



# ATF EXPLOSIVES Industry Newsletter

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### Firearms & Explosives Industry Division (FEID)

Division Chief **Debra Satkowiak**

Deputy Division Chief **Michael F. Fronczak**

### Explosives Industry Programs Branch (EIPB)

Branch Chief **Paul W. Brown**

### Firearms Industry Programs Branch (FIPB)

Acting Branch Chief **David Adinolfi**

### Firearms Technology Branch (FTB)

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## Meet ATF's New Director, B. Todd Jones

**B** Todd Jones was confirmed by the U.S. Senate as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on July 31, 2013. Prior to his confirmation, Jones served as ATF's Acting Director, having been appointed to the post by President Barack Obama on August 31, 2011.



The Director oversees and guides ATF, a unique law enforcement agency within the U.S. Department of Justice responsible for enforcing Federal firearms and explosives laws and regulations that protect communities from violent criminals and criminal organizations. Jones is the seventh permanent Director of ATF since its establishment as a separate Bureau within the Treasury Department in 1972, and the first to be confirmed by the Senate.

While acting as ATF's Director, Jones served as the United States Attorney for the District of Minnesota, the second time he filled this position. He was also a partner with a major national law firm in Minneapolis. Director Jones received his Juris Doctor from the University of Minnesota Law School in 1983 and his Bachelor's of Arts degree from Macalester College in 1979. Following admission to the Minnesota bar, he went on active duty in the U.S. Marine

Corps, where he was an infantry officer with the First Marine Division and, subsequently, both a trial defense counsel and prosecutor in a number of court martial proceedings.

Said Jones about working with the industry and its membership: “ATF has regularly partnered with the explosives industry to work on issues related to public safety. This is especially important after the events in West, Texas, and other explosives incidents throughout the country. ATF is actively participating in a working group that was a result of the President’s Executive Order on chemical safety. Through collaboration with our government and industry partners, we will continue to promote best practices that ensure public safety.”

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## **New Deputy Division Chief**

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**M**ichael F. Fronczak was recently selected as the new Deputy Chief of the Firearms & Explosives Industry Division, succeeding Debra Satkowiak who became Chief of the Division last year. (Former Division Chief Chad Yoder returned to the field as Director, Industry Operations for the San Francisco Field Division.) Mike began his career with ATF in 1987 as an Inspector in the Baltimore, Maryland area office. In 1996, he transferred to Washington, DC, to work as a Specialist in the Office of Field Operations, Field Management Staff. In 1998, he returned to the field as a Special Operations Inspector for the Baltimore Field Division and became the Baltimore Area Supervisor in 2002. Mike is looking forward to enhancing ATF’s working relationships with the firearms and explosives industries.

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## **Contingency and Shared Storage**

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### *Contingency Storage*

**A**TF generally requires explosives applicants (including renewal applicants) to possess or have access via a contingency storage agreement to explosives storage magazines meeting the requirements in 27 CFR 555, Subpart K—Storage, prior to issuing an explosives license or permit. Persons who require contingency agreements and Federal explosives licensees or permittees (FEL/P’s) who provide agreements have certain responsibilities when the agreement is used. It is important to remember that once an FEL/P uses their agreement, the contingency storage scenario becomes actual storage thereby necessitating certain regulatory requirements.

Further, contingency agreements are not limited to temporary storage and may be implemented for longer time periods.

In most cases, FEL/P’s who use their contingency storage agreement maintain ownership of the explosives and require temporary storage until they can use the explosives again. If the FEL/P requiring storage is provided sole access to a magazine (and the magazine keys) then they have acquired a new magazine and must: 1) notify ATF pursuant to 27 CFR 555.63(d); 2) notify the authority having jurisdiction for fire safety pursuant to 555.201(f); and 3) maintain a daily summary of magazine transactions (DSMT) pursuant to 27 CFR 555.127.

However, if the FEL/P providing the storage receives the other FEL/P’s explosives rather than provide him or her with sole access to the magazine, then an explosives transfer has occurred. The FEL/P providing storage must: 1) complete an acquisition record for the explosives receipt; and 2) maintain a DSMT for the product received and stored in their magazine. The FEL/P requiring storage must: 1) complete a disposition record for the explosives transfer; and 2) meet the license and permit verification requirements in 27 CFR 555.103(b)(2). Further, acquisition and disposition records are also required when the FEL/P storing the explosives eventually returns them to the other FEL/P. The FEL/P storing the explosives must meet the license and permit verification requirements in 27 CFR 555.103(b)(2) prior to transferring the explosives back to the other FEL/P.

### *Shared Storage*

Shared storage exists when multiple FEL/Ps: 1) store their own explosives in the same magazine; and 2) have access into the magazine when the other FEL/P(s) are not present. This access to and control by one FEL/Ps when the other FEL/Ps are not present results in a “receipt” of explosive materials, even if they do not remove the other storers’ explosives from the magazine. Therefore, under the regulations, a FEL/P accessing a magazine containing materials stored by another FEL/P must create a record of acquisition of these materials. Similarly, the regulations require that the other FEL/Ps using the magazine must maintain transfer records reflecting a disposition.

ATF believes that requiring each FEL/P in a shared storage arrangement to maintain records of transfers each time one of them accesses the magazine is cumbersome and impracticable. ATF also believes that shared storage arrangements are beneficial to the industry and ultimately to the public in that they provide suitable storage at a reasonable cost for persons who might otherwise have difficulty bearing the financial burden of purchasing their own magazine. This helps to ensure that the explosive materials are stored in accordance with the regulations.

Therefore, ATF has determined that good cause may exist for issuance of an alternative procedure to the recordkeeping requirements under these circumstances provided certain conditions are met at all times. FEL/Ps in shared storage arrangements that do not want to maintain transfer records as described above should submit variance requests to [eipb@atf.gov](mailto:eipb@atf.gov). At least one FEL/P in shared storage arrangements must submit a variance request and list the other FEL/P involved.

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## Binary Explosives: Checking Laws

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**A**TF does not regulate the sale and distribution of unmixed binary explosive component chemicals, even when sold together in binary “kits.” However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements found in 27 CFR, Part 555. Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a Federal explosives license or permit, however a Federal explosives license or permit is required to receive or transport mixed binary explosives, e.g., transporting mixed exploding targets to a shooting range. Further, prohibited persons may not possess mixed binary explosives, such as mixed exploding targets or theatrical flash powder. A prohibited person is any person who:

- Is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for more than 1 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 (with some exceptions);
- Has been discharged from the armed forces under dishonorable conditions; or
- Has renounced their United States citizenship.

All persons mixing binary explosives should check with other Federal agencies, as well as their State and local law enforcement officials as there may be Federal, State or local laws that prohibit the mixing, transportation, possession or use of binary explosives, including binary exploding targets. Compliance with Federal explosives regulations does not supersede any other Federal, State, or local laws.

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## Alternate Identification Markings

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**I**t has come to ATF’s attention that some explosives manufacturers and importers are marking their explosives with serial numbers or unique alphanumeric codes, in part, to comply with the European Commission’s Directive 2008/43/EC (amended by Commission Directive 2012/4/EU) on Identification & Traceability of Explosives for Civil Uses. The directive sets up a harmonized system for the unique identification and traceability of explosive materials manufactured, used, and imported into the European Union.

The regulation at 27 CFR 555.109 requires licensed explosives manufacturers and importers to mark explosives manufactured and imported for sale or distribution with marks of identification including the date and shift of manufacture. Licensed explosives manufacturers and importers must also affix the date and shift of manufacture on the outside container used for the packaging of the explosive materials.

ATF acknowledges that serial numbers or unique alphanumeric codes will greatly increase the traceability of explosives should a theft or loss of explosives occur by reducing the number of explosive materials with the same marks of identification. However, current ATF explosives regulations do not allow for marking explosive materials with serial numbers or unique alphanumeric codes in lieu of the required markings.

Explosives manufacturers or importers who want to mark their explosive materials and/or outside containers used for the packaging of the explosive materials with serial numbers or unique alphanumeric codes must submit a written variance request for alternate marking procedures to ATF’s Explosives Industry Programs Branch.

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## Black Powder Lifters

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**S**pecial effects companies, movie studios, and theaters frequently use black powder in various special effects applications. The entertainment industry relies greatly upon black powder lifters to accomplish their special effects needs. Black powder lifters typically consist of commercially-manufactured black powder placed in a cylindrical cardboard container, wrapped with friction tape or twine, sealed with fiber end caps, and initiated with an igniter. The tightness of the wrapping and the amount of black powder will vary depending on the desired effect of the lifter. The lifters are commonly placed in mortars, open-ended steel containers,

in part, to direct the force of the explosion in a specific direction. The steel mortars are typically constructed by special effects technicians and vary in shape and size depending on the desired special effect.

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).”

Therefore, black powder acquired for use in black powder lifters does not meet the aforementioned exemption criteria. Individuals or companies acquiring black powder for use in black powder lifters or in other special effects must obtain a Federal explosives license or permit.

Although special effects companies do not typically manufacture their own black powder, ATF has determined that individuals or companies manufacturing black powder lifters are creating a new explosives device. Therefore, ATF has determined that individuals or companies acquiring black powder and igniters, and manufacturing black powder lifters for use in entertainment productions must obtain a Federal explosives manufacturer’s license. Further, licensed dealers/distributors of black powder must maintain disposition records and verify the license/permit status of any recipient acquiring black powder for non-exempt purposes.

Licensed manufacturers of black powder lifters must, not later than the close of the next business day, create a record of manufacture as required in 27 CFR 555.123(b). Licensed manufacturers who manufacture and use black powder lifters for their own commercial use must maintain a separate record of use as required in 27 CFR 555.123(d) unless they use the lifters at the same site of manufacture within 24 hours. For example, a special effects technician—a licensed manufacturer—who acquires black powder, subsequently manufactures black powder lifters at a movie production site, and uses them at the same site over a week’s timeframe must meet the following requirements:

1. Create a record of acquisition for the igniters and black powder pursuant to 27 CFR 555.123(b);
2. Create a record of manufacture for the black powder lifters pursuant to 27 CFR 555.123(b);
3. Create a record of use for the black powder lifters pursuant to 27 CFR 555.123(d); and

4. Maintain daily summary of magazine transactions pursuant to 27 CFR 555.127 for each storage magazine used to store black powder, igniters, and black powder lifters.

Individuals or companies manufacturing black powder lifters for sale or distribution must also create a record of disposition pursuant to 27 CFR 555.123(c) and affix marks of identification to the lifters pursuant to 27 CFR 555.109. Additionally, all persons must store the black powder lifters in at least a type 4 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 receive or transport the black powder lifters.

Individuals or companies who intend to manufacture black powder lifters and who do not currently possess a manufacturer’s license can learn more about the Federal explosives licensing process at <http://www.atf.gov/explosives/how-to/become-an-fel.html> or by contacting the Federal Explosives Licensing Center at FELC@atf.gov or (877) 283-3352. You can also access the explosives regulations at <http://www.atf.gov/files/publications/download/p/atf-p-5400-7.pdf>. We recommend that you download a PDF copy of the regulations book for future reference. ATF has also recently developed explosives publications that provide licensees and permittees with abbreviated summaries for specific regulatory requirements. Industry members can access these publications at <http://www.atf.gov/publications/explosives-arson.html>.

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## More on Hoods

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**T**he regulations at 27 CFR 555, Subpart K—Storage, generally require padlocks used to secure explosives storage magazines to be protected with ¼” thick steel hoods that are constructed to prevent sawing or lever action on the lock body and shackle, hasps, and staples. Most industry members protect their padlocks with steel hoods that are vertically-mounted to provide padlock access through the bottom of the hoods. However, the explosives regulations do not specify a minimal hood size or how and where the hoods should be affixed to the magazine doors.

ATF suggests that industry members conduct an evaluation of their steel hoods to ensure: 1) they are ¼” thick; 2) they are securely fastened (e.g. through welding or bolting) to the magazine doors; and 3) they have openings that are small enough to prevent sawing or lever action on the lock body and shackle, hasps, and staples.

It has been brought to ATF's attention that many industry members are storing commercial explosives in U.S. Department of Defense magazines that are not secured with two padlocks and hoods. In these cases, industry members must: 1) secure the magazine doors with two padlocks protected with a ¼-inch steel hood(s); or 2) submit a variance request to ATF for alternate locking procedures. The variance request should identify additional security measures that provide equivalent theft-resistance as prescribe in the explosives regulations. (See the [June 2013](#) explosives newsletter for additional information on horizontally-mounted and pipe-style hoods.)

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## Underground Storage Reminder

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**F**ederal explosives licensees and permittees (FEL/Ps) must comply with all pertinent regulations found under 27 CFR Part 555—Commerce in Explosives. This includes all storage requirements, whether the explosives are stored above ground or underground, e.g., a mine. Occasionally, an underground magazine is a dugout or a tunnel. These dugouts or tunnels must meet all construction, locking, housekeeping and table of distance requirements found in 27 CFR Part 555.

FEL/Ps who wish to use an alternate method or procedure, including alternate magazine construction standards, must submit a request for variance from the regulations. Variances must provide levels of safety and security substantially equivalent to the regulatory requirements and are not intended simply to allow a noncompliant situation. FEL/Ps should review 27 CFR, Part 555, to determine what information should be provided in demonstrating how the requested variance would provide levels of safety and security substantially equivalent to the regulatory requirements.

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## Explosives Disposal

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**O**ccasionally, ATF is asked how to dispose of explosives waste, deteriorated explosives, or defective explosives that need to be destroyed or rendered safe. There is generally more than one way of destroying explosive materials depending on the nature of the explosives and their hazards. Under no circumstances should a Federal explosives licensee or permittee (FEL/P) attempt to destroy deteriorated explosive materials without first contacting the manufacturer or other knowledgeable authorities.

Proper and safe disposal requires a thorough knowledge of the physical and chemical properties of the explosives, training in the different methods of disposal, and practical experience in the disposal of those explosives. If explosives need to be disposed of and you are not qualified to dispose of such explosives, contact the manufacturer or supplier, who may be able to provide guidance or assist with this service.

If the explosives are not able to be identified, please contact your local ATF office or local law enforcement authority.

Explosives must not be abandoned, thrown away, or buried. The Environmental Protection Agency (EPA) regulations set standards for the safety, security, and accountability of hazardous waste. In authorized States, EPA has delegated the responsibilities of the hazardous waste program to State officials. You should check with State, local and other Federal authorities—such as the U.S. Department of Transportation—to ensure all Federal, State, and local requirements are adhered to during any clean-up operation of deteriorated explosive materials.

Facilities used exclusively to destroy damaged explosives must have a Federal explosives license or permit. FEL/Ps who want to transfer damaged or defective explosive materials to another FEL for destruction must record and maintain required records of the transaction. More information on explosive material disposal can be found in our December 2009 newsletter article, *Deteriorated Explosives*.

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## ATF and the Interagency Committee on Explosives

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**T**he Interagency Committee on Explosives (ICE) is a forum of Federal and independent agencies that promotes and facilitates information exchange concerning policies on the safety and security of explosives and other energetic materials. ATF has been involved with ICE in studying and discussing explosives, fireworks and ammonium nitrate accidents, explosives classification issues, investigative techniques, and interagency activities that could help increase the safety of explosives operations. Recent meetings have helped to clarify and discuss jurisdictional responsibilities and have resulted in collaborative efforts, for example, the OSHA fireworks plant inspection directive. By examining industry practices and accidents, ATF and other ICE members hope to identify means of increasing public safety.

Recently, ICE has been examining the safety management of explosives manufacturing facilities involved in decontamination, demilitarization or demolition of explosive materials. Such handling operations face significant risks as they frequently involve explosives, including fireworks, that may be of unknown origin and/or chemical compositions with unknown sensitivity or behavior. Damaged, altered or “dud” explosives and fireworks have an increased potential for inadvertent initiation and unknown sensitivity.



A nearby train is derailed after over 124,000 pounds of smokeless powder explodes in Minden, Louisiana.

Waste fireworks and pyrotechnic materials including confiscated, damaged, loose materials, production wastes, or residue cleanup after fireworks display shows, create an increased handling risk.

ATF would like to remind all Federal explosives licensees and permittees to follow all Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) regulations to reduce the risks associated with the handling of explosive materials. (Facilities that acquire and destroy damaged explosives must have a Federal explosives license or permit.) Worker and public safety must be the primary focus particularly when dealing with unknown or uncharacterized explosive and pyrotechnic materials.

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## ATF Hosts QRA Workshop

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**O**n August 26, 2013, ATF hosted an explosives quantitative risk assessment (QRA) workshop sponsored by the Institute of Makers of Explosives (IME) at ATF National Headquarters in Washington, DC. The workshop brought together, in part, members of the explosives industry, foreign representatives from NATO countries, as well as several Federal agencies with public safety oversight. Presenters at the workshop

discussed basic QRA terminology, history of QRA, advantages and disadvantages of using QRA, and the methodology of establishing a QRA program. The workshop also introduced IME’s Safety Analysis For Risk (IMESAFR), which is a probabilistic QRA software model used to calculate risk to persons from explosives facilities. The IME developed the program to provide a more comprehensive assessment of overall risk of explosives operations.

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## Questions and Answers

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**Q**uestion: Is a parking lot considered to be part of a public highway for table of distance (TOD) purposes?

**Answer:** Parking lots are not highways for TOD purposes.

**Question:** Can a licensee/permittee have multiple detonator boxes indoors?

**Answer:** Yes, they can use multiple detonator boxes indoors. Each box would be limited to 100 detonators. The 50 pound total weight limit for indoor storage would still apply.

**Question:** What constitutes “non-mass detonating” detonators?

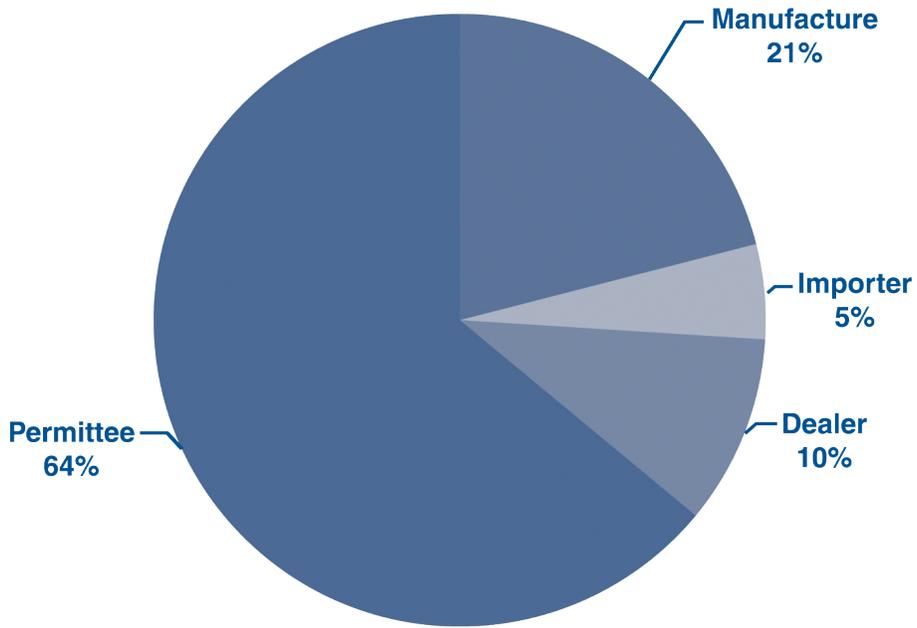
**Answer:** Non-mass detonating detonators (electric, non-electric, electronic) generally have a DOT 1.4 classification AND are stored in their original DOT packaging. When DOT issues an EX approval and hazard classification (e.g. 1.4), they do so with the detonators packaged in a specific configuration.

**Question:** I work at a rock quarry and am wondering who should take care of the explosive inventory books. Can anyone in the office take care of the books?

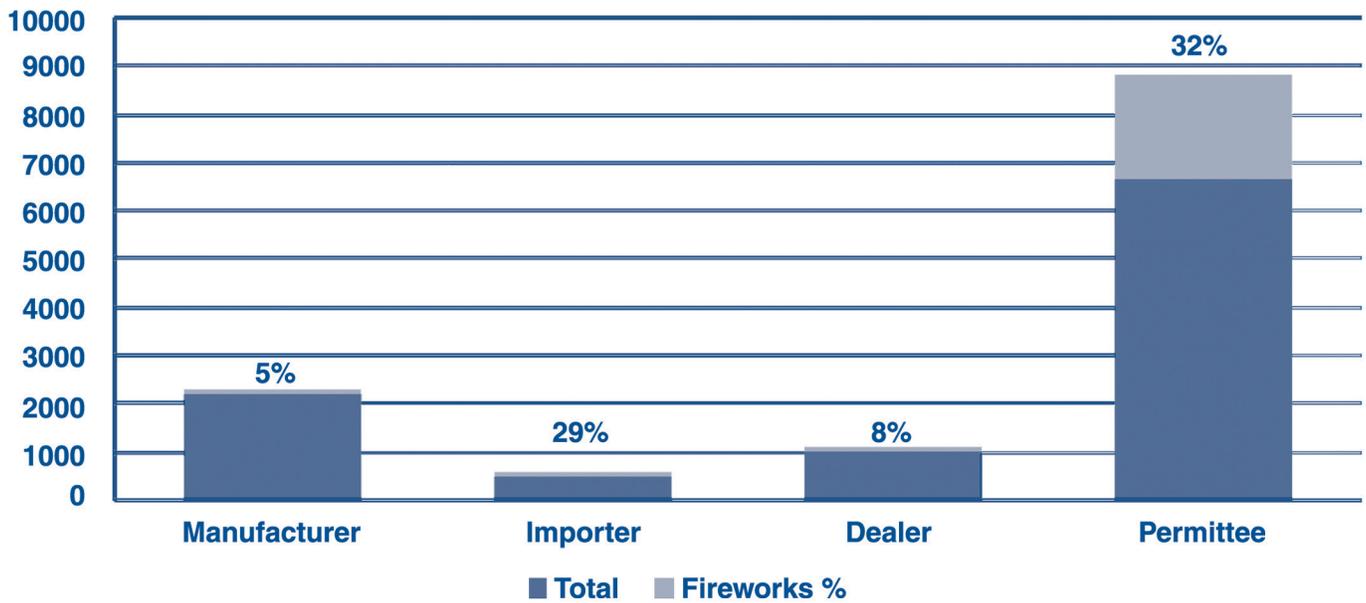
**Answer:** Since the person maintaining the inventory records generally requires access to the explosives, he/she would need to be listed as a responsible person or possessor of explosives (employee possessor) under your company’s license.

**Note:** If you have a topic or question that you would like to see addressed in the Explosives Industry Newsletter, please email us at [eipb@atf.gov](mailto:eipb@atf.gov).

## Licensee/Permittee Percentages



## Licensee/Permittee Population by Type



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