



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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AMENDMENTS TO THE LAW AND REGULATIONS REGARDING BLACK POWDER AND CERTAIN IGNITERS

Federal Firearms Licensees, Explosives Licensees and
Permittees, and Others Concerned:

Purpose. This circular provides information on amendments to the law and proposed amendments to the regulations regarding black powder and certain igniters, subsequent to Public Law 93-639, effective January 4, 1975.

Background. Public Law 93-639 removed the exemption in 18 U.S.C. 845(a)(5) on black powder in amounts of five pounds or less, whether commercially or otherwise manufactured and regardless of its intended use. In lieu of the five pound exemption, the amended law inserted an exemption on black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers; however, the new exemption is specifically restricted to (1) commercially manufactured black powder, and (2) black powder 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). 18 U.S.C. 921(a)(4) was also amended to add language exempting antiques such as muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the definition of "destructive device".

In commenting on the legislation, the House of Representatives, Committee on the Judiciary (Report No. 93-1570), which amended the original Senate bill, specifically addressed the issue of Treasury Department regulations that would be drafted to implement the bill. The Committee indicated that "retailers will be required to keep records of their sales of black powder under the new exemption". The Committee further expected that ATF "establish forms to require sporting users to identify themselves on purchase of black powder". In addition to the above conditions, the Committee suggested that ATF could also "require that a purchaser-sportsman certify by affidavit that he intends to use the black powder for sporting, recreational or cultural purposes".

Proposed Regulatory Amendments. Based on the foregoing Congressional expectations and recommendations, the Bureau published a notice of proposed rulemaking in the FEDERAL REGISTER for May 20, 1975. As a result of the numerous comments and suggestions received from sporting organizations, antique firearms enthusiasts, and interested persons, the Bureau has revised the original proposals and has prepared an amended notice of proposed rulemaking.

Basically, under the new proposals the regulations in 27 CFR Parts 178 (Commerce in Firearms and Ammunition) and 181 (Commerce in Explosives) would be amended to reflect the following changes:

1. Definition of "destructive device". The definition of "destructive device", found in Part 178, would be amended by the addition of language exempting antiques, such as small muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the term "destructive device".

2. Licensees. Under previous law, all black powder in amounts of five pounds or less was exempt from the provisions of law and regulations in Part 181. This meant that retailers were able to sell black powder in five pound quantities or less without being subject to licensing requirements. Since Public Law 93-639 requires a determination at the time of sale as to whether commercially manufactured black powder in amounts of fifty pounds or less is going to be used solely for sporting, recreational, or cultural purposes, our proposed regulations would require the retailer to maintain records certifying that the purchaser intends to use the black powder in accordance with the provisions of the law. All retailers, of course, would need to be licensed in order for ATF to impose these recordkeeping requirements upon them. The dealer's license is a nominal fee of \$20 initially and a \$10 renewal fee every year thereafter. There would be no licensing requirements on dealers in percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers.

3. Permittees. Under current regulations in Part 181, a user permit is required in order to acquire explosive materials (except black powder in quantities of five pounds or less) in interstate or foreign commerce. This requirement would be modified so that it would not be necessary for a person to obtain a user permit, if he intends to receive in interstate or foreign commerce, 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, to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

4. Transaction record for black powder to be used in antique firearms and antique devices. The proposed regulations would require a licensed dealer selling commercially manufactured black powder in quantities not to exceed fifty pounds to be used in antique firearms or in antique devices, to a non-licensee or nonpermittee, to record the transaction on proposed ATF Form 5400.3. No transaction record would be required for the purchase of percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers by nonlicensees or nonpermittees. The executed Form 5400.3, signed by the purchaser and the dealer, would identify the purchaser (by name and address) and certify that the black powder purchased is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. The licensee would be required to maintain the executed Form 5400.3 on his business premises available for inspection by ATF officers.

Inquiries. Until specific regulations are promulgated, our only authority is the law. In the interim, any inquiries as to our requirements relating to black powder and igniters should be directed to your Regional Firearms and Explosives Coordinator. If you wish to obtain a copy of the proposed regulations, you may obtain it from your regional coordinator. The mailing addresses and phone numbers for the regional coordinators are:

Central Region

Room 6501, Federal Office Building
550 Main Street
Cincinnati, Ohio 45202
(513) 684-3715

Mid-Atlantic Region

Room 334, 2 Penn Center Plaza
Philadelphia, Pennsylvania 19102
(215) 597-2220

Midwest Region

Room 1514, 230 S. Dearborn Street
Chicago, Illinois 60604
(312) 353-3883

North-Atlantic Region

P. O. Box 15
New York, New York 10008
(212) 264-3993

Southeast Region

P. O. Box 2994
Atlanta, Georgia 30301
(404) 455-2675

Southwest Region

Main Tower, Room 345
1200 Main Street
Dallas, Texas 75202
(214) 749-3280

Western Region

525 Market Street, 34th Floor
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