



ATF EXPLOSIVES Industry Newsletter

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New Web Pages and Publication

ATF has added new web pages that provide guidance in the areas of plastic explosives, suspicious or dangerous explosive items, and disaster preparedness for Federal explosives licensees and permittees. These new web pages include information such as detection agent requirements, explosives descriptions for the public, and a new publication, ATF P 5400.16, *Voluntary Steps to Prepare for a Pending Natural Disaster*. Go to the Explosives Industry website at <http://www.atf.gov/explosives/industry/> and click on the associated links to view the new web pages. ATF P 5400.16 may be found at <http://www.atf.gov/publications/explosives-arson/>. Also, see our Open Letter with information regarding explosive pest control devices at <http://www.atf.gov/explosives/open-letters/>.

Display Fireworks Materials Exemption for Federally Recognized Indian Tribes

Firearms & Explosives Industry Division (FEID)
Division Chief **Chad J. Yoder**

Deputy Division Chief **Debra Satkowiak**

Explosives Industry Programs Branch (EIPB)
Branch Chief **William J. Miller**

Firearms Industry Programs Branch (FIPB)
Branch Chief **Adam Rogers**

Firearms Technology Branch (FTB)
Branch Chief **John R. Spencer**

Industry Operations Training Branch (IOTB)
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Working for a Sound and Safer America

ATF has issued an open letter to all federally recognized Indian tribes and explosives licensees and permittees regarding the Tribal Law and Order Act of 2010. This Act, signed into law in July 2010, creates an exemption for federally recognized Indian tribes or tribal agencies from provisions of the Federal explosives law with respect to display fireworks. Section 236 of the Tribal Law and Order Act of 2010, Exemption for Tribal Display Materials, amends 18 U.S.C. § 845, Exceptions, by adding § 845(a)(7), which exempts "the transportation, shipment, receipt, or importation of display fireworks materials for delivery to a federally recognized Indian tribe or tribal agency."

This provision allows federally recognized Indian tribes and tribal agencies to obtain display fireworks materials without a Federal explosives license or permit.

Under this exemption, only authorized employees of a federally recognized Indian tribe or tribal agency acting within the scope of their official duties may acquire display fireworks materials on behalf of the tribe or tribal agency without an ATF license or permit. The term “Indian tribe” is defined by 18 U.S.C. § 841(t) as “any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.” It should be noted, however, that pursuant to 27 CFR, Part 555, Subpart G—Records and Reports, ATF licensees distributing display fireworks materials to tribes under this provision are still required to maintain separate records of the distribution.

The new law does not exempt Indian tribes and tribal agencies engaged in the business of manufacturing fireworks from the requirement to obtain a license to manufacture explosives. Moreover, as provided by 18 U.S.C. § 842(a)(3)(B), tribes and tribal agencies, in addition to State and local governments, may not distribute display fireworks, display fireworks materials, or other explosive materials to another person or entity that does not have a Federal explosives license or permit or is not otherwise exempt.

Indian tribes and tribal agencies, like State and local agencies, must comply with the Federal explosives storage regulations specified in 27 CFR, Part 555, Subpart K—Storage. These regulations outline how explosive materials must be stored in properly constructed explosives storage magazines and detail certain minimum distances explosives magazines need to be located from inhabited buildings, public highways, passenger railways, and other explosives storage magazines. Additionally, Indian tribes and tribal agencies are still required to report any theft or loss of explosive materials from their stock within 24 hours of discovery to ATF and to appropriate local authorities.

Fireworks and Black Powder

Black powder, a low explosive, has historically been, and continues to be, an integral component of commercial and amateur fireworks. However, there has been recent confusion over the exemption status of black powder when used for this purpose.

The regulation at 27 CFR 555.141(b) states, “Except for the provisions applicable to persons required to be licensed under Subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow

matches, and friction primers, 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 antique devices, as exempted from the term “destructive devices” in 18 U.S.C. 921(a)(4). Further, the regulation at 27 CFR 555.41(b)(1)(iv) states, “It is not necessary to obtain a permit if the user intends only to lawfully purchase commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.” Therefore, the exemption allowing the purchase of commercially manufactured black powder applies only to black powder intended to be used solely for sporting, recreational or cultural purposes in antique firearms or in antique devices.

Hence, any individual or company purchasing any amount of black powder for use in fireworks must possess a Federal explosives license or permit. All persons or companies that sell black powder, regardless of quantity, must be licensed as Federal explosives dealers.

Keep in mind that individuals do not need a manufacturer’s license if they are manufacturing black powder for their own personal, non-business use. However, all persons possessing black powder for use in fireworks must store the black powder in an explosives magazine subject to the regulations found in 27 CFR, Part 555, Subpart K—Storage, and must possess a Federal explosives license or permit to transport such black powder.

ATF Ruling 2011-2 Storage in Type 5 Bins and Silos

ATF has received numerous requests from Federal Explosives Licensees and Permittees (FEL/Ps) for variances from the 27 CFR 555.211(a)(4) locking requirements for outdoor Type 5 bin and silo storage magazines. These magazines are used to store bulk blasting agents—typically bulk emulsion (sensitized) and ammonium nitrate-fuel oil (ANFO)—that cannot be stored in magazines with conventional doors that are easily padlocked and hooded. Rather, bulk blasting agents must be stored in magazines with filling and discharge systems that have small openings that are secured and controlled by hatches, valves, and nozzles.



It is impractical to retrofit the locks used on these magazines with hoods because of the configuration of the filling and discharge systems. Additionally, access points, including ladders and hatch openings, cannot be hooded or secured with two padlocks without impeding access to the magazine.

Accordingly, ATF recognizes that it is difficult for FEL/Ps who use outdoor Type 5 bin and silo storage magazines to comply with the locking requirements of section 27 CFR 555.211(a)(4). Moreover, ATF believes that the design of outdoor Type 5 bin and silo magazines, and the inaccessibility of the bulk blasting agents stored within them, provides protection from theft and loss that is substantially equivalent to the requirements of section 555.211(a)(4), provided certain conditions are met. Therefore, ATF has issued ATF Ruling 2011-2 to address this industry issue.

Pursuant to ATF Ruling 2011-2, FEL/Ps may store bulk blasting agents in outdoor Type 5 bin or silo magazines with doors not equipped with the requisite locks, provided all of the following conditions are met at all times:

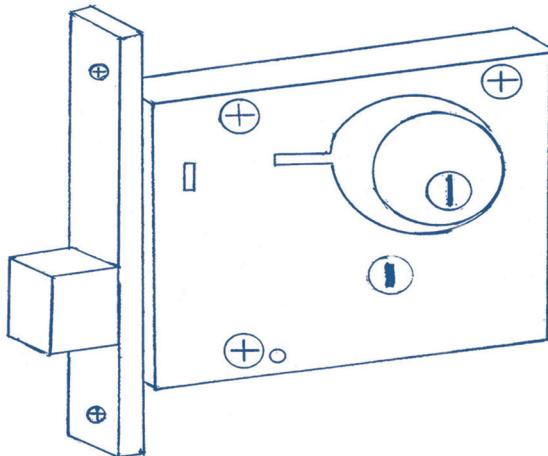
1. When not in operation, FEL/Ps must provide adequate security that restricts outer perimeter access, e.g., a locked gate, security guards, fences, or a combination of these measures.
2. FEL/Ps must secure each outdoor bin or silo with at least one five-tumbler padlock with a case-hardened shackle of at least $\frac{3}{8}$ " diameter on the top hatch, the valves at the loading ports and points of discharge, and the elevated ladder to prevent anyone from climbing onto bins or silos.
3. Blasting agent storage silos and bins must meet all other construction requirements of Type 5 magazines as described in 27 CFR 555.211.

All other provisions of 27 CFR Part 555 must be complied with as prescribed. For official guidance, refer to ATF Ruling 2011-2, located at <http://www.atf.gov/regulations-rulings/rulings/>. FEL/Ps who use the alternate method or procedure set forth in Ruling 2011-2 and comply with all the requirements stated therein are not required to obtain a separate variance approval from 27 CFR 555.211(a)(4).

Mortise Locks and Cylindrical Dead Bolt Locks

Industry members have asked ATF whether cylindrical dead bolt locks qualify as the mortise locks required under the Federal explosives regulations at 27 CFR, Part 555, Subpart K—Storage. The locking requirements in the regulations for type 1, 2, 4, and 5 explosives magazines generally provide that each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

MORTISE LOCK



The Federal explosives regulations at 27 CFR Part 555, do not define the term "mortise lock." However, a mortise lock is generally installed in a hollowed-out (or mortised) cavity within the side of a door—with the housing of the lock contained in the door itself—and is actuated by a keyed cylinder on the front of the door.

A mortise lock typically contains a dead bolt and a dead latch, which extend from the same faceplate into the strike plate and box on the door frame. A spring loaded latch typically secures the door automatically when shut while the dead bolt is actuated by a key. Beyond this, mortise locks may contain additional features that vary depending on the intended application of the lock.

In contrast, cylindrical locks have a simpler design, installed in two intersecting holes in the door with the cylinder contained in the outside knob or lever, away from the surface of the door. A cylindrical dead bolt lock is installed within a large bored hole in the front of the door and requires a positive action (e.g., the use of a key) to extend and retract the dead bolt.

The Federal explosives regulations allow indoor magazines housed in secure rooms—that are locked pursuant to the regulations—to have each indoor magazine door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the door hinges and lock hasp are securely fastened to the magazine. Such an indoor magazine may be secured with steel padlocks only if the room housing the indoor magazine is locked in accordance with the Federal explosives regulations magazine locking requirements, that is, with two mortise locks, two padlocks fastened in separate hasps and staples, a combination of a mortise lock and a padlock, a mortise lock that requires two keys to open, or a three-point lock. ATF has learned, however, that many rooms that house indoor magazines are being secured with cylindrical dead bolt locks.

Because cylindrical dead bolt locks are not mortise locks, as described above, they do not meet the locking requirements under the Federal explosives regulations in 27 CFR, Part 555, Subpart K—Storage. However, ATF will evaluate variance requests to use cylindrical dead bolt locks as part of an indoor magazine locking scheme on a case by case basis. Licensees or permittees who desire to use cylindrical dead bolt locks to secure a room that contains an indoor magazine may submit a request for a variance from the Explosives Industry Programs Branch at EIPB@ATF.GOV. Variance requests to use cylindrical dead bolt locks should include a description of any other security measures on the premises (e.g., security system, additional locks, structures without windows), type and construction of the door, and make/model of magazine lock(s).

Recordkeeping Exception at 27 CFR 555.123(d)

ATF recently received an inquiry regarding the manufacturer recordkeeping requirements under 27 CFR 555.123 and the exception under subsection 555.123(d). Subsection 555.123(d) contains recordkeeping requirements for manufacturers manufacturing explosive materials for their own use. A licensed manufacturer is generally required to maintain records of explosives manufactured. Additionally, under subsection 555.123(d), a manufacturer is required to maintain separate records of explosive materials he manufactures for his own use. These records must detail the explosive material's date of use, quantity, and description and size. However, subsection 555.123(d) contains an exception to this particular recordkeeping requirement. Specifically, a licensed manufacturer does not need to maintain the subsection 555.123(d) required record if the explosive materials are manufactured for his own use and used within 24 hours at the same site. For example, a licensed manufacturer mixing ANFO at the shot site and using those materials within 24 hours of manufacture does not need to keep the records of use as otherwise required under subsection 555.123(d).

This exception applies only to the separate use record required in subsection 555.123(d). The licensed manufacturer must continue to comply with all other section 555.123 recordkeeping requirements.

Pressure Gas Systems

Various industries have found a need for high pressure gas systems that use low explosive pressure gas generators contained within steel tubes to remove buildups in industrial equipment. These systems rely on gas generator cartridges and carbon dioxide to produce rapid gas expansion, thereby removing obstructions from the target area.

ATF has consistently considered these pressure gas systems and gas generators to be low explosives subject to the Federal explosives law at title 18, United States Code chapter 40 and regulations at 27 CFR Part 555. Additionally, ATF has held that these systems do not meet the criteria necessary to exempt them under the Special Explosive Device provisions in 27 CFR 555.32.

Therefore, individuals or companies must obtain a Federal explosives license prior to engaging in the business of manufacturing, importing, or dealing in these gas systems, gas generators, or similar explosive systems. Further, any individual or company that purchases or otherwise acquires the pressure gas systems or gas generators must possess a Federal explosives license or permit.

Individuals or companies that manufacture or import explosive gas generators must ensure the gas generators contain marks of identification as specified in 27 CFR 555.109, Identification of explosive materials. These marks of identification, in addition to other specified information, must be recorded in permanent records of acquisition and disposition, which are required pursuant to 27 CFR Part 555, Subpart G—Records and Reports. When not in use, explosive pressure gas systems and explosive gas generators must be stored as specified in 27 CFR Part 555, Subpart K—Storage.

You may obtain an application packet for a Federal explosives license or permit from your local ATF office, by visiting <http://www.atf.gov/explosives/how-to/become-an-fel.html>, or by contacting the Federal Explosives Licensing Center at 1-877-283-3352.

Indoor Magazines Stored Inside Containers and Trailers

Federal explosives licensees and permittees generally may use portable (non-mobile) metal sea-containers to house indoor magazines without prior variance approval provided that the container is locked, unsusceptible to mobility or intrusion, and is of stable construction to provide protection from wind and other inclement weather conditions.

Keep in mind that the indoor magazine must meet all applicable storage requirements as specified in 27 CFR 555, Subpart K—Storage, including a maximum net explosive weight of 50 pounds. Further, if a licensee or permittee chooses to house an indoor magazine within such a container, they are prohibited from storing other explosives within the container and outside the indoor magazine.

In contrast, Federal explosives licensees or permittees must obtain a variance from ATF prior to housing an indoor magazine within mobile or vehicular trailers. EIPB will evaluate each variance based in part on the following: immobilization of the trailer, locks on each trailer access door, and whether the magazine is securely

attached to the trailer. Keep in mind that the indoor magazine must meet all applicable storage requirements as specified in 27 CFR 555, Subpart K—Storage.

Federal explosives licensees or permittees may submit variance requests via email to EIPB@atf.gov or mail requests to the:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Explosives Industry Programs Branch
99 New York Avenue, NE
Mailstop 6N-672
Washington, DC 20226

Educational Institution Exemptions and Students

ATF has received inquiries from several educational institutions regarding the exemption status of explosives educational programs that require students to handle explosives as part of their coursework. Some of these explosives educational programs involve students assisting and learning from Federal explosives licensees or permittees.

Public Educational Institutions

With some exceptions, section 845(a) of title 18, United States Code, generally exempts from the provisions of the Federal explosives law at title 18, United States Code Chapter 40, 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. This exemption is also found in section 555.141 of the Federal explosives regulations in title 27, Code of Federal Regulations Chapter 555. Therefore, educational institutions operated by Federal, State or local governments—public educational institutions—are generally exempt from explosives licensing, recordkeeping, and conduct of business requirements.

Students of public educational institutions can handle explosives acquired by the educational institution if: (1) an employee of the public educational institutions is physically present to oversee and provide direct supervision to the students at all times the students handle the explosives and (2) the students are not otherwise prohibited from possessing explosives as specified in 18 U.S.C. 842(i) or 27 CFR 555.26(c).

Although public educational institutions are exempt from most provisions of the Federal explosives law and regulations, they are required to store explosive materials in accordance with the requirements in 27 CFR 555, Subpart K—Storage.

Private Educational Institutions

Private educational institutions acquiring or manufacturing explosives are subject to all provisions in 27 CFR Part 555—Commerce in Explosives, and must obtain a Federal explosives license or permit. Each private educational institution must submit appropriate identifying information for all employees who will have constructive or actual possession of explosives as responsible persons or employee possessors as required in 27 CFR 555.45(c) and 555.57(b).

The regulation at 27 CFR 555.26 states, in part, that “*No person, other than a licensee or permittee knowingly may transport, ship, cause to be transported, or receive any explosive materials.*” Generally, only individuals listed as employee possessors or responsible persons may operate under the authority of a Federal explosives license or permit. Since students enrolled at educational institutions are handling explosives as students and not as employees, students cannot be listed as employee possessors.

However, students can handle explosives acquired by licensed or permitted private educational institutions or another explosives licensee or permittee if: (1) an employee possessor or responsible person (from the licensee or permittee acquiring the explosives) is physically present to oversee and provide direct supervision to the students at all times the students handle the explosives; and (2) the students are not otherwise prohibited from possessing explosives as specified in 18 U.S.C. § 842(i) or 27 CFR 555.26(c).

Keep in mind that all explosives acquired by private educational institutions must be stored in accordance with the requirements in 27 CFR 555, Subpart K—Storage.

Educational Institution Extracurricular Clubs

Extracurricular clubs at public or private educational institutions (e.g., chemistry or pyrotechnic clubs that are attended voluntarily by students) that want to acquire or manufacture explosives are subject to all provisions in 27 CFR, Part 555—Commerce in Explosives, and must obtain a Federal explosives license or permit.

Further, these clubs are required to obtain a Federal explosives manufacturing license if they intend to engage in the business of manufacturing explosives for sale, distribution, or for their own business use. However, they are not required to possess a manufacturer’s license if they are manufacturing explosives for their personal, non-business use.

Keep in mind that these clubs may not transport explosive materials unless they obtain a Federal explosives license or permit. For example, a chemistry club mixing chemicals into pyrotechnic compositions at their university

laboratory and subsequently transporting them to a high school demonstration site is required to obtain a Federal explosives license or permit.

Educational institutions who require a determination on their exemption status may submit requests via e-mail to EIPB@atf.gov, or mail requests to the:

Bureau of Alcohol, Tobacco, Firearms, and Explosives
Explosives Industry Programs Branch
99 New York Avenue, NE
Mailstop 6N-672
Washington, DC 20226

Prohibited Person Reminder

The Safe Explosives Act of 2002 expanded the categories of persons prohibited from shipping or transporting any explosives in or affecting interstate or foreign commerce, or receiving or possessing such explosives. Federal law at 18 U.S.C. §842(i) makes it unlawful for any person to ship or transport any explosive in or affecting interstate or foreign commerce or to receive or possess any such explosive if the person:

- Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to any controlled substance;
- Has been adjudicated as a mental defective or has been committed to a mental institution;
- Is an alien (other than permanent resident aliens and certain other excepted aliens);
- Has been dishonorably discharged from the armed forces; or
- Has renounced his or her United States citizenship.

Generally, persons who fall under the prohibited categories listed above may apply for relief from their explosives disabilities. ATF may grant relief to an applicant if it is established that the circumstances regarding the disability, and the applicant’s record and reputation, are such that he or she will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest. For relief of disability application forms, or for additional information on the relief process, see ATF’s webpage at <http://www.atf.gov/explosives/how-to/apply-for-relief-of-explosives-disability.html>.

A Reminder about Special Explosive Device Exemptions

As provided by the Federal explosives regulations at 27 CFR 555.32, ATF may issue exemptions for special explosive devices that, as designed, do not constitute a public safety or security hazard. When issuing an exemption for a specific special explosive device, ATF stipulates any conditions that may affect the exempted status of the device. Because ATF does not routinely provide copies of special explosive device determinations to third parties, we recommend that the person, licensee or company to whom the exemption is issued provide a copy of the exemption to their customers.

ATF further recommends that applicants for special explosive device exemptions note if their application contains proprietary information, and if possible, where such information appears in the application documents.

Explosives importers and their brokers should ensure that a copy of the ATF exemption is available for inspection by U.S. Customs and Border Protection (CBP) officials. It has come to ATF's attention that in many cases importers have not had proof of exemption for a particular special explosive device available for examination by CBP when the shipment reaches the U.S. border. As a result, a shipment may be denied entry into the United States until a copy of the exemption is transmitted to CBP for evaluation. This may result in significant and costly delays when the holder of the exemption is not involved in the importation.

Special explosive device exemptions generally transfer to the recipient of the exempt devices. However, any alterations to the exempt device, the packaging of the device, or the manufacture of a different device, will render the exemption void and necessitate a separate request for exemption. Further, any explosive materials removed from exempt devices are also subject to regulation.

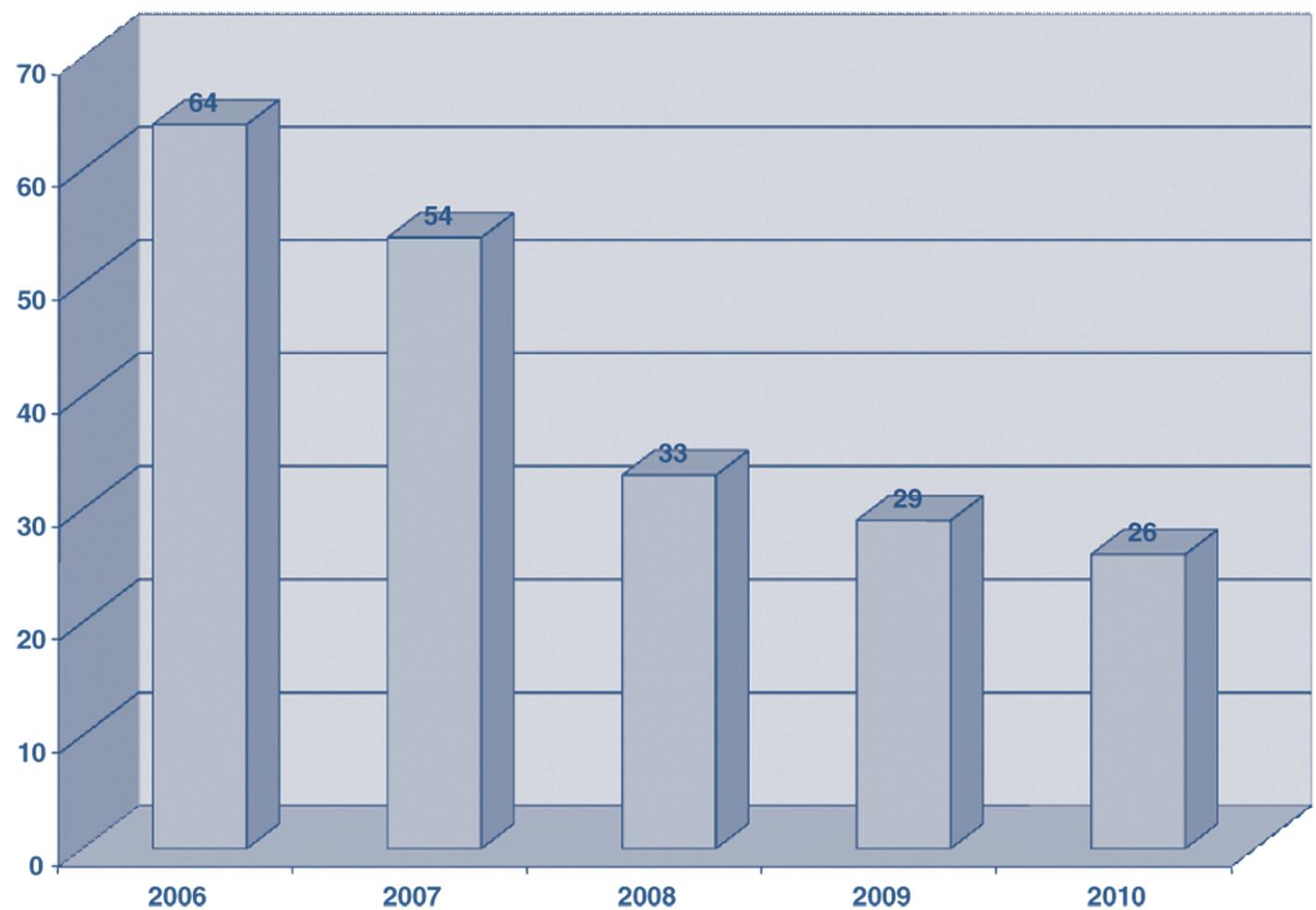
Acting Director Expresses ATF Gratitude



ISEE President Ron Elliott, ATF Acting Director Kenneth Melson and ISEE Executive Director and General Counsel Jeff Dean at the 37th Annual Conference

In February 2011, ATF Acting Director Kenneth E. Melson addressed the members of the International Society of Explosives Engineers (ISEE) at their National Conference in San Diego, California and expressed his gratitude to ISEE members *"for being such champions of the safety and security of our great nation. In advancing the art and science of explosives, your community of members ensures that safety and security is paramount and I appreciate your watchful eyes. It's in part due to your watchfulness that explosives thefts continue to drop, carrying on a downward trend. There were 26 in 2010, down from 29 in 2009! In 5 years, with your oversight and vigilance, the number of explosives thefts has dropped over 50 percent! That equates to lives saved and people protected from potential harm. Timely reporting and clear and complete recordkeeping go far in helping us keep this country safe and we appreciate it greatly!"*

Explosives Thefts from 2006 through 2010



Newsletter Distribution

The Explosives Industry Newsletter is now available online and is no longer distributed to licensees and permittees in "hard copy" format unless specifically requested. Current and previous issues of the newsletter are available on-line at <http://www.atf.gov/publications/newsletters/>. Licensees and permittees are encouraged to use ATF's new email update subscription service to receive notice whenever a new newsletter is posted to the ATF site at www.atf.gov.

To receive email notices whenever new Explosives Industry Newsletters are posted to the ATF website, licensees and permittees should go to <http://www.atf.gov/publications/newsletters/>, click on the Receive FEL Newsletter Updates link and complete the requested e-mail and preference information.

Licensees and permittees who do not have Internet access, or who otherwise wish to continue receiving the newsletter by mail, must write to the ATF Distribution Center, 1519 Cabin Branch Dr., Cheverly MD 20785 and ask to be placed on the mailing list for the ATF Explosives Industry Newsletter, ATF M 5400.3.

Name: _____

Company: _____

Address: _____

City/State: _____ Zip Code: _____

Phone No.: *(optional)* _____ E-mail: *(optional)* _____

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives
Federal Explosives Licensing Center
244 Needy Road
Martinsburg, West Virginia 25405

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