

§ 55.23

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 the procedures, conditions, and limitations shall automatically terminate the authority for the variations and the licensee or permittee 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 Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where the licensee or permittee desires to employ an emergency variation, he shall submit a written application to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. 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 ATF officers, any application approved by the Director under this section.

§ 55.23 List of explosive materials.

The Director shall compile a list of explosive materials, which shall be published and revised at least annually in the FEDERAL REGISTER. The "List of Explosive Materials" (ATF Publication 5400.8) is available at no cost upon re-

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quest from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

[T.D. ATF-290, 54 FR 53054, Dec. 27, 1989, as amended by T.D. ATF-446, 66 FR 16602, Mar. 27, 2001]

§ 55.24 Right of entry and examination.

Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or permittee for the purpose of inspecting or examining any records or documents required to be kept under this part, and any explosive materials kept or stored at the premises.

§ 55.25 Disclosure of information.

Upon receipt of written request from any State or any political subdivision of a State, the regional director (compliance) may make available to the State or political subdivision any information which the regional director (compliance) may obtain under the Act with respect to the identification of persons within the State or political subdivision, who have purchased or received explosive materials, together with a description of the explosive materials.

§ 55.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

(a) No person, other than a licensee or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials. This paragraph does not apply to:

- (1) The transportation, shipment, or receipt of explosive materials by a non-licensed 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 § 55.105(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 50 pounds, if the 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).

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in interstate or foreign commerce who:

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

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(4) Has been adjudicated as a mental defective or has been committed to a mental institution.

(c) No person shall knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age,

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

(3) Is a fugitive from justice,

(4) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(5) Has been adjudicated as a mental defective or has been committed to a mental institution.

(d) See § 55.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or

possession of plastic explosives that do not contain a detection agent.

[T.D. ATF-87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF-293, 55 FR 3721, Feb. 5, 1990; T.D. ATF-363, 60 FR 17449, Apr. 6, 1995; T.D. ATF-387, 62 FR 8376, Feb. 25, 1997]

§ 55.27 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.

§ 55.28 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.

§ 55.29 Unlawful storage.

No person shall store any explosive materials in a manner not in conformity with this part.

§ 55.30 Reporting theft or loss of explosive materials.

(a) 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, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number) and on ATF F 5400.5 (formerly 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.

(b) Any other person, except a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials under paragraphs (a) and (b) of this section must include the following information, if known:

(1) The manufacturer or brand name.