



ATF EXPLOSIVES Industry Newsletter

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Firearms Industry Programs Branch (FIPB)
Branch Chief **Edward Courtney**

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and Safer America**

New Acting Director

In April 2015, former Deputy Director Thomas E. Brandon became the Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). With more than 26 years of experience with ATF, he began his ATF career as a Special Agent in Detroit in 1989. Rising through the ranks, he served in many management positions, including Special Agent in Charge of the Phoenix and Detroit Field Divisions; Supervisory Special Agent of the Detroit Arson and Explosives Enforcement Group; Special Agent with the Office of Inspection in Washington, D.C.; Supervisory Special Agent of the Achilles Enforcement Group in Los Angeles, California; and as the Division Intelligence Officer with the Phoenix Field Division. Mr. Brandon also held the position of Chief, ATF National Academy, in Glynco, Georgia. Mr. Brandon succeeds former ATF Director B. Todd Jones.

New Assistant Director, Enforcement Programs and Services

On December 4, 2014, Marvin G. Richardson became the Assistant Director, Enforcement Programs and Services. Mr. Richardson began his career with ATF in the Dallas Field Division in 1989. He has been with ATF for over 26 years and served in various capacities, including the ATF Special Response Team, National Response Team, Public Information Officer, Legislative Liaison, Diversity Career Manager, Group Supervisor, Assistant Special Agent in Charge, Chief of ATF's National Center for Explosives Training and Research, Chair of the ATF Professional Review Board, Special Agent in Charge of the Denver Field Division, and Deputy Assistant Director Enforcement Programs and Services.

Mr. Richardson has spoken at various conferences, including the International Society of Explosives Engineers' 41st Annual Conference in New Orleans, Louisiana. While there, Mr. Richardson discussed the common ground between good business practices and public safety. He expressed his commitment to working with the industry, stating "better communication helps to build better relationships, and better relationships increase trust. The combination of these things are essential to carrying out [ATF's] public safety mission." Mr. Richardson replaces former Assistant Director Arthur Herbert, who retired in December 2014.

William E. Frye, New Chief of Explosives Industry Programs Branch

William E. Frye is the new Chief of ATF's Explosives Industry Programs Branch (EIPB). Mr. Frye comes to EIPB after serving for 7 years as an area supervisor in Lubbock and Houston, Texas. He joined ATF in 2001 as an Industry Operations Investigator and is looking forward to working with the explosives industry. Mr. Frye succeeds former EIPB Chief Paul Brown, who became the Director of Industry Operations for the Denver Field Division earlier this year.

Magazine Identification Program

ATF is developing a process to better track industry-owned explosives storage magazines. During natural disasters, local emergencies, or civil unrest, ATF assists emergency responders in ensuring the security of nearby explosives and the safety of responders. In these situations, ATF provides information on the location of explosives magazines within an affected area. With current processes, it is difficult to identify industry-owned magazines across the country in a timely manner for emergency notifications.

A significant obstacle to emergency responder notification is the lack of a unique identifier for each industry magazine. Although ATF maintains GPS coordinates for magazines, the coordinates can't be used as unique identifiers since readings can vary slightly from one inspection to another, and the coordinates sometimes refer to groups of magazines.

After consulting with explosives industry members and associations, ATF will, with the voluntary participation of industry members, have Industry Operations Investigators affix small labels with unique numbers to interior magazine walls during routine inspections. ATF will replace damaged, missing, or destroyed labels during subsequent inspections. This program will not place any burden or responsibility upon industry members or change their internal magazine designations.

These labels (see sample below) will not contain other information or electronically track the magazines. Participation is voluntary, but we encourage licensees and permittees to participate to ensure the success of this program.



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Less Lethal Devices

Federal explosives laws and regulations, at 18 U.S.C. § 845(a)(4) and 27 CFR § 555.141(a)(4) generally exempts "Small arms ammunition and components of small arms ammunition" from the provisions Title 18, U.S.C. Chapter 40 and 27 CFR Part 555. The regulation at 27 CFR § 555.11 defines "ammunition" as "[s]mall arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and $\frac{3}{32}$ " and other external burning pyrotechnic hobby fuses. The term does not include black powder."

Law enforcement agencies frequently use less lethal devices such as smoke, chemical, impact, and stun munitions during various operations. Many of these devices are initiated with small arms ammunition primers and smokeless propellant and contain non-explosive components (e.g. rubber balls, OC gas, wood baton). The small arms ammunition primers and smokeless propellant designed for use in small arms ammunition are exempt until they are assembled into devices that are not small arms ammunition (for example, 37 millimeter bean bag cartridges). These cartridges, containing primers, smokeless propellant, and non-explosive bean bags, do not meet the exemption criteria for ammunition. Therefore, they are regulated under Title 18, U.S.C. Chapter 40 and 27 CFR, Part 555. Keep in mind that less lethal devices initiated with fuses and fuzes are also regulated.

Companies manufacturing less lethal devices containing explosive materials must obtain a Federal explosives license, even if some of the components were originally designed for use in small arms ammunition. They must also store less lethal devices containing only primers, smokeless propellant, and non-explosive materials in at least a type 4 explosives storage magazine and meet all other storage requirements in 27 CFR Part 555, Subpart K—Storage. Devices containing high explosive material (e.g. flash powder) must be stored in a type 1 or 2 magazine. Explosives manufacturers must maintain records of manufacture, disposition, use (if applicable), and daily summaries of magazine transactions.

Federal explosives laws and the implementing regulations, at 18 U.S.C. §§ 845(a)(3) and (a)(6), 27 CFR §§ 555.141(a)(3) and (a)(5) generally exempt “[t]he transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision” and “[t]he manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by, the military or naval services or other agencies of the United States.” Hence, law enforcement agencies acquiring explosive less lethal devices are exempt from ATF’s licensing and recordkeeping requirements. State and local agencies must store their explosive materials as prescribed in 27 CFR Part 555, Subpart K—Storage. Manufacturers, distributors, and importers of regulated less lethal devices must obtain the applicable Federal explosives license and meet all other requirements in the federal explosives laws and regulations. 27 CFR, Part 555. Persons other than manufacturers, distributors, and importers who do not meet the exemptions must obtain a Federal explosives permit before acquiring regulated less lethal devices.

If you require an ATF explosives license, you can obtain an application packet by contacting ATF’s Federal Explosives Licensing Center at (877) 283-3352 or FELC@atf.gov. Information on the licensing process can also be found at <https://www.atf.gov/content/explosives/explosives-industry/how-become-federal-explosives-licensee-FEL>.

Fireworks Reminders

ATF Ruling 2007-2

ATF Ruling 2007-2 allows Federal explosives licensees and permittees to temporarily store display fireworks in locked and attended vehicles at explosives magazine sites or fireworks display sites

provided certain conditions are met. One such condition is that licensees and permittees notify ATF in writing of the storage location no less than 3 Federal office business days prior to temporarily storing explosive materials in the vehicle(s) at magazine sites and fireworks display sites.

Recently, ATF’s has learned that some licensees and permittees are not providing proper notification prior to using this temporary storage method. The ruling requires the same notification to the authority having jurisdiction for fire safety in the locality where the explosive materials are stored.

Keep in mind that licensees and permittees must meet all conditions in the ruling when temporary storage occurs at the magazine site as well as at the fireworks display site. Licensees and permittees must also ensure the vehicle(s) containing the explosive materials meet the required distances from inhabited buildings, highways, passenger railways, and other explosives storage magazines.

Fireworks Processing and Igniters

The regulations at 27 CFR 555.221, 555.222, and 555.223 prescribe distance and net explosives weight restrictions, in part, for the processing and manufacture of display fireworks. A fireworks process building is defined, in part, as any building where pyrotechnic compositions or explosive materials are pressed or otherwise prepared for finishing or assembly.

ATF has determined that affixing igniters to display fireworks shells, cakes, and candles is a process subject to these restrictions. For example, a building used by an explosives licensee to attach igniters to display shells is a fireworks process building that must be at least 200 feet from inhabited buildings, highways, passenger railways, explosives storage magazines, fireworks shipping buildings, and buildings used to store consumer fireworks and articles pyrotechnic.

Barricades and 27 CFR §555.224

The regulation at 27 CFR 555.206(b) requires outdoor magazines containing display fireworks to be located no closer to inhabited buildings, highways, passenger railways and other explosives storage magazines, than the minimum distances specified in § 555.224. Footnote 3 to § 555.224 permits halving the prescribed distances if the storage magazine was in use prior to March 7, 1990 (30 days from the date of publication of the final rule in the Federal Register) and it is properly barricaded from potential receptor sites (e.g. inhabited building, highway). The magazine must be located in the same physical location as it was prior to March 7, 1990.

Proper barricading, as defined in § 555.11, requires that “a straight line from the top of any sidewall of the magazine containing explosive materials to the eave line of any other magazine or building, or to a point 12 feet above the center of a railway or highway, will pass through the natural or artificial barricade.” The distances in § 555.224 must be used (without halving) if the magazine was not in use prior to March 7, 1990.

Placement of Fireworks Storage Magazines

Magazines containing 10,000 pounds or less of display fireworks must meet the minimum distances in 27 CFR 555.224 (Table of Distances for Display Fireworks), and magazines containing more than 10,000 pounds of display fireworks or bulk salutes must meet the minimum distances in 27 CFR 555.218 (Table of Distances for High Explosives). However, fireworks industry members should ensure their magazines meet the minimum distances in both § 555.218 and § 555.224 in the event that the net explosives weight of the magazine fluctuates over or under 10,000 pounds.

For example, an industry member may intend to store 11,000 pounds of display fireworks in their magazine and place it 165 feet from the nearest explosives storage magazine in compliance with § 555.218. However, following the Fourth of July season, the net explosives weight in the magazine may fall below 10,000 pounds, and, as such become subject to the table of distances at § 555.224, which requires a distance of 200 feet from the nearest magazine. Verifying compliance under both tables of distances will eliminate potential compliance issues when magazine net explosives weights fluctuate.

NPRM to Remove Reference Note

On May 29, 2015, ATF published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (docket number ATF 2002R-226P) titled “Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents.” The purpose of the NPRM is to solicit comments on ATF’s intent to remove 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.

Most ammonium nitrate currently located near stores of high explosives and blasting agents are already subject to the §555.220 Table of Distances. Further, it is ATF’s understanding that entities who store ammonium nitrate located near high explosives and blasting agents do not

use the outdated August 1984 guidance referenced in the existing regulations and instead comply with 27 CFR 555.206(c)(2) and the 555.220 Table of Distances.

ATF proposed amending the third note following the § 555.220 Table of Distances to delete the reference to the August 1984 guidance and to state that all ammonium nitrate stored near high explosives or blasting agents is subject to the § 555.220 Table of Distances. This proposed removal of the reference to the outdated test does not address ammonium nitrate blends containing fuels. Such blends are subject to ATF’s criteria for high explosives in § 555.202(a) or blasting agent in § 555.11. Ammonium nitrate blends that meet the criteria are ammonium nitrate explosive mixtures and designated as such in ATF’s List of Explosive Materials, which ATF publishes annually pursuant to 27 CFR 555.23.

Written comments on this proposed rulemaking must be postmarked and electronic comments must be submitted on or before August 27, 2015. To submit comments to ATF via the Federal eRulemaking portal, visit <http://www.regulations.gov>, keywords “blasting agents” and follow the instructions for submitting comments.

Marking and Recording Bulk Explosives

The regulation at 27 CFR 555.109 requires licensed manufacturers and importers to affix marks of identification on explosive materials for sale or distribution at the time of manufacture or no later than 15 days after the date of release from Customs custody. The marks of identification must be placed on each cartridge, bag, or other immediate container of explosive materials (e.g. shaped charge casing), and the outside package or container used for the packaging of the explosive materials. However, since no packaging exists for bulk explosives, licensed manufacturers who manufacture unpackaged bulk explosives (e.g. in silos or bulk trucks/trailers) are not required to affix them with marks of identification.

Explosives licensees and permittees acquiring and disposing of explosive materials generally must record the manufacturer’s marks of identification (e.g. date and shift of manufacture) in their records of acquisition and disposition. However, licensees and permittees acquiring and disposing of unpackaged bulk explosives are not required to record the manufacturer’s marks of identification in their records of acquisition and disposition. They must still record all applicable information prescribed by regulation (e.g. name of brand name of manufacture, quantity,

description) in their required explosives records. Further, licensed manufacturers manufacturing bulk explosives must record the date of manufacture in their record of manufacture.

Internal Transfers of Explosives

Federal explosives regulations under 27 CFR 555.121(c) require that “Each licensee and permittee shall maintain all records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations in this part prescribe.” Industry members have questioned how this requirement may apply to companies that have multiple locations when each location has its own permit. For instance, can a company physically transfer explosives from one permit location to another as a course of business under the same corporate umbrella?

Even though the permittees fall under the same corporate umbrella, each site is nonetheless considered an individual permittee and cannot distribute explosives as a course of business. Under § 555.102, a Federal Explosives License would be required to operate in that manner. Permittees may dispose of surplus stocks of explosive materials to other licensees or permittees only in accordance with § 555.103 and § 555.105. Licensees may transfer explosive materials to other licenses under the same corporate umbrella provided they maintain the required records of disposition and acquisition.

Plywood, Hardwood, and ATF Ruling 76-18

Several individuals have contacted ATF regarding the substitution of plywood for hardwood in type 1 and type 2 magazines. Plywood is a sheet material manufactured from sheets of wood glued or cemented together with the grains of adjacent layers rotated up to 90° from one another. Although some plywood is comprised of hardwood, plywood made from hardwood is not considered to be hardwood for ATF magazine construction (or bullet resistance) purposes.

ATF Ruling 76-18, based upon the Institute of Makers of Explosives’ Safety Library Publication No. 1 (IME SLP-1), Construction Guide for Storage Magazines, addresses alternate construction to meet bullet resistance requirements in type 1 and type 2 magazines. The ruling specifies several different types of alternate bullet-resistant construction that include the use of plywood.

For example, under the 1976 ruling, 1/8" steel lined with an interior of 5" of hardwood and 1/8" steel lined with an intermediate layer of 4" of hardwood and an interior lining of 3/4" plywood both meet the bullet-resistance standard. This combination would suggest that plywood actually provides greater bullet resistance than hardwood. However, the ruling also allows for a construction of 3/16" steel lined with 4" of hardwood and 3/16" steel lined with 6 3/4" of plywood. This comparison seems to indicate that a greater thickness of plywood is necessary to equal a certain amount of hardwood. Part of the reason for this apparent inconsistency is that the IME SLP-1 was not intended to specify ratios of one material to another for magazine construction.

The IME SLP-1 specifies multi-layered construction made of common materials, used in varying thicknesses, which passed IME bullet-resistance testing. There is no one-to-one correlation between plywood and hardwood, nor is there a “ratio” for one material to another that could be used universally for explosives magazine construction. The use of plywood in type 1 and type 2 magazine construction must comply with ATF Ruling 76-18. A variance is required to use plywood thicknesses that do not conform to this ruling in type 1 or type 2 magazine construction. Variance requests may be submitted through the local ATF office or to the Explosives Industry Programs Branch.

Using Commercial Records

ATF addressed using commercial records to meet recordkeeping requirements in the June 2013 Explosives Industry Newsletter. We noted that a Federal explosives licensee or permittee (FEL/P) may use commercial invoices to record their explosives acquisitions and dispositions if the records contain the required information set forth for each type of license or permit (e.g. manufacturers, importers, etc.) in 27 CFR, Part 555, Subpart G—Records and Reports. Recently, ATF has been asked if a licensee or permittee *must* provide ATF access to commercial records during an inspection.

The Federal explosives law at 18 U.S.C. § 843(f) and the implementing regulations at 27 CFR 555.24 provide that ATF has the authority to conduct inspections of FEL/Ps, in part for the purpose of inspecting or examining any records or documents required to be kept under 27 CFR Part 555. Therefore, if an FEL/P uses commercial records to fulfill their recordkeeping requirements under 27 CFR, Part 555, the FEL/P must provide ATF access to these records for inspection purposes. However, if an FEL/P maintains a separate record (e.g., ledger-type record

separate from commercial invoices, receipts, etc.) to fulfill their recordkeeping obligations under 27 CFR, Part 555, then they need not provide ATF access to their commercial records. It should be noted that in cases where inventory or recordkeeping discrepancies arise, ATF may request to see other records, such as invoices, in an attempt to determine the nature of the discrepancy. Although an FEL/P keeping separate ATF records is not obligated to allow ATF access to such commercial records, it may be in the interest of the FEL/P and public safety to share these records with ATF in an effort to reconcile inconsistencies.

ATF Would Like to Hear Back From You!

We encourage you to take our online survey to bring you a better experience on our website (www.atf.gov). Tell us what you think when you see the pop-up that says “We’d welcome your feedback!”

Explosives Thefts—2013 thru 2014 As Reported to the U.S. Bomb Data Center

2013

Klawock, AK
 Ft. Payne, AL
 Maricopa, AZ
 Bakersfield, CA
 Hilo, HI (Fireworks)
 Linton, IN
 Waverly, MN (Fireworks)
 Silex, MO
 Red Lodge, MT
 Wellington, NV
 Oregon, OH (Fireworks)
 Merlin, OR
 Cleburne, TX
 Lubbock, TX (Fireworks)
 Midkiff, TX
 Colonial Beach, VA (Fireworks)

2014

Augusta, AR
 Glenwood, AR
 Lonsdale, AR
 Chandler, AZ
 Phoenix, AZ
 Sandpoint, ID
 Slidell, LA (Fireworks)
 Joplin, MO (2 Fireworks thefts)
 Columbia Falls, MT
 Victor, MT
 Troy, NH (Fireworks)
 Clearfield, PA (Fireworks)
 Edinburg, PA (Fireworks)
 Dallas, TX (Fireworks)
 Queen City, TX



Newsletter Distribution

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