

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES

27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1): INDOOR STORAGE OF EXPLOSIVES IN BUSINESS PREMISES DIRECTLY ADJACENT TO A RESIDENCE OR DWELLING

ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

ATF Rul. 2002-4

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received questions concerning indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

Section 842(j) of 18 U.S.C. states: "It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary."

The regulations in 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1) specify that no indoor magazine is to be located in a residence or dwelling. Section 55.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, section 55.22(a)(3) provides that such "variances" are permissible only in certain circumstances, including where "[t]he alternate method or procedure will not be contrary to any provision of law and will not . . . hinder the effective administration of this part."

ATF has been asked whether businesses that are directly adjacent to living quarters may lawfully store explosive materials in the business premises. The issue presented is whether the premises amount to a "residence or dwelling" within the meaning of the regulations cited above.

Even where the business premises are segregable from the living quarters by the existence of a door or a common wall, the business premises retain their character as a residence or dwelling. Accordingly, indoor storage of explosives in such premises is generally prohibited and can be allowed only pursuant to an approved variance.

Held, ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling. ATF may approve such variances upon receipt of all appropriate certification and other documentation as may be requested.

Date signed: August 23, 2002