Alcohol, Tobacco  
and Firearms

# Effect of Title XI on the Fireworks Industry

Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. Chapter 40) establishes controls over explosive materials, including black powder and other pyrotechnic compositions commonly used in fireworks. Part 181 of Title 27, Code of Federal Regulations (CFR), contains the regulations which implement Title XI.

Section 181.141(h) exempts regulation "the importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances." This section does not exempt "special fireworks," often referred to as "display fireworks," which are classified by the Department of Transportation as Class "B" explosives (see Question and Answer section for additional information on fireworks). The exemption applies only to "common fireworks" in a finished state classified by Department of Transportation regulations as Class "C" explosives (49 CFR 173.100).

## Who Needs a License?

- 1) Manufacturers of black powder;
- 2) Manufacturers of any other explosive material used in manufacturing "special fireworks" (Class "B" explosives) or "common fireworks" (Class "C" explosives); and
- 3) Importers of or dealers in "special fireworks."

## Who Needs a Permit?

- 1) A person acquiring or transporting "special fireworks" interstate for his own use and not for resale. Agencies of the United States or of any State or political subdivision thereof are exempt from permit requirements; and
- 2) A person, other than a licensee, acquiring or transporting explosive materials interstate for use in manufacturing "special fireworks" or "common fireworks," unless the materials consist of black powder of an exempt quantity.

Frequently, persons contracting for display fireworks (such as would be appropriate for Fourth of July observances, for example) from an out-of-state dealer receive a total service, including the services of a pyrotechnician who transports display fireworks in interstate commerce to the site of the display and con-

ducts or supervises the display. In these instances, the customers purchase the dealer's services rather than the explosive materials themselves, and the cost of the services includes the dealer's expense in providing the fireworks utilized. When business is transacted in this manner, the customers purchasing and receiving the services need not obtain Federal permits since they are not actually acquiring explosive materials outside their States of residence, nor are they receiving such materials or causing them to be transported in interstate commerce. If the dealer furnishing the services is a licensee, his interstate transportation of explosive materials to the display sites would be conduct authorized by his license.

## Types of Permits

- 1) User permit: allows a permittee to acquire, transport, ship and receive "special fireworks" in interstate or foreign commerce for his own use and not for resale. This permit is issued at a cost of \$20.00 for a one-year period and is renewable at a cost of \$10.00.
- 2) User-limited permit: identical to the user permit but issued for a single transaction only at a cost of \$2.00; non-renewable. A new permit must be obtained for each transaction. This type of permit is advantageous to civic and veterans organizations who wish to conduct a single display such as on the Fourth of July.

## Storage

The law prohibits any person from storing any explosive materials in a manner not in conformity with the regulations promulgated by the Secretary of the Treasury (18 U.S.C. 842(j)). Pursuant to this section, the Secretary has prescribed storage regulations in 27 CFR Part 181, Subpart J. Since display fireworks are not exempt from regulations, they must be stored in conformity with regulations. Display fireworks generally contain perchlorate mixture explosives, potassium chlorate base explosive mixtures, and black powder, all of which are designated as explosives on the List of Explosive Materials (printed in this publication) compiled by the Director, ATF, and which fall within the definition of low explosives in 27 CFR 181.182(b). Thus, display fireworks

should be stored as low explosives in facilities meeting the requirements for Type 4 storage facilities, prescribed by 27 CFR 181.190, unless they contain other classes of explosives. The manufacturer of exempt or non-exempt fireworks having stocks of explosive materials on hand to be used in the manufacture of fire-

works must store his stocks in conformity with applicable storage requirements. In storage facilities where weight restrictions apply, the net weight of the explosive materials may be used. To determine the actual weight of the explosive materials it may be necessary to contact the manufacturers.

## **Basic Explosives Dealer's and User's Guide to Federal Explosives Regulation**

### **\*EXPLOSIVES MAY NOT BE DISTRIBUTED BY LICENSEES TO ANY PERSON WHO:**

- Is under 21 years of age
- Has been convicted of a crime punishable by imprisonment for a term exceeding one year
- Is under indictment for a crime punishable by imprisonment for a term exceeding one year
- Is an unlawful user of marihuana or any depressant or stimulant or narcotic drugs
- Has been adjudicated a mental defective
- Is a fugitive from justice
- May not lawfully purchase, possess or use such explosives under State or local laws applicable at the place of distribution

### **\*DEALERS IN EXPLOSIVES MUST:**

- Have a Federal license
- Have proper storage facilities
- Keep accurate and complete records
- Verify that each out-of-State buyer has a Federal permit
- Have nonlicensees or nonpermittees execute Form 4710, Explosives Transaction Record
- Have nonlicensees and nonpermittees acquiring black powder under the exemption (see footnote, this page) execute Form 5400.3, Transaction Record for Black Powder to be Used in Antique Weapons.
- Have employees of buyers or carriers to whom delivery is made at a distributor's premises execute Form 4721, Explosives Delivery Record
- Verify buyer's identity

### **\*USERS OF EXPLOSIVES: PERMITTEES AND NONPERMITTEES**

Federal permits are required of those who purchase explosives from outside their State of residence and/or transport them interstate. The permittee must keep complete and accurate records of his acquisitions and dispositions of explosives.

Nonpermittees may buy and use explosives in their State of residence without obtaining a Federal permit. They must give proper identification to the dealer and execute Form 4710, Explosives Transaction Record.

**NO PERSON SHALL STORE ANY EXPLOSIVE IN A  
MANNER NOT IN CONFORMITY WITH REGULATIONS**

**ALL PERSONS WILL PROMPTLY REPORT TO ATF AND  
LOCAL AUTHORITIES ANY LOSS OR THEFT OF THEIR  
EXPLOSIVES**

**A FEDERAL LICENSE OR PERMIT DOES NOT CONFER  
ANY RIGHT OR PRIVILEGE TO VIOLATE ANY STATE  
LAW OR LOCAL ORDINANCE**

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

\* Under Public Law 93-639 and implementing regulations, transactions involving commercially manufactured black powder, in quantities of 50 pounds or less, for sporting, recreational or cultural purposes in antique firearms or antique devices have been largely deregulated. For further information, see the special article headed "Black Powder Transactions."

## **Black Powder Transactions**

As a result of Public Law 93-639 and implementing regulations:

(1) An exemption now exists which allows a nonpermittee or nonlicensee to purchase commercially manufactured black powder, in quantities of 50 pounds or less, solely for sporting, recreational or cultural purposes in antique firearms or antique devices virtually without regulation, except as set forth in paragraph (2).

(2) Nonlicensees and nonpermittees who purchase under the terms of this exemption (181.105[g]) must execute ATF Form 5400.3, Transaction Record for Black Powder to be Used in Antique Weapons. The form shall contain all the required information as indicated by the headings on the form and the instructions. Licensees and permittees making distribution of black powder shall retain Forms 5400.3 as part of their permanent records. (181.124[b])

(3) A nonlicensee or nonpermittee purchasing black powder under the exemption need not be a resident of the State in which the dealer is located. Also, the categories of persons to whom the distribution of explosive materials is prohibited do not apply to black powder transactions made under the exemption.

(4) Acquisitions of black powder not qualifying under this exemption are subject to the same regulatory requirements that govern any other low explosive.

(5) All persons who sell black powder, regardless of quantity, must be licensed as explosives dealers and must provide adequate storage.

## Emphasize Explosives Security

Through prompt reporting of losses or thefts of explosives and increased emphasis on physical security, explosives licensees and permittees can contribute greatly to efforts by Federal, State and local authorities to reduce the incidence of bombings in the United States.

The following actions are of prime importance:

**REPORT** thefts or losses of explosives from magazines, premises and job sites promptly, by telephone, to ATF (toll free: 800-424-9555) and appropriate local and/or State authorities. Because the States and many municipalities have designated specific agencies to investigate the theft or loss of explosives, licensees and permittees are urged to be familiar with local and State reporting procedures and appropriate contact points.

**FOLLOW UP** on telephone notification with a written report on ATF Form 4712, Report of Theft or Loss - Explosive Materials, to the nearest ATF District Office.

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

**REVIEW** recordkeeping practices to assure that no discrepancies exist and that no figures in reported inventories have been manipulated, and correct any clerical errors promptly.

If any questions arise concerning explosive security procedures or any aspect of explosives regulation coming under the jurisdiction of ATF, do not hesitate to contact the Bureau.

## For More Information

The Bureau publishes a quarterly general-information booklet, the Alcohol, Tobacco and Firearms Bulletin. The ATF Bulletin is the Director's means for informing all permittees and licensees on current alcohol, tobacco, firearms, and explosives matters. It contains regulatory, procedural, and administrative information, as well as items of general interest that warrant your attention.

This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Alcohol, Tobacco and Firearms Bulletin costs \$8.50 (domestic) and \$10.65 (foreign) for a 1-year subscription. A single copy is \$2.15 (domestic) and \$2.70 (foreign).

Checks should be made payable to the Superintendent of Documents.

**END**