



ATF EXPLOSIVES Industry Newsletter

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Division Chief **Chad J. Yoder**

Deputy Division Chief **Debra Satkowiak**

Firearms Industry Programs Branch (FIPB)

Branch Chief **Adam Rogers**

Explosives Industry Programs Branch (EIPB)

Branch Chief **William J. Miller**

Firearms Technology Branch (FTB)

Branch Chief **John R. Spencer**

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www.atf.gov

Working for a Sound and Safer America

William J. Miller Selected as Chief of Explosives Industry Programs Branch

William Miller was recently named as the Chief, Explosives Industry Programs Branch (EIPB), succeeding Debra Satkowiak who became Deputy Chief of the Firearms & Explosives Industry Division earlier this year. Will worked as a probation and parole officer in Missouri before beginning his ATF career as an Industry Operations Investigator in the Kansas City Field Division in 2003. In 2007, he transferred to Washington, DC, to work as a Program Manager in EIPB. As the new branch chief, Will looks forward to a continued partnership with industry members to foster future open communication and enhance the explosives industry's awareness of public safety practices.

New Explosive Pest Control Device Web Page

ATF has added a new web page that provides regulatory guidance in the area of explosive pest control devices (EPCDs), commonly known as bird bombs or seal bombs. The new webpage consolidates pertinent information such as license and permit requirements, storage and past newsletter articles relative to EPCDs. Additionally, the webpage contains a printable flyer that importers, manufacturers and distributors may use to assist their customers in understanding Federal explosives regulatory requirements. Go to the EIPB website at <http://www.atf.gov/explosives/industry> and click on Learn about explosive pest control devices to view the new web page. Also, see our Open Letter with information regarding these devices at <http://www.atf.gov/press/releases/2010/11/111210-openletter-fel-use-of-epcds.html>.

Advance Notice of Proposed Rulemaking: *Separation Distances of Ammonium Nitrate and Blasting Agents*

On September 16, 2010, ATF published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register (Notice No. ATF 26A) titled “*Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents.*” The principal purpose of this ANPRM was to notify the public and the explosives industry of ATF’s intent to replace the regulations’ reference to The Fertilizer Institute’s outdated *Definition and Test Procedures for Ammonium Nitrate Fertilizer* guidance document; which was used to determine the insensitivity of ammonium nitrate fertilizer. This ANPRM was intended to gather information and comments from the public and explosives industry regarding possible replacements for this guidance document. The ANPRM can be viewed at www.regulations.gov, keywords “blasting agents.”

ATF Ruling 2010-7 Storage of Loaded Perforating Gun Assemblies

Perforating gun assemblies are primarily used to perforate oil and gas wells in preparation for production operations. Each perforating gun is assembled to meet a specific purpose and function under certain well conditions. These assemblies are commonly housed within hollow thick-walled steel tubes and contain shaped charge perforators, initiated by detonating cord.

While regulations at 27 CFR 555.205 normally require loaded perforating gun assemblies to be stored in locked explosives storage magazines, ATF believes that allowing for storage in alternate secure areas greatly decreases the chance of accidents that may occur due to adverse conditions at the jobsite and repeated handling and movement between the assembly area or jobsite and the magazine. Explosives industry members have asked ATF to designate a uniform set of procedures that companies can follow when storing preloaded perforating gun assemblies. ATF has issued Ruling 2010-7 in response to this industry need.



Some of the factors ATF considered in developing this ruling were the practicality of storing assembled perforating guns in a traditional explosives magazine (assemblies can range up to 70 feet in length); sparking hazards to other explosives contained in a magazine with assemblies that are housed in metal tubes; and the risk to operators when they are forced to return unused assemblies to the business premises for disassembly and removal of the explosives to an approved magazine. The complete Ruling may be found at <http://www.atf.gov/regulations-rulings/rulings>.

Licensees or permittees who want to use the alternate method or procedure set forth in ruling 2010-7 are not required to obtain a separate variance approval. Any licensee or permittee having received previous variance approval for the storage of loaded perforating guns outside an approved magazine must immediately comply with all conditions within this ruling. Any other alternate methods or procedures not specified in this ruling may be proposed through a variance request addressed to the Explosives Industry Programs Branch.

Dosed Gas Systems

Dosed gas systems utilize an explosive gas mixture to generate shock waves for industrial, agricultural, or other applications such as removing ash build-up from a boiler surface or killing tunneling pests in their burrows. In these applications, a flammable gas, such as propane, is combined with oxygen and pumped into a balloon inside a boiler or the burrow of a tunneling pest. An electric spark initiates the explosion. ATF has received a number of inquiries relating to these types of devices and has consistently classified “dosed gas systems” used for cleaning boilers and killing pests as explosive materials regulated under the Federal explosives laws and regulations.

Federal explosives law and regulations at 18 U.S.C. 841 and 27 CFR, Part 555, define “manufacturer” as “any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.” The definition of “explosive materials,” includes explosives, i.e., “any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion...”

The combination of gases mixed for the purpose of creating an explosion in the manner described above constitutes an explosive material. As a result, combining the gases for a commercial purpose constitutes manufacturing explosive materials under the Federal explosives laws and regulations. Any person or company using a dosed gas system in their commercial operations or any person or company performing commercial cleaning, pest control or other services utilizing a dosed gas system must first obtain a license from ATF and otherwise comply with Federal explosives laws and regulations. Persons not engaged in commercial operations are not required to obtain a Federal explosives license or permit to use dosed gas systems.

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.

Federal Explosives Exemptions for U.S. Federal, State, and Local Government Agencies

What the Federal Explosives Exemptions Cover. The Federal explosives laws at 18 U.S.C. 845, and the Federal explosives regulations at 27 CFR 555.141, provide exemptions from most provisions of the Federal explosives laws and regulations.

As specified in 18 U.S.C. 845(a)(3) and 27 CFR 555.141(a)(3), the transportation, shipment, receipt, or importation of explosive materials for delivery to any Federal, State, or local government agency are exempt from the Federal explosives laws and regulations. 18 U.S.C. 845(a)(6) and 27 CFR 555.141(a)(5) also provide an exemption for explosive materials manufactured under the direction of the U.S. military, their distribution to, or their storage or possession by, U.S. government agencies. Further, 18 U.S.C. 845(a)(6) and 27 CFR 555.141(a)(6) exempt arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of The United States.

What This Means for Industry Members Operating Under the Federal Explosives Exemptions Applicable To Government Agencies.

In order for any person to establish that an operation is exempt from the Federal explosives laws and regulations, the industry member should maintain documentation which clearly identifies that his/her operations or explosive materials are for, on behalf of, or for delivery to a Federal, State or local government agency. This documentation should generally identify: (1) the name of the government agency requesting the services or products; (2) a document reference number (such as an invoice, purchase order or contract number); (3) the effective dates or tenure for which the services or products to be provided or delivered; (4) the name of the government agency’s point of contact, and (5) the explosives-related materials, products, or services that are requested by the government agency.

During the course of an ATF inspection, ATF Industry Operations Investigators (IOIs) may ask industry members to review copies of these documents in order to verify any claimed exemption from Federal explosive laws and regulations.

What the Federal Explosives Exemptions Applicable to Government Agencies DO NOT Cover.

The above Federal explosives exemptions do not apply to any explosives-related operations conducted by industry members prior to the finalization and issuance of an official Government request or contract. This includes any explosives operations performed during the contract or order’s bidding process for a Government contract, or any operations conducted for demonstration or marketing purposes. The Federal explosives exemptions also do not apply to explosive materials, products or services delivered to foreign governments, unless the delivery to the foreign entity is specifically requested by and required on behalf of a U.S. Government agency. Further, the Federal explosives exemptions do not apply to Federal, State, or local government agencies **distributing** explosive materials, products, or services to non-governmental agencies or companies. Finally, State and local government agencies are not exempt from complying with storage requirements in the Federal explosives regulations. As a result, any industry member conducting operations pursuant to a State or local government agency’s contract must continue to store explosive materials in accordance with the requirements of 27 CFR 555, Subpart K—Storage.

Industry members are reminded that the Federal explosives exemptions discussed above do not supersede their required compliance with any other Federal, State, or local law. Also, industry members conducting operations

that are regulated by more than one law, such as the Gun Control Act (GCA), the National Firearms Act (NFA), and the Arms Export Control Act (AECA), or other law, must continue to adhere to those requirements.

Should industry members have any questions regarding the application of the Federal explosives exemptions, or require a formal determination whether their operations are exempt, please contact the Explosives Industry Programs Branch by telephone at 202-648-7120, or by e-mail to EIPB@atf.gov.

Fireworks Storage Bins

Many display fireworks industry members use uncovered, non-sparking wooden bins, also known as “picking bins,” to store their fireworks within explosives magazines. When constructed appropriately, bins provide a more stable and organized configuration than traditional storage within cardboard cases.



The regulation at 27 CFR 555.214(c) states, in part, that “containers of explosive materials must be closed while being stored.” ATF recently determined that picking bins used to store display fireworks are containers and therefore must be closed (with a lid, flap, curtain, etc., made of a non-sparking material).

Further, pursuant to the regulation at 27 CFR 555.202(a), bulk salutes are classified as high explosives and must be stored in Type-1 or Type-2 magazines. Federal explosives regulations define bulk salutes, in part, as “finished salute shells held separately prior to being packed with other types of display fireworks.” Therefore, bins containing only salutes must be maintained in Type-1 or Type-2 magazines.

ATF has found that if fireworks industry members meet certain conditions, there may be good cause for authorizing the storage of display fireworks in uncovered bins by variance. Any Federal explosives licensee or permittee using, or planning to use, uncovered storage bins must apply for, and receive approval of, a variance from the explosives storage regulations prior to using the uncovered storage bins. 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

Marking Requirements and Transfers of Damaged or Defective Display Fireworks

Federal explosives licensees importing display fireworks for sale or distribution must ensure the fireworks contain marks of identification as specified in 27 CFR 555.109 no later than 15 days after the date of release from U.S. Customs custody. However, marks of identification are not required to be placed on display fireworks that are for the importing company’s own use. ATF has encountered a situation in which a licensed importer that did not mark shells imported for their own use subsequently transferred these shells to another licensee for destruction. These shells were deemed unusable by the importer due to weather damage or damage during fireworks shows.

Importers transferring display fireworks that do not contain the required marks of identification and that were not marked within 15 days following release from U.S. Customs are in violation of the Federal explosives laws and regulations. Those explosives importers who do not have their shells marked within 15 days of release from U.S. Customs custody may not distribute or transfer those shells, even for the purpose of destruction. Further, any importer whose shells were properly marked within 15 days of release from Customs, and who wishes to transfer damaged or defective display fireworks to licensees or permittees for destruction purposes, must ensure the required marks of identification are still affixed to the fireworks and subsequently recorded in the required explosives records.

ATF recommends that explosives importers ensure marks of identification are placed on all their display fireworks if any possibility exists that a transfer might occur following importation.

The Federal Explosives Regulations Pertaining to Fuses and Fuzes

Industry members have inquired about the regulated status of certain types of fuses and fuzes, whether in their original configuration or when contained in other devices.

As specified on the Material Safety Data Sheets (MSDS)—a form providing data on the properties, safe use and potential hazards associated with a particular chemical material or compound—for fuses and fuzes, these products generally contain a low explosive, (e.g., black powder, smokeless powder, or a pyrotechnic composition) but may also contain a high explosive. As a result, these products are regulated under the Federal explosives laws and regulations. While both of these items are used as initiators of other devices, they are not to be confused with “igniters” which are also regulated.

As industry members are aware, ATF regulates the commerce and safe storage of explosive materials, products, and devices, unless they have been specifically exempted by the Federal explosives laws and regulations at 18 U.S.C. 845, 27 CFR 555.32 or 27 CFR 555.141. ATF’s authority over explosive materials applies to explosive materials in their raw, original state, when they are mixed with other chemical compositions, and when contained in other products or devices. This authority applies irrespective of the net explosives weight of the materials, products, or devices in question. As a result of these products’ regulation under the Federal explosives laws, persons transporting, shipping, causing the transportation, or receiving these products must hold a Federal explosives license or permit. In addition, Federal explosives manufacturers and importers are required to meet the marks of identification requirements specified in 27 CFR 555.109, as well as all recordkeeping and storage requirements.

In accordance with 27 CFR 555.23, ATF is required to compile a list of explosive materials and publish this list in the Federal Register as least annually. The “*List of Explosive Materials*” can be located on ATF’s website at <http://edocket.access.gpo.gov/2010/pdf/2010-45.pdf>. Any person wishing to learn the regulated status of explosives materials, products, or devices may:

1. Request and review the Material Safety Data Sheet (MSDS) for each material, product, or device in question. The MSDS can be obtained from the U.S. manufacturer, importer, or distributor and will list the ingredients and/or chemical compositions of each material, product, or device. In reviewing this list of ingredients, industry members may be able to compare the MSDS materials to the items on the “List of Explosive Materials” to determine if the product or device is regulated by the Federal explosives laws; and/or,
2. Request a formal determination of the material, product, or device’s regulated status from ATF. These requests should be presented to ATF’s Explosives Industry Programs Branch (EIPB), via telephone at 202-648-7120, through e-mail to EIPB@atf.gov, by fax at 202-648-9741, or by mail to the Bureau of Alcohol, Tobacco, Firearms and Explosives, Explosives Industry Programs Branch, 99 New York Avenue, NE, Mail Stop 6N-672, Washington, DC, 20226.

Industry members with questions relating to any explosives-related operations that they may conduct should contact the Explosives Industry Programs Branch at 202-648-7120.

Activities Conducted at Remote Storage Facilities

ATF has received inquiries regarding what activities may be conducted at a licensee’s remote storage locations. The regulation at 27 CFR 555.41(b)(2) requires a separate license for each location where business is conducted. However, there are exceptions to this separate licensing requirement, as follows:

1. Facilities that are used solely for the storage of explosive materials;
2. Locations used solely for the storage of records pertaining to the business; and
3. Licensed manufacturers’ on-site manufacturing.

Remote storage locations are used solely for the storage of explosives. Typically, one employee possessor of the licensee or permittee is responsible for unlocking magazines, receiving shipments, and assisting in loading explosives for shipments to another location.

The inquiries have been focused on drop shipments. A “drop shipment” occurs when an explosives shipment is delivered to a customer directly from a licensee’s

remote storage location. While this is acceptable without obtaining an additional license, orders may not be received at these remote storage locations. Rather, the customer must place an order directly with the licensed location. Further, all order processing must occur at a licensed location. The disposition and acquisition records are also typically kept at the licensed location. The daily summary of magazine transactions (DSMT) may be kept at the storage site.

Note to Explosive Importers or User Permittees Importing Explosive Materials

Licensed importers and user permittees are required by U.S. Customs and Border Protection (CBP) to present a copy of their Federal explosives importer's license or user permit to have imported explosive materials released from CBP custody. However, it has come to ATF's attention that in many cases importers, users, and their brokers do not make proper arrangements to ensure that their importer's license or user permit is available for examination by CBP when their shipment reaches the U.S. border. As a result, the shipment is denied entry into the United States until a copy of the license or permit is transmitted to CBP for evaluation.

We suggest that explosives importers, users, and their brokers review all ATF and CBP explosives importation requirements to ensure that each import transaction contains all necessary documentation. Making appropriate arrangements to ensure a copy of their importer's license or user permit is available to CBP may help avoid significant and costly delays. Should you have any questions relating to CBP's importation standards or requirements, please contact your local CBP office. For any questions relating to ATF's jurisdiction regarding the importation of explosives, please contact the ATF Firearms and Explosives Imports Branch at 304-616-4550.

Requirements for Marking Packages

The Federal explosives regulations at 27 CFR 555.109 require that licensed manufacturers and licensed importers of explosive materials mark their explosive materials with certain information, including the name and location of the manufacturer or importer, as applicable, and the date and shift of manufacture.

The regulations at 27 CFR 555.109(c)(3) specify that the licensee must place the marks of identification on "each cartridge, bag, or other immediate container of explosive materials that they manufacture or import, as well as on any outside container used for the packaging of such explosive materials." ATF was recently asked if this regulation allows for a manufacturer of oil well perforator shaped charges to place the required marks on a plastic bag containing a shaped charge, rather than on the shaped charge itself.

With respect to oil well perforator shaped charges, the phrase "...cartridge, bag, or other immediate container of explosive materials..." refers to the cartridge, case, or body containing the HMX, RDX, or other explosive material. The term "bag" refers to a bag containing ANFO or another material in circumstances where the bag is the immediate container of the explosives. As such, the regulation requires the shaped charge itself to be marked. Marking only the bag containing the perforator is not sufficient.

The regulation at 27 CFR 555.109(d) provides an exception to this requirement for detonators. The regulation further states that the Director may authorize other means of identifying explosive materials, on a case-by-case basis, provided that the proposed method does not hinder the effective administration of the explosives regulations. Persons wishing to obtain such a variance must submit a letter to the Explosives Industry Programs Branch explaining the need for the variance.

Notification of Explosives Magazine Changes

Licensees and permittees who acquire or construct new explosives magazines, or make changes in the construction of existing explosives magazines, must notify ATF in accordance with 27 CFR 555.63. Notification to ATF may be made by telephone or in writing to the nearest ATF field office. Contact information for ATF Field Division offices may be found at <http://www.atf.gov/field>. Written notification must be made at least 3 business days prior to magazine construction changes to existing magazines and at least 5 business days prior to using newly acquired or constructed magazines. Please note that no person may begin storing explosives within a storage magazine until the magazine meets all regulatory construction specifications for the proper class of explosives intended to be stored, and the magazine placement complies with the applicable table of distances. Please keep in mind that all explosives must be removed from magazines prior

to making construction changes. Additionally, Federal explosives regulations at 27 CFR 555.201(f) require any person storing explosive materials to notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location or each site where such explosive materials are stored. Although not required, ATF recommends that licensees or permittees notify the local ATF office if a magazine is moved to a new location.

Faxed or Scanned Copies of Licenses and Permits

In a June 2009 ATF Explosives Industry Newsletter article, ATF provided notice that an electronically transmitted copy of an explosives license or permit would suffice as a certified copy for the purposes of 27 CFR 555.103 and 555.104, provided that the licensee or permittee whose signature appears on the license or permit intends for it to serve as an original signature. We further specified that scanned or e-mailed explosives licenses or permits are acceptable for explosives transactions.

Since that time, ATF has received further inquiries related to the article. Specifically, we have been asked whether faxed licenses or permits are acceptable for verifying a licensed or permitted status; and whether other documents required under 27 CFR 555.103—such as the certified statement of intended use and the list of persons authorized to receive explosives on behalf of the licensee or permittee—may also be transmitted electronically.

In accordance with our determination that electronically transmitted copies of licenses and permits are acceptable, a faxed copy of a license or permit may also serve as a certified copy. Further, ATF has determined that the certified statement of intended use and the list of persons authorized to receive explosives may also be transmitted electronically for the purposes of Section 555.103.

As a reminder, a copy of a license, permit, or any other accompanying document required by Federal explosives regulations is not considered valid unless all required information is clear and legible. Also, industry members should consider any security issues surrounding the transmission of information electronically. If a licensee or permittee receives a certified copy of a license or permit that looks suspicious (e.g., names that are crooked, different type faces, illegible license/permit number), it is recommended that he or she contact the distributee to verify the validity of the license or permit to ensure a

legitimate transaction. As an additional precaution, industry members may consider the use of a PDF protocol, which is less likely to be altered. It is incumbent upon all licensees and permittees to safeguard their personal and business information to prevent fraudulent activity involving their Federal explosives license or permit. If you have any questions regarding this information, please contact your local ATF field office.

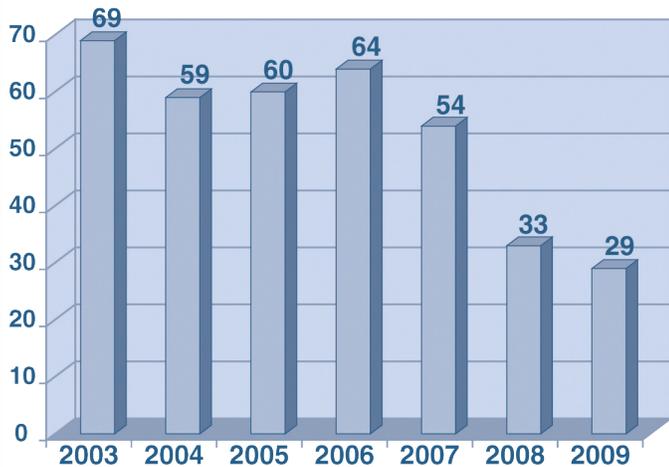
Key Federal Agencies with Authority over Explosives

ATF's authority relating to explosives pertains to the commerce, and safe and secure storage of explosives. ATF's authority includes, but is not limited to, requiring all persons intending to receive, possess, ship, or transport explosives to obtain Federal explosives licenses or permits, that all persons store explosives materials properly and that all appropriate explosives transaction records are maintained. In addition to ATF, the following agencies within the U.S. Government also regulate explosives under the conditions outlined, or as noted:

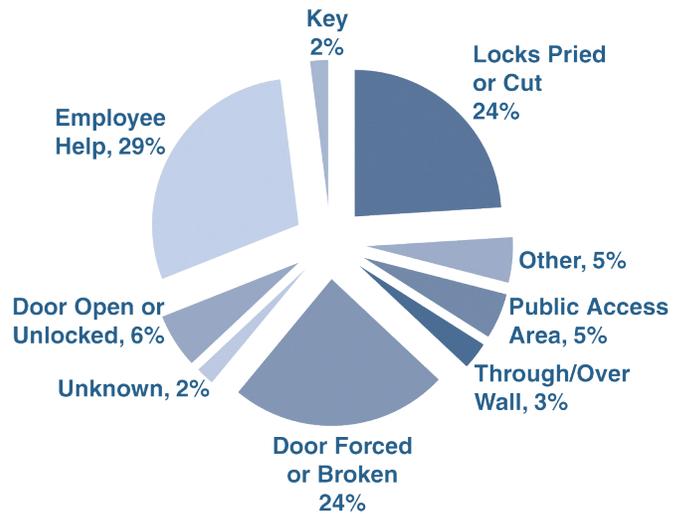
- U.S. Department of Transportation (DOT)—DOT has authority over the transportation of hazardous materials (including explosives), whether by rail, water, motor carrier, air, or other conventional means.
- U.S. Department of Labor, Mine Safety & Health Administration (MSHA)—MSHA has authority over activities relating to the manufacture or use of explosives at surface and underground mining locations, for both metal and non-metal operations.
- U.S. Department of Labor, Occupational Safety & Health Administration (OSHA)—OSHA has authority over employee safety on the job, including the use of explosives at job sites, or while under manufacture or other processing of the explosive materials.
- U. S. Department of Homeland Security, U.S. Coast Guard (USCG)—The USCG has authority over explosives while they are within any navigable waterways within the United States or its territories.
- U.S. Department of Defense (DOD)—DOD has authority over explosives when they are in use by the military, or on behalf of the military, pursuant to a contract between an explosives supplier and any of the various military departments of the United States.

- Consumer Product Safety Commission (CPSC)—CPSC authority within the explosives industry pertains to any explosives containing device, whether toy or novelty items (toy gun caps, party poppers, etc.) not used for its explosives characteristics; and specific explosives devices, such as consumer fireworks, which are not regulated by ATF once fully assembled. Also, CPSC prohibits the distribution of illegal explosives devices such as M-80s and cherry bombs to consumers.

Explosives Thefts by Calendar Year



Explosives Storage Entry Methods 2008–2009



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.

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U.S. Department of Justice

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

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