



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

May 5, 2015

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This is in response to your request to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). You asked ATF to clarify its regulatory requirements for the M992 infrared (IR) 40 millimeter parachute illumination flare.

The M992 flares are intended for military and law enforcement during night operations using night vision technology. The flares are fired from 40 millimeter grenade launchers and equipped with parachutes for extended IR illumination. The flares contain less than 100 grams of explosive material (i.e. primer, propellant charge, parachute charge, ignition delay charge) and are initiated with a primer and propellant charge that propel the flare from the launcher.

The regulation at 27 CFR 555.141(a)(4) generally exempts "Small arms ammunition and components of small arms ammunition" from the provisions of 27 CFR, Part 555 – Commerce in Explosives. The regulation at 27 CFR 555.11 defines "ammunition" as "Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and $\frac{1}{32}$ inch and other external burning pyrotechnic hobby fuses. The term does not include black powder."

ATF has historically held that .50 caliber or smaller ammunition (and certain sporting shotgun ammunition) is small arms ammunition, and exempt from the provisions in 27 CFR, Part 555 – Commerce in Explosives. However, devices or articles that contain small arms ammunition or components thereof, but are not small arms ammunition by themselves, are regulated explosives. Therefore, we have determined M992 IR 40 millimeter flares are low explosives subject to the requirements in 27 CFR, Part 555 – Commerce in Explosives.

Individuals or companies acquiring M992 flares must possess a Federal explosives license or permit unless they are acquired pursuant to a Government contract. The law at 18 U.S.C. §845(a)(3) and the regulation at 27 CFR 555.141(a)(3) generally exempt 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 from the controls of the Federal explosives laws and regulations. Therefore, the distribution to and receipt of explosives by U.S. Federal, State and local agencies are exempt from the explosives licensing regulations in 27 CFR 555, Subpart D—Licenses and Permits. This exemption extends to contractors and subcontractors who have a current, valid, and verifiable contract with a Federal, State or local municipality to conduct explosives operations. Bear in mind that State and local agencies, and their contractors, must comply with all storage provisions under 27 CFR, Part 555.

We trust the foregoing has been responsive to your request. If you have additional questions, please feel free to contact the Explosives Industry Programs Branch at 202-648-7120.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Valentina Close", with a long horizontal flourish extending to the right.

Valentina Close
Acting Chief, Explosives Industry
Programs Branch