

Distance from Passenger Railways, Public Highways, Fireworks Plant Buildings used to store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings. ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾

Note: Footnotes (3), (4), and (5) are included in the footnotes at the end of table 55.223 in ATF P 5400.7

We would direct your attention to the ATF Website, where a copy of the current regulations may be found. We would also like to point out that, in light of changes and additions to our regulations, new items have been added to Section 55.11, Meaning of Terms. You will also find that we have expanded the question & answer section in the back of the orange book, adding, among other things, the new topics of plastic explosives and military explosives. If you have questions on any of these regulations or ATF's policy with regard to these regulations, contact either your local ATF Office of Industry Operations, or the Public Safety Branch in Washington, DC.

Variations

Activities and operations undertaken by Federal explosives licensees and permittees (and by others who store explosive materials) are governed by 18 U.S.C. Chapter 40 and 27 CFR Part 55. Occasionally, however, a licensee or permittee may wish to use a method or procedure other than one that is specified in Part 55. In these cases, proprietors may use the provisions of Section 55.22 to petition ATF for a variance from the regulatory requirements.

ATF reviews each variance request on a case-by-case basis. Examples of variance requests that are regularly received and of the conditions under which they have been granted are described below. Please note that adherence to the conditions described below will not guarantee approval of a particular variance request because the specific circumstances surrounding each individual request must always be taken into account. Please contact the Public Safety Branch if you have any further questions regarding variance requests.

- 1. Pre-loading vehicles with blasting agents or low explosives, in order for them to be available for delivery to a customer or job site early the next morning.**

Such requests may be approved if proper security is provided and the table of distance requirements are met. For example, if the vehicle is kept in a secure, locked garage, or if the vehicle is located within a secure area and has an immobilization device attached, proper security may be deemed to exist. Additionally, licensees/permittees requesting a variance of this nature will be required to comply with regulations generally pertaining to storage in magazines, including table of distance requirements applicable to the types of explosives in question.

- 2. Storage of more than 300,000 pounds of explosives.**

The regulations at 27 CFR § 55.213(a) limit storage in a single magazine to 300,000 pounds of explosives, or not more than 20 million detonators, "unless approved by the Director." This provision also effectively limits the total amount of explosives that may be stored in magazines which, because they are not separated from one another by less than the specified distance for "separation of magazines," must be considered a single magazine (see note 2 to Section 55.218). ATF has issued variances allowing the storage of quantities of explosives greater than 300,000 pounds in a magazine, or in a group of magazines required to be considered a single magazine for table of distance purposes. Companies wishing to receive such a variance must show that the distances from their explosives storage to inhabited buildings, passenger railways, and public highways will provide the same level of safety to the public as that afforded by the tables of distances under Part 55. It should be noted that variances will not be approved if the proposed operation or storage is in violation of any state or local requirements.

User Permits and User-Limited Permits

We frequently get questions asking what activities/operations may be undertaken by the holder of an ATF explosives permit. An ATF explosives permit authorizes the holder to acquire explosives outside his home state and to transport explosives from one state to another, subject, of course, to any limitations imposed by state law or local ordinance. See 27 C.F.R. § 55.62. The permit does not authorize manufacturing or dealing in explosives, nor does it authorize a permittee to import explosives for purposes of sale or distribution.

User-Limited Permits are issued for a one-time acquisition of explosive materials, including display fireworks. In addition to allowing the one-time acquisition of explosives, the user-limited permit allows the permit-holder to transport across state lines the explosives he has obtained with his permit. Persons who intend to obtain explosives on a recurring basis should obtain the regular explosives permit. As always, regardless of which permit you have, or even if you do not have a permit, proper storage of explosives in a magazine suitable for the class of explosive materials being stored is required at all times.

Fireworks Table of Distance Issues

We have received several questions asking what a “non-process building” is for purposes of the table of distances set forth at 27 C.F.R. § 55.222. The definitions section of the regulations (see 27 C.F.R. § 55.11) defines both “Fireworks nonprocess building” and “Fireworks plant warehouse.”

The requirement that “fireworks nonprocess buildings” be separated from fireworks process buildings by certain minimum distances was intended to provide a safe separation distance for employees engaged in activities in buildings not used for the processing or storage of fireworks. Accordingly, any building usually and regularly used by employees for activities not involving the processing or storage of fireworks will be considered a nonprocess building and will be subject to the separation distances specified in Table 55.222.

A “fireworks plant warehouse” is a building or structure that is not regularly occupied or used by employees and that is utilized strictly for storage of materials that are neither explosives nor pyrotechnic compositions (for example, tools or equipment). Unlike a fireworks nonprocess building, a fireworks plant warehouse will not be subject to regulatory separation distances (see footnote 5 to table 55.223). Whether a particular building or structure is or is not subject to these requirements must be determined on a case-by-case basis. If you have any questions on this issue, please write to the Public Safety Branch for a formal opinion.

Verbal Opinions vs. “Have-it-in-Writing”

With respect to any situation requiring an ATF determination or variance, it is ATF policy that only a formal opinion “in writing” will be considered official. Although it is more time consuming, the use of written opinions ensures that both ATF and the affected licensee/permittee will understand the factual scenario upon which an opinion is based.

Plastic Explosives

We also would like to remind all persons who have or who intend to use plastic explosives of the general requirement that all such explosives must be marked with a chemical “detection agent.” A definition of “plastic explosive” can be found at 18 U.S.C. § 841(q) and 27 CFR § 55.180. Common examples include sheet explosive, C-4, explosive cutting tape, slip-on boosters, and explosive items of a similar nature. Plastic explosives generally may not be manufactured, imported, or possessed if they do not contain the required detection agent. The final use-up date for any unmarked plastic explosives was April 24, 1999. Accordingly, ATF will be conducting inspections of licensees to ensure that only marked plastic explosives are available.

There are other, more technical, aspects to the regulation of plastic explosives. If you have any questions about the Federal explosives laws and regulations that pertain to plastic explosives, please contact ATF for more information.

Thefts or Losses of Explosives

Explosives theft and loss is a serious problem that requires the cooperation of all persons involved with the industry. ATF regulations require that anyone who discovers or becomes aware of a theft or loss of explosive material **MUST** report the theft/loss to ATF within 24 hours of the discovery of the theft or loss (see section 55.30 of ATF Explosives Regulations for more information on how to report thefts/losses). There was a total of 72 theft incidents reported to ATF in 1999. A summary of explosives thefts for 1999 may be found at the end of this newsletter. For further statistical information regarding thefts of explosives, visit the ATF website and see the “statistics” section on the National Repository page, under Arson and Explosives.

Advance Notice of Proposed Rulemaking - Markings on Imported Explosives

On November 13, 2000, ATF published Notice No. 906 in the Federal Register. This Advance Notice of Proposed Rulemaking (ANPRM) outlines proposed changes to Part 55 (ATF Explosive Regulations). The principal item in this ANPRM is a proposal to require explosives importers to place marks of identification, similar to those set forth in the Regulations at section 55.109, on imported explosives. ATF welcomes your comments on this proposed change. Any comments should be submitted in accordance with the requirements outlined in the above ANPRM.

Personnel Changes Within the Arson and Explosives Programs Division

The Arson and Explosives Programs Division (AEPD) has some new faces. Former Deputy Division Chief Tom Crone has moved to the Alcohol & Tobacco Directorate, where he was named as the new Deputy Chief of the Regulations Division. While Tom will be missed in AEPD, he will still provide valuable assistance to the explosives industry because one of his new functions is to oversee the implementation of new explosives regulations. Any contemplated changes in explosives regulations under Part 55 will continue to be submitted to the Regulations Division for review and publication.

The new Deputy Chief of AEPD is Phil Horbert. Phil brings with him 30 years of ATF experience. He has previously held positions as Chief of the Firearms, Explosives, and Arson Services Division, Special Agent in Charge (SAC) of the Explosives Technology Branch, Assistant Special Agent in Charge in Detroit, and Resident Agent in Charge in Hartford, Connecticut.

Dick Van Loan has been named the new Chief of the Public Safety Branch (PSB). Mr. Van Loan has been with ATF for 21 years, and previously held the position of Chief of the Alcohol Import/Export Branch. Prior to that time, he served as the area supervisor for Regulatory Enforcement in Detroit. Dick has a considerable background in the explosives area, dating back to when he was an inspector in Denver in the early

1980s. At that time, he dealt with the use of explosives in the oil field arena, as well as in other venues. He looks forward to resuming work with the explosives industry and facing the many new challenges in the Public Safety Branch.

In Memoriam

Lieutenant John "Jack" Galvan was a member of the Wichita, Kansas, Police Department Bomb Squad. On October 9, 2000, the bomb squad was disposing of a large quantity of 1.3 (display) fireworks when a catastrophic unplanned explosion occurred as technicians were placing explosives into two pits. Forty cases of fireworks, or about 1,500 pounds of product, were involved. Lieutenant Galvan, a 20-year veteran of the department, suffered second and third degree burns over 80 percent of his body. The explosion also injured Sergeant Douglas Manning and city employee Christopher Sells. Both were treated at a local hospital and later released. Lieutenant Galvan, however, who joined the Wichita Bomb Squad in 1993, died at approximately 5:30 p.m. on November 4, 2000. He is survived by his wife and four children.

Fellow Bomb Technician Lieutenant Ron Harris best sums up Jack's reputation in the bomb technician community:

"Jack and I were friends for over 20 years. Many of you who had met Jack at IABTI conferences most likely met me as well, as we rarely went to conferences without one another. Jack and I shared a friendship that has spanned our careers, both on duty and off. Lt. Galvan was a dedicated professional who knew no shift limits. He was routinely at work hours before required and stayed many hours afterwards in order to finish a project, plan a special event, or assist me with arranging training for the Bomb Unit. I have never worked with a more dedicated individual, and never will again."

ATF notes Lieutenant Galvan's death with deep sadness. His loss is a constant reminder of the dedication, enthusiasm, and hard work of people in the bomb technician community and the extreme danger they face each and every day. ATF extends its deepest sympathies to his wife and children, as well as to his fellow professionals of the Wichita Police Department.

Future Questions

We anticipate distributing the Explosives Industry Newsletters on a regular basis, and welcome any questions or topics that you would like to have presented. You may contact the Public Safety Branch in Washington, DC, by mail, phone, or fax, as follows:

Bureau of Alcohol, Tobacco & Firearms -
Public Safety Branch
Room 680, Tech World South Building,
Washington, DC 20001
Phone: (202) 927-7930
Fax: (202) 927-8887

Wanted by ATF

RANDY MICHAEL YAGER

For violation of Federal Explosives Law

Yager was the Chicago regional president of the Outlaws Motorcycle Club and is wanted in the Eastern Judicial District of Wisconsin for violations of RICO (Racketeering) Laws and for interstate transportation of explosives. This warrant stems from the ATF Milwaukee investigation of a series of bombings in the Midwestern United States. Yager is known to carry firearms, has a previous felony conviction, and has acquired explosive material in the past.



Race: White
Sex: Male
Date of Birth: 8/7/56 (has also used 8/17/56)
Place of Birth: Indiana
Height: 5' 11"
Weight: 235
Eyes: Hazel
Hair: Brown
Scars/tattoos: Tat R Arm (Eagle)
Tat L Arm (Outlaw Indians)
Tat UL Arm (Harley emblem)
Scar on abdomen
SSN: 310-68-5860

Warrant No. 9789-0604-0267-J issued June 2, 1997, by the Eastern District of Wisconsin.

Do not attempt to apprehend this person yourself. He should be considered armed and dangerous. Report any information to the nearest ATF field office or call the ATF enforcement operations Center in Washington, DC, 1-800-800-3855.

International Explosives Assistance

During this past fall, ATF has sent representatives to Ireland, Azerbaijan, Kyrgyzstan, and Uganda to assist those countries in dealing with the criminal use of explosives. In addition, at the request of the Dutch government, ATF is reviewing their investigation of catastrophic explosions that occurred at a fireworks facility on May 13, 2000, in Enschede, the Netherlands. According to news reports, an estimated 100,000 kilograms (110 tons) of explosive product detonated, killing at least 20 people, four of whom were firefighters attempting to suppress the initial fire. In addition, more than 600 persons were injured, and 400 homes and businesses were destroyed or damaged. ATF will be making recommendations to the Dutch government as to measures they might take to strengthen their explosives laws and regulatory framework.

In December, Phil Horbert, Deputy Chief of the Arson and Explosives Programs Division, attended the 2nd Session of the International Explosives Technical Commission held in Montreal, Canada. The Commission has been mandated by the Convention on the Marking of Plastic Explosives for the Purpose of Detection to annually evaluate technical developments relating to the manufacture, marking, and detection of explosives.

Deputy Chief Horbert is the commissioner representing the United States, and he is advised by representatives from the Federal Aviation Administration, Department of State, United States Army, and the ATF National Laboratory. This Commission recommended that the number of approved explosives detection agents be reduced by removing o-MNT because it is carcinogenic. Because

o-MNT is one of the detection agents specified in U.S. explosives law, it will be necessary, if o-MNT is removed by the Commission, for Congress to act to remove this detection agent from 18 U.S.C. § 841(p). The Commission is appointed by the Council of the International Civil Aviation Organization of the United Nations.

SUMMARY OF EXPLOSIVES THEFTS, JANUARY - DECEMBER 1999

	Pounds	Quantity	Feet
Blasting Agents			
ANFO	2,205		
Other BA	<u>751</u>		
Total	2,956		
High Explosives			
Booster	713		
C-4	14		
Dynamite	6,387		
PETN	40		
Total	7,154		
Low Explosives			
Black Powder	<u>87</u>		
Total	87		
Other Explosives			
Electric Detonators		3,187	
Non-Electric Detonators		<u>1,223</u>	
Total		4,410	
Detonating Cord			18,653
Ignitor Cord			50
Safety Fuse			<u>2,125</u>
Total			20,828
Other, Miscellaneous			
Connectors		1	
Shaped charges		286	
Squibs/Electric Matches		68	
Fireworks (pounds)	4,570		
Military Ordnance			
C-4 (pounds)	13		
Rockets		6	
Total, All theft of Explosives	<u>Pounds</u> 14,966	<u>Quantity</u> 5,198	<u>Feet</u> 22,678

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Florida

Washington Field Division

607 14th St., NW., Room 620
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Virginia, Washington DC



WARNING

**THEFT OF EXPLOSIVES
IS A FEDERAL CRIME
REPORT THEFTS
OR LOSSES IMMEDIATELY**

**TO
1-888-ATF-2662**

**Bureau of Alcohol, Tobacco and Firearms
ATTN: Explosives Newsletter
650 Massachusetts Avenue, NW, Room 7100
Washington, DC 20226**

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