

Bureau of Alcohol, Tobacco, Firearms & Explosives

A overview of underground storage requirements



U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

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Title XI, Organized Crime Control Act of 1970

This law was enacted in response to a widespread national concern that existing Federal and State sanctions and prohibitions over the use, possession and transportation of explosives were inadequate

“The Act” charged ATF with the responsibility for protecting “interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from the misuse and unsafe or insecure storage of explosive materials”

Title XI, Organized Crime Control Act of 1970

Federal Explosive Laws are set forth in 18 United States Code Chapter 40 (Sections 841-848)

Federal Explosives Regulations are set forth in 27 Code of Federal Regulations Part 555 (formerly Part 55)

- Subpart C - Administrative and Miscellaneous Provisions
- Subpart D – Licenses and Permits
- Subpart F – Conduct of Business or Operations
- Subpart G – Records and Records
- Subpart K - Storage

Safe Explosives Act (SEA)

President George W. Bush signed the Safe Explosives Act on Nov. 25, 2002, amending Title XI of the Organized Crime Control Act of 1970, 18 U.S.C.



Chapter 40. The legislation is intended to restrict the availability of explosives to persons prohibited from possessing explosives, strengthen licensing and permitting requirements, and aid in the fight against terrorism.

Changes implemented by SEA

- Prohibited person categories expanded, as prescribed by 27 CFR § 555.106.
- Importers & manufacturers required to submit samples of explosives materials and ammonium nitrate upon request by ATF, as prescribed by 27 CFR § 555.110.
- Increased penalties for licensees and permittees who fail to report the theft of explosives, as required by 27 CFR § 555.30.
- Federal permit or license required for the acquisition of explosives materials as prescribed by 27 CFR § 555.26.
- All Federal explosive licensees and permittees and their responsible persons and employees authorized to possess explosives are affected by the new requirements and background checks mandated by the Act, 27 CFR § 555.33.

Current Prohibited Persons – (as prescribed by 18 USC 842(i) and 27 CFR 555.26)

- 1) It shall be unlawful for any person-
- 2) who is under indictment for, or who have 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 or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- 5) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- 6) **Aliens (with limited exceptions)**
- 7) **Dishonorably discharged from the military**
- 8) **Renounced U.S. Citizenship**

Licenses and Permits: Who Must be Licensed?

Any person who wants to engage in the business of manufacturing, importing or dealing in explosive materials, as prescribed in [18 U.S.C. § 842(a); 27 CFR § 555.41].

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

All explosive materials must be kept in locked magazines meeting the standards in Subpart - K Storage, as prescribed by 27 CFR § 555.205 (unless they are):



Manufacturing



Physically
handled in
operating
process



Being used



Being
transported

Type 1 Magazine Construction (27 C.F.R. 555.207)

Permanent structure for the storage of high explosives

Must be:

- Bullet-resistant
- Fire-resistant
- Weather-resistant
- Theft-resistant
- Ventilated



Alternate construction meeting bullet-resistant criteria provided in ATF Ruling 76-18

Type 1 Magazine Construction (27 C.F.R. 555.207)

Examples:

- Masonry wall - 6” brick concrete, cement block, tile, or cinder blocks. Hollow masonry units must be filled as prescribed by 27 CFR § 555.207(a)(1).
- Metal wall -14 gauge steel or aluminum lined with:
 - Brick or solid cement blocks
 - 4” hardwood or
 - 6” sand between inner and outer wall

Type 2 Magazine Construction (27 C.F.R. 555.208)

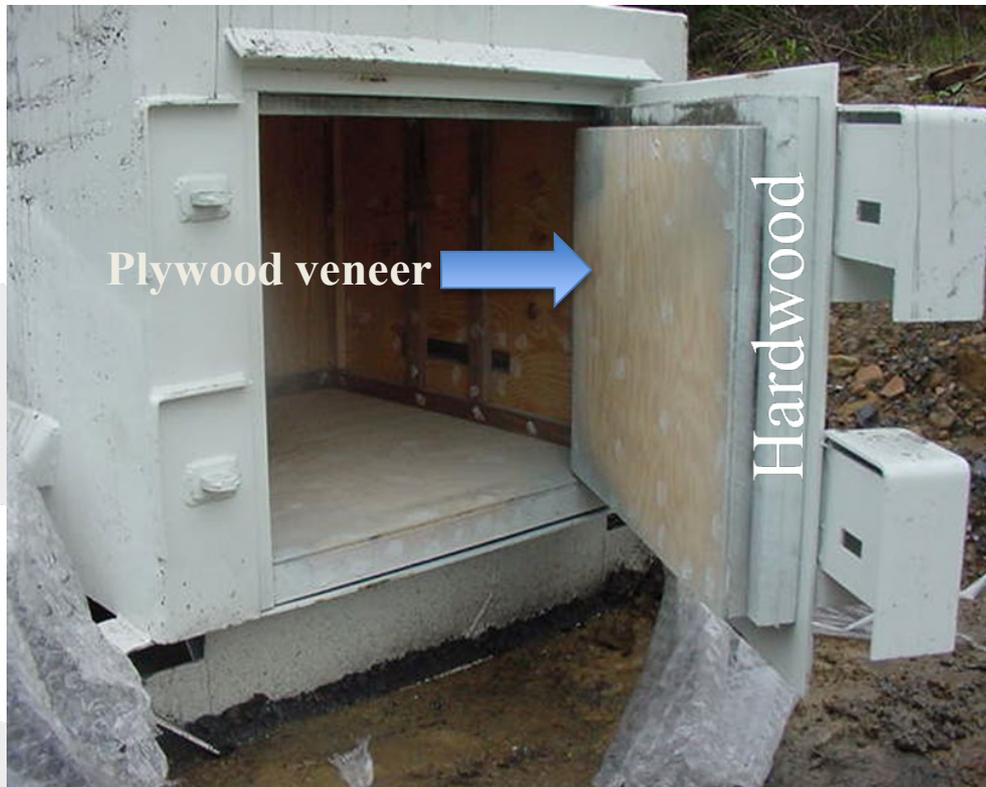
A portable or mobile magazine for the storage of high explosives that may be indoor or outdoor.

- Bullet-resistant
- Fire-resistant
- Weather-resistant
- Theft-resistant
- Ventilated



Examples: a box, trailer, semi-trailer, or other mobile facility.

Type 2 Magazine Construction (27 C.F.R. 555.208)



Outdoor magazine

Exterior and Doors: Not less than ¼ inch steel and lined with at least 2 inches of hardwood.

Magazines with top openings will have lids with water-resistant seals or which overlap the sides by at least 1 inch when closed.

Type 3 Magazine Construction (27 C.F.R. 555.209)

A portable “day box” magazine used for temporary attended storage (not overnight storage).

- Must be fire-resistant, weather-resistant and theft-resistant
- 12 gauge steel lined with 1/2” plywood or Masonite-type board
- Doors must overlap by 1”
- Locking: One five tumbler padlock with 3/8” shackle, no hood required



Type 4 Magazine Construction (27 C.F.R. 555.210)

- A permanent structure or a portable/mobile facility for the storage of low explosives. May be indoor or outdoor.
- Walls must be constructed of masonry, metal covered wood, fabricated metal or a combination thereof
- Doors must be metal or solid wood covered with metal
- KINGPIN locking device is an acceptable means of securing a vehicular type 4 magazine



Type 5 Magazine Construction (27 C.F.R. 555.211)

A permanent structure or other mobile facility for the storage of blasting agents. May be indoor or outdoor. Must be weather-resistant and theft-resistant.

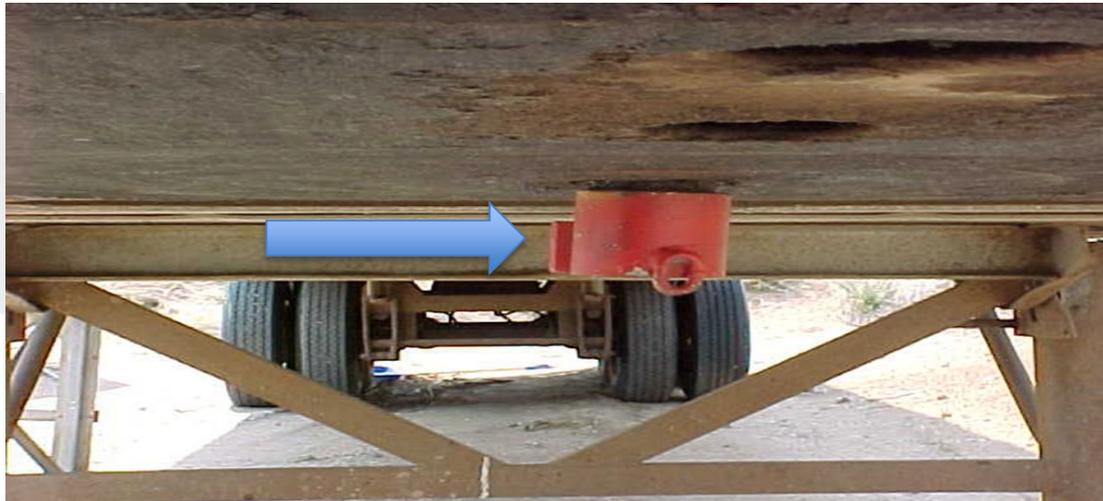
Placards are required for type 5 magazines (as per DOT regulation at (49 CFR, Part 172)

- Vehicular magazines-locking requirements: One five tumbler padlock with 3/8" shackle, no hood required
- Doors must be constructed of solid wood or metal



Securing Type 5 Trailers (27 C.F.R. 555.211)

When unattended, vehicular magazines must have wheels removed or otherwise be effectively immobilized by kingpin locking devices or other methods approved by ATF.



Kingpin locking device immobilizes drop trailer

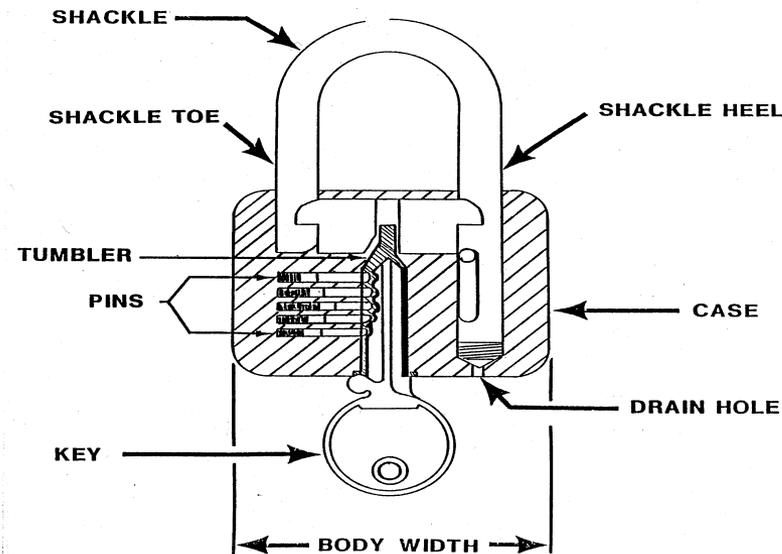
Construction Requirements Common to all Types of Storage (as prescribed by 27 CFR §§ 555.207- 555.211.)

Hinges and hasps must be attached to doors by welding, riveting, or bolting so that the bolts cannot be removed from the outside.



Padlocks (as prescribed by 27 CFR §§ 555.207-555. 211)

Padlocks must have five tumblers and 3/8-in case-hardened shackles fastened in separate hasps and staples.



ATF Ruling 2011-3 Alternate Locks Approves the use of additional locks under certain conditions.

“Puck locks” (Die-cast bodies not allowed- only hardened steel)

Padlocks with boron-alloy shackles



Recessed locks
(Jobsite boxes must
have two recessed
padlocks)



Hoods **(as prescribed by 27 CFR §§ 555.207-555. 211)**

Padlocks must be protected with no less than 1/4 inch steel hoods constructed so as to prevent sawing or lever actions on the locks, hasps and staples.



Underground Storage



ATF Inspection

- Determine if a licensee or permittee is complying with Federal laws and regulations.
- Ensure the integrity of record systems to facilitate the tracing of explosives.
- Ensure the safe and secure storage of explosives.
- Prevent and detect criminal diversion and misuse of explosives.
- Investigate and detect thefts and illegal diversion of explosives.
- Identify areas of weakness and vulnerability in security and internal controls in order to prevent prohibited persons and terrorists from obtaining explosive materials.

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Underground Storage Reminder

- Federal explosives licensees and permittees (FEL/FEPs) must comply with all pertinent regulations found under 27 CFR Part 555—Commerce in Explosives. This includes all storage requirements, whether the explosives are stored above ground or underground.
- Occasionally, an underground magazine is a dugout or a tunnel. These dugouts or tunnels must meet all construction, locking, housekeeping and table of distance requirements as prescribed by 27 CFR Part 555.

ATF Newsletter (cont.)

Underground Storage Reminder

- FEL/FEPs who wish to use an alternate may request for variance from the regulations (as prescribed by 27 CFR § 555.22.)
- Variances will afford levels of safety and security substantially equivalent to the regulatory requirements (as per 27 CFR § 555.22).
- FEL/FEPs should review 27 CFR, Part 555, to determine what information should be provided to afford those levels of safety and security.

History of Mine Safety Health Administration/ATF Memorandum of Understanding

- Original agreement with Mine Enforcement and Safety Administration (MSHA's predecessor) in 1971
- Modified in 1980 after creation of MSHA in 1978
- MSHA agreed to inspect explosives at mine sites on behalf of ATF
- Since approximately 1990, ATF has regularly provided training on ATF requirements to MSHA inspectors

ATF's inspections of mine and quarry operators holding Federal explosive licenses or permits.

- ATF will inspect aboveground storage and associated DSMT records, as well as all other remaining parts of the explosives operations. ATF is responsible for any license or permit action under 18 U.S.C. Chapter 40.
- MSHA conducts inspections of mine and quarry operators holding Federal explosive licenses or permits. MSHA has agreed to inspect the underground storage at these facilities for compliance with storage regulations pertaining to safety and security. MSHA will cite operators for violations of 27 CFR 555, and provide violation information to ATF.
- MSHA will not examine any records pertaining to acquisitions or dispositions, nor any information pertaining to Conduct of Business regulations prescribed in 27 CFR Part 555 Subpart F.

During MSHA's inspections of mines, MSHA determines a mine's compliance with the Mine Act and applicable MSHA standards and regulations.

- MSHA standards at part 57, subpart E, and part 75, subpart N govern the transportation, storage, and use of explosive materials taken underground for mining and related activities.
- ATF requirements in 27 CFR part 555, subpart K, Storage, govern the storage of explosive materials and construction of storage facilities.
- In the event that ATF has concerns with the underground storage of explosives at a mine, the agencies will determine an appropriate course of action to resolve those concerns. These concerns should be initiated at the division or district level. Among the possible courses of action are reviews of the security concerns at issue or an evaluation for alternate procedures by ATF.

ATF may approve the use of an alternate method or procedure

- In the event that ATF and MSHA underground storage standards differ and the agencies decide that MSHA's requirement sufficiently addresses safety and security concerns, the mine operator must submit a request to ATF for alternate methods or procedures pursuant to 27 CFR 555.22.

Variance request (27 C.F.R 555.22)

Pursuant to 27 CFR § 555.22, ATF may approve the use of an alternate method or procedure in lieu of a method or procedure specifically prescribed in Part 555 when: (1) Good cause is 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 the 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 Part 555.

Underground Storage Variance Requests

