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FAIR Trade Group Firearms and Ammunition Import and Export Conference



U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Elements Unique to Government Contractors

Exemptions, Marking Requirements,
and Variances

EXPLOSIVES

Licensing Requirements

License Types

- **Explosives License**
 - Engaging in the business of Importing, manufacturing, or dealing
- **Explosives User Permit**
 - Acquiring explosives for use
- **Limited Permit**
 - Acquiring explosives for use
 - In the same state and on no more than 6 separate occasions

Licensing Requirements

Prior to Approving an Explosives License or Permit:

- The applicant must have a premises from which to conduct business or operations.
- The applicant must have storage for the class of explosive materials described on your application.
- The applicant must certify in writing that you are familiar with and understands all published State laws and local ordinances.

Licensing Requirements

Responsible Persons

Individual who has the power to direct the management and policies of the applicant pertaining to the explosives.

- Must submit a fingerprint card and passport-style photo.

Employee Possessors

- Employees who have constructive or actual possession of explosives during the course of their employment.
- Must submit an employee possessor questionnaire (ATF Form 5400.28).

Licensing Requirements

Prohibited persons:

- Under indictment or information, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding a year.
- Fugitive from justice.
- Unlawful user of or addicted to any controlled substance.
- Adjudicated as a mental defective or has been committed to a mental institution.
- Alien (with exceptions).
- Dishonorable discharge.
- Renounced citizenship.

If prohibited – Must seek Relief from Federal Explosives Disabilities to possess explosives.

Licensing Requirements

Other considerations:

- Foreign government contracts.
- Rejected, “left-over”, and over-run explosives
- Pre-contract operations.
- Manufacturing for DoD **and** commercial purposes
- Storage of DoD explosives with commercial explosives.

Licensing Requirements

All explosives that are NOT under a current and valid USG contract must meet all applicable requirements in Part 555 – Commerce in Explosives.

- Licensing
- Recordkeeping
- Identification
- Storage

U.S. Government Contracts

Typical manufacturing of a destructive device involves the purchase and manufacture of explosive materials that are ultimately manufactured into the destructive device.

- U.S. Government Furnished Materials: The U.S. Government owns the raw materials/components and therefore has dominion and control and considered under contract.
 - U.S. Government (including foreign military sales at the direction of the U.S. Government) and commercial component and finished goods inventories.
- Foreign Military Sales (FMS) are sales to foreign governments that are purchased under the direction of the U.S. Government. This is considered a sale under a U.S. Government contract.
- Direct Commercial sales to foreign governments that are not purchased under the direction of the U.S. Government, is considered a commercial sale.

U.S. Government Contracts

Prime contractor: holds contract with U.S. Government.

Subcontractor: holds a contract with the prime contractor (and may not have access to the prime contract).

Government Exemption – 555.141(a)(3)

- U.S. Federal, State and local agencies are exempt from:
 - Transport
 - Shipment
 - Receipt
 - Import
- Exemption also applies to contractors and subcontractors transporting, shipping, receiving, or importing under a current and valid government contract.



Government Exemption – 555.141(a)(5)



U.S. Department of Defense

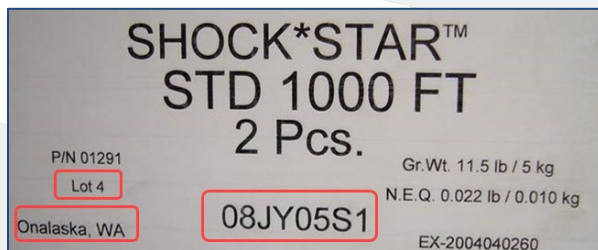
- The manufacturing of explosive materials by, or for the U.S. Department of Defense, is exempt.
- Exemption also applies to the:
 - Distribution to; and
 - Storage and possession by U.S. Federal agencies.
- Exemption also applies to contractors and subcontractors operating under a current and valid U.S. Federal government contract.

Government Exemptions – 555.141(a)(3) & (a)(5)

- Explosives manufactured and/or distributed under a foreign government contract are not exempt and therefore must meet all ATF explosives requirements.
- Contractors or subcontractors in possession of “left-over” explosives must ensure compliance with ATF’s explosives regulations.
 - This also applies to explosives that do not meet contract specifications (e.g. those rejected).
- Distribution of “left-over” or “out-of-specification” explosive materials.
 - Markings required under 555.109.

Marks of Identification – 555.109(b)(1)

- Licensed manufacturers must mark all explosives **for sale or distribution** with the following marks of identification at the time of manufacture:
 - Name of Manufacturer;
 - Location of Manufacture; and
 - Date and shift of manufacture



(*Shift is only required if manufacturer operates more than one shift)

Marks of Identification – 555.109(b)(2)

- Licensed importers must mark all explosives **for sale or distribution** with the following marks of identification:
 - Name of Importer;
 - Address (city and state) of Importer;
 - Location (city and country) where explosives were manufactured; and;
 - Date and shift of manufacture.
 - Shift is only required if manufacturer operates more than one shift
- Marks must be affixed:
 - Prior to distribution or shipment for use; and
 - No later than 15 days after the date of release from Customs custody.


Marks of Identification

- Cannot be rendered unreadable by extended periods of storage
- Must be permanent and legible
- Must be in the English language (Roman letters & Arabic numerals)
- Must be affixed to each individual explosive material/device AND on the outside container used for the packaging.
- Markings for detonators only on the packaging.

Marks of Identification

- Manufacturers or Importers who want to deviate from the prescribed marking requirements must submit a variance to EIPB.

For example, explosives marked pursuant to MIL-STD-1168B or MIL-STD-130 cannot be transferred to a non-exempt entity (e.g. foreign government) without a variance from EIPB.



U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Explosives Industry Programs Branch

Washington, DC 20226
www.atf.gov
February 26, 2024

903070-
24-854104
555-32
5403

Mr. [REDACTED]
[REDACTED]
Pahrump, Nevada 89048

Dear [REDACTED]:

This is in response to your letter dated January 18, 2024, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). [REDACTED] requested a special explosive device exemption pursuant to the regulation at 27 CFR § 555.32, for two explosive distraction devices. After careful consideration, we are unable to exempt the [REDACTED] Grenade and the [REDACTED] Grenade from the requirements of 27 CFR Part 555.

By way of background, the Federal explosives regulation at 27 CFR § 555.32 states, in part:

The Director may exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of this part. A person who desires to obtain an exemption under this section for any special explosive device, which as designed does not constitute a public safety or security hazard, shall submit a written request to the Director.

In a letter dated April 28, 2023, in combination with a supplemental submission dated June 30, 2023, [REDACTED] requested a special explosive device exemption for, among other items, the [REDACTED] Grenade. You stated that both devices contained 500 milligrams of flash powder. In a letter dated October 27, 2023 (23-850950), ATF declined to exempt these items as special explosive devices, based, in part, on the fact that they contain significantly more flash powder than the 50 milligrams allowed for ground consumer fireworks.

In your January 18, 2024, letter, you stated that the [REDACTED] Grenade and the [REDACTED] Grenade contain 200 milligrams of flash powder. You compared the items to certain consumer fireworks, namely cracking ball ground devices, which contain up to 20 grams of net explosive

FIREARMS

ATF Licensing Requirements

- Federal firearms licensees (FFLs), licensed under the Gun Control Act of 1968 (GCA) as a manufacturers (Type 10) or importers (Type 11) and who pay a special occupational tax (unless exempt) under the National Firearms Act (NFA), are permitted to manufacture or import destructive devices under Federal law.
- Destructive devices are generally sold to the USG and include destructive device munitions such as explosive or incendiary bombs, grenades, mines and other explosive, incendiary or poison gas weapons as defined in the GCA, 18 U.S.C. 921(a)(4)(A), and the NFA, 26 U.S.C. 5845(f)(1).
- Under the Gun Control Act and the National Firearms Act, a destructive device is a firearm.

ATF Licensing Requirements

License Types:

- **Type 10-** Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition.
- **Type 11-** Importer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition.

DOS Licensing Requirements

- Licensees holding a manufacturer's license (FFL Type 10) must register as a manufacturer with the Department of State unless exempted by the Directorate of Defense Trade Control (DDTC), regardless of whether the manufacturer actually exports any of the items manufactured. Therefore, applicants intending to manufacture and/or export defense articles, as defined on the United States Munitions List (Part 121 of the ITAR), may need to register with Directorate of Defense Trade Controls (DDTC).
- Licensees intending to import firearms and/or ammunition may need to register with ATF under the provisions of the Arms Export Control Act.
- Licensees intending to deal in, import, or manufacture weapons subject to the National Firearms Act (NFA) (e.g., machine guns, short-barreled shotguns, silencers, destructive devices, etc.) may be required to pay a Special Occupational Tax (SOT).

Exemptions to Tax Requirements

Exemptions to the Special Occupational Tax (SOT):

- Licensees are exempt from the SOT if it is established that the business is conducted exclusively with, or on behalf of, an agency of the United States.
 - This exemption must be obtained by filing a letter application addressed to the NFA Division setting out the manner in which the applicant conducts business,
 - the type of firearms to be manufactured,
 - and satisfactory proof of the existence of the applicant's contract with the Government.
- The exemption must be renewed by letter on or before July of each year. Approval of the application entitles the applicant to the exemption.

Exemptions to Tax Requirements

Exemptions to the Making or Transfer Tax

- ATF may relieve any person manufacturing firearms for or on behalf of the United States from the provisions of the NFA, including tax on making or transfer of firearms.
- NFA firearms may be exported without payment of the transfer tax provided that proof of the exportation is furnished in such form and manner as the regulations prescribe. The form to be filed is ATF Form 9 (Firearms), Application and Permit for Exportation of Firearms. Approval of the form by ATF is required before exportation.

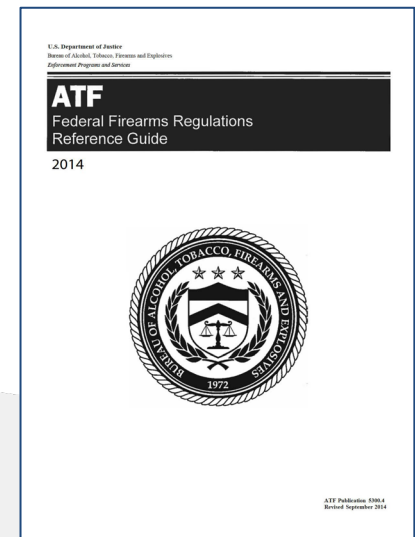
GCA/NFA - Marks of Identification

Gun Control Act (GCA)

- 18 U.S.C. § 923(i) requires manufacturers and importers to identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm manufactured.
- 18 U.S.C. § 921(a)(3)(D) a Destructive Device is considered a firearm.

National Firearms Act (NFA)

- 26 U.S.C. § 5842(c) requires firearms classified as a destructive device to be identified in such manner as the regulations prescribe.



GCA/NFA - Marks of Identification

- Implementing Regulations – as of August 24, 2022

27 CFR §§ 478.92(a)(1) and 479.102(a) require destructive devices to be marked with:

- a unique serial number,
- Manufacturers name (or recognized abbreviation),
- City and State (or recognized abbreviation) of Manufacturer's or Importer's place of business

OR

Serial number beginning with the Manufacturer's or Importer's abbreviated FFL number (e.g. 12345678-`{unique identification number}`)

- Name of Foreign manufacturer (if any)
- Country of manufacturer (if imported),
- Model (if known), and
- Caliber or gauge.


GCA/NFA – Other Means of Identification

- Regulatory Exceptions

478.92(a)(4)(ii) and 479.102(d) permits ATF to authorize other means of identifying destructive devices if engraving, casting, or stamping (impressing) the destructive devices would be dangerous or impracticable.



GCA/NFA – Other Means of Identification



U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Office of the Director

Washington, DC 20226

August 1, 2016

18 U.S.C. 845: EXCEPTIONS
18 U.S.C. 921: DESTRUCTIVE DEVICE DEFINITION
18 U.S.C. 923: IDENTIFICATION OF FIREARMS
26 U.S.C. 5842: IDENTIFICATION OF FIREARMS
26 U.S.C. 5845: DESTRUCTIVE DEVICE DEFINITION
27 CFR 478.22: ALTERNATE METHODS OR PROCEDURES
27 CFR 478.92: FIREARMS IDENTIFICATION
27 CFR 479.26: ALTERNATE METHODS OR PROCEDURES
27 CFR 479.102: FIREARMS IDENTIFICATION
27 CFR 555.109: IDENTIFICATION OF EXPLOSIVE MATERIALS
27 CFR 555.141: EXEMPTIONS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorizes an alternate method or procedure to the firearms marking requirements contained in title 27, Code of Federal Regulations (CFR), sections 478.92 and 479.102. Specifically, ATF authorizes licensed manufacturers of certain destructive device munitions that are manufactured for and transferred to the U.S. Government (USG) to mark these destructive device munitions with sequential lot numbers, provided conditions set forth in this ruling are met.

ATF Rul. 2016-5

Federal firearms licensees (FFLs), licensed under the Gun Control Act of 1968 (GCA) as manufacturers (type-10) and who pay a special occupational tax (unless exempt) under the National Firearms Act (NFA), are permitted to manufacture destructive devices under Federal law. These destructive devices are usually sold to the USG and include destructive device munitions such as explosive or incendiary bombs, grenades, mines and other explosive, incendiary or poison gas weapons as defined in the GCA, 18 U.S.C. 921(a)(4)(A), and the NFA, 26 U.S.C. 5845(f)(1). Type 10 FFLs have recently inquired about marking variances for these destructive device munitions manufactured as part of a valid USG contract. The FFLs point out that government contracts require specific markings, and that these markings may conflict with those required by the GCA and NFA. Further, FFLs note that applying for and awaiting approval of variances creates difficulties in fulfilling contracts in a timely manner.

- **ATF Ruling 2016-5** authorizes licensed manufacturers of certain destructive devices that are manufactured for and transferred to the U.S. Government (USG) agency listed on the USG contract to mark sequential lot numbers as an alternative to the requirements of 478.92 and 479.102 under the following conditions:

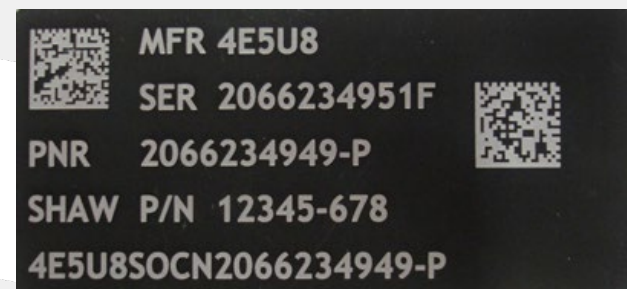
Ruling 2016-5



1. Applies only to explosive, incendiary, or poison gas, bombs, grenades, rockets having a propellant charge of more than 4 ounces, missiles having an explosive or incendiary charge of more than one-quarter ounce, or mines.
2. The destructive device munitions are being manufactured to fulfill a current USG contract.
3. The licensed manufacturer is currently a party to that existing USG contract.

Ruling 2016-5

4. The alternate markings comply with the requirements of the existing USG contract including:
 - a) Lot number sequences comply with MIL-STD-130 (marking and identification of government property) and MIL-STD-1168C; and
 - b) Lot numbers are comprised of only Roman letters and Arabic numerals, or solely Arabic numerals (cannot contain special characters other than a hyphen); and
 - c) Only one lot number is used for each production run unless the contract specifies otherwise.



Ruling 2016-5

5. The markings shall be:
 - a) Applied with permanent ink or paint utilizing stenciling and/or stamping techniques per current USG or DOD standard; and
 - b) Placed on labels that are permanently affixed when labels are utilized.
6. If the destructive device is enclosed/covered by a container, the outermost container must be marked as set out above.



Ruling 2016-5

7. Prior to engaging in the manufacturing process, the licensed manufacturer must submit to ATF:
- manufacturer's name, address, and license number;
 - contract number of the existing USG contract under which the destructive device munitions will be manufactured;
 - sequential lot numbers that will be used for the destructive device munitions manufactured under the USG contract.



Ruling 2016-5

8. The licensed manufacturer must maintain copies of its submission to ATF of the information required by this ruling with its permanent records of manufacture.
 - a) Must retain proof of its submission to ATF (e.g., certified return receipt mail or tracking number).
 - b) Proof of submission should show that it was sent to ATF's National Tracing Center, or any other office that ATF may designate as the proper recipient of such information.
 - c) Must allow ATF representatives to inspect such documents upon request at any time during business hours without a warrant.

FUTURE QUESTIONS?

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