



## EXPLOSIVES NEWSLETTER

Summer Issue 1989

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"Federal Explosives Licensees/Permittees Information Service" provided by the  
Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C.

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### AN OPEN LETTER TO ALL EXPLOSIVES LICENSEES AND PERMITTEES

As you are aware, the Bureau of Alcohol, Tobacco, and Firearms is the Federal agency charged with enforcing the Federal laws governing the explosives industry. ATF's statutory authority centers on reducing the hazards to persons and property arising from the misuse and unsafe or insecure storage of explosive materials.

With your help, we can insure safe and proper record keeping, storage, and use of explosive materials.

We in ATF are always looking for ways to help the industry better understand the Federal explosives laws. Therefore, we have developed this, the first edition of the ATF Explosives Industry Newsletter. We hope you find it and future issues informative. We plan to publish the newsletter twice each year. Let us know if it is useful and how we can make it a better product.

Sincerely,

Stephen E. Higgins

## FIREWORKS

Once again we are approaching another festive tradition which all Americans share each year, the **Fourth of July**. What may start as a lot of fun sometimes ends in **tragedy**. It has been recognized for many years that fireworks, for all their patriotic associations, can present a very serious safety hazard when improperly handled. Deaths, blindings, amputations and severe burns have been all too often the result of the misuse of fireworks.

ATF has been the primary Federal agency in conducting investigations into the illegal manufacturing of explosives and distribution of M-80's and other illegal explosive devices since the passage of the explosives laws in 1970.

**M-80'S, M-100'S, M-1,000'S, CHERRY BOMBS, AND OTHER SIMILAR DEVICES** were federally banned in 1966 under the Child Protection Act and have been classified as **forbidden explosives** by Department of Transportation (DOT). Further, they are considered by ATF to be explosive devices. These devices are not Class B explosives or special fireworks and are not to be referred to as such. Again, they are illegal explosive devices.

**Any person who illegally manufactures explosive materials faces criminal penalties up to 10 years imprisonment, a \$10,000 fine and/or both.**

Jurisdiction over fireworks and similar devices is the responsibility of the following agencies.

### BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

ATF is empowered with the responsibility for licensing those engaged in the business of importing, manufacturing, and distributing explosive materials under 18 U.S.C., Chapter 40. Permits are issued to users of explosive materials who ship, transport, or receive such materials in interstate or foreign commerce. Anyone who fails to secure the necessary license or permit is in violation of 18 U.S.C. section 842(a)(1). **ATF RULING 85-13**

### MOVEMENT OF EXPLOSIVE MATERIALS PERTAINING TO FIREWORKS

(1) No more than 10 pounds of flash powder and no more than 500 pounds of other explosive materials used in special fireworks may be kept outside of an approved magazine and in a processing building or area during a day's manufacturing or assembling operations; and (2) Dry explosive powders and mixtures, unfinished special fireworks, and individual special fireworks articles and packaged display segments received into packing buildings or areas for sorting, temporary storage, and packing into complete display units shall be stored in approved magazines in accordance with 27 C.F.R. Part 55 at the conclusion of a day's manufacturing, assembling, or processing operations.

#### VARIANCE

In most areas of the explosive regulations, the Bureau will consider a variance from the regulations provided that the following conditions are met:

- (1) will afford security and protection that is substantially equivalent to the regulations;
- (2) will not hinder the effective administration of the regulations;
- (3) will not be contrary to any provisions of the law.

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Department of the Treasury  
Bureau of Alcohol, Tobacco and  
Firearms  
Distribution Services

Any building not classified as an approved magazine must meet the minimum distances as specified in the Table of Distances in 27 C.F.R. 55.218. No variation will be considered if these requirements are not met.

All requests for variance must be submitted with supporting documentation, such as a complete description and measurements of the facility and/or plat plan, to the Regional Director (Compliance) of the region in which your licensed premises are located.

### **REMINDER**

All Class B fireworks users acquiring such fireworks interstate are reminded to file their applications for a permit early. Also, all special or display fireworks which have been classified by DOT as Class B explosives in 49 CFR 173.88(d) must be stored in a type 4 storage facility.

### **DEPARTMENT OF TRANSPORTATION**

The Department of Transportation (DOT) regulates the movement of fireworks in interstate commerce. Also assigned to DOT is the examination, classification, and approval for transportation of all explosives, including fireworks. A laboratory examination is required for all new explosives to insure that the materials will be stable before they can be introduced into commerce and to determine how they must be packaged for shipment.

### **CONSUMER PRODUCT SAFETY COMMISSION**

The Consumer Product Safety Commission (CPSC) has jurisdiction over hazardous substances in accordance with 18 U.S.C. Chapter 30. Section 1261(f)(1)(a) defines a hazardous substance as follows:

“Any substance or mixture of substances which (1) is toxic; (2) is corrosive; (3) is an irritant; (4) is a strong sensitizer; (5) is flammable or combustible; or (6) generates pressure through decomposition, heat, or other means, if such substances or mixture of substances may cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable handling...”

Furthermore, 16 C.F.R. 1500.17(a)(3) declares that the following are banned as hazardous substances:

“Firework devices intended to produce audible effects including, but not limited to, cherry bombs, M-80’s, salutes, etc. if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition...”

The following is a summary of state regulations as of April 1989, which is provided by the Consumer Product Safety Commission.

#### **A. STATES WHICH ALLOW CLASS C (COMMON) FIREWORKS:**

Alabama	Mississippi
Alaska	Missouri
Arkansas	South Dakota
Florida	Tennessee
Louisiana	

(These states permit any fireworks that are legal according to CPSC regulations.)

**B. STATES WHICH ALLOW CLASS C FIREWORKS AS APPROVED BY THE ENFORCING AUTHORITY, OR AS SPECIFIED IN LAW:**

California	Ohio
District of Columbia	Oklahoma
Idaho	Oregon
Indiana	South Carolina
Kansas	Texas
Kentucky	Utah
Michigan	Virginia
Montana	Washington
Nebraska	Wisconsin
New Hampshire	Wyoming
New Mexico	
North Dakota	

## **EXPLOSIVES SECURITY**

Terrorism in our back yard! Are your explosives properly secured? Most people when asked this question will answer, "Sure, they are locked up in my magazine."

Although ATF reviews security measures during our on-site inspections, it is really up to you, the industry, to continually minimize the opportunity for theft. We would hope that you emphasize to your employees the need for being "security conscious" all the time, and that you periodically review and test your procedures and controls. Aside from the potential liabilities resulting from negligence, none of us wants to feel that our action, or failure to act, made it easier for terrorists or criminals to obtain explosives.

We all know that it is nearly impossible to build a theft-proof magazine, but the harder you make it for a thief, the less likely he is to try to break into your magazine. There are several things that you can do to meet these responsibilities: use properly constructed and maintained magazines, good locks, and keep an up-to-date inventory of the contents.

### **MAGAZINES**

ATF regulations in 27 C.F.R. 55.208(a)(1), state that "Outdoor magazines are to be bullet resistant, fire resistant, weather resistant, THEFT RESISTANT, and ventilated."

### **LOCKS**

ATF regulations in 27 C.F.R. 55.208(a)(4) state that "Padlocks must have at least five tumblers and a case hardened shackle of at least 3/8 inch diameter."

An interesting article recently appeared in a law enforcement newsletter. It was written following a Department of Mines and Minerals survey of lock manufacturers. This survey solicited comments from 40 lock manufacturers, asking which of their products would meet ATF standards. Only 25 companies responded, and of these only 14 produced a lock that would be acceptable under ATF regulations. For example, a well known lock manufacturer which makes numerous types of locks only has seven models which meet the ATF specifications.

This section of the regulations also states that "Padlocks must be protected with not less than 1/4 inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples." This means that the lock must be protected so you cannot get to it with a lever, a hacksaw, bolt cutters or other cutting tools.

## THEFT STATISTICS

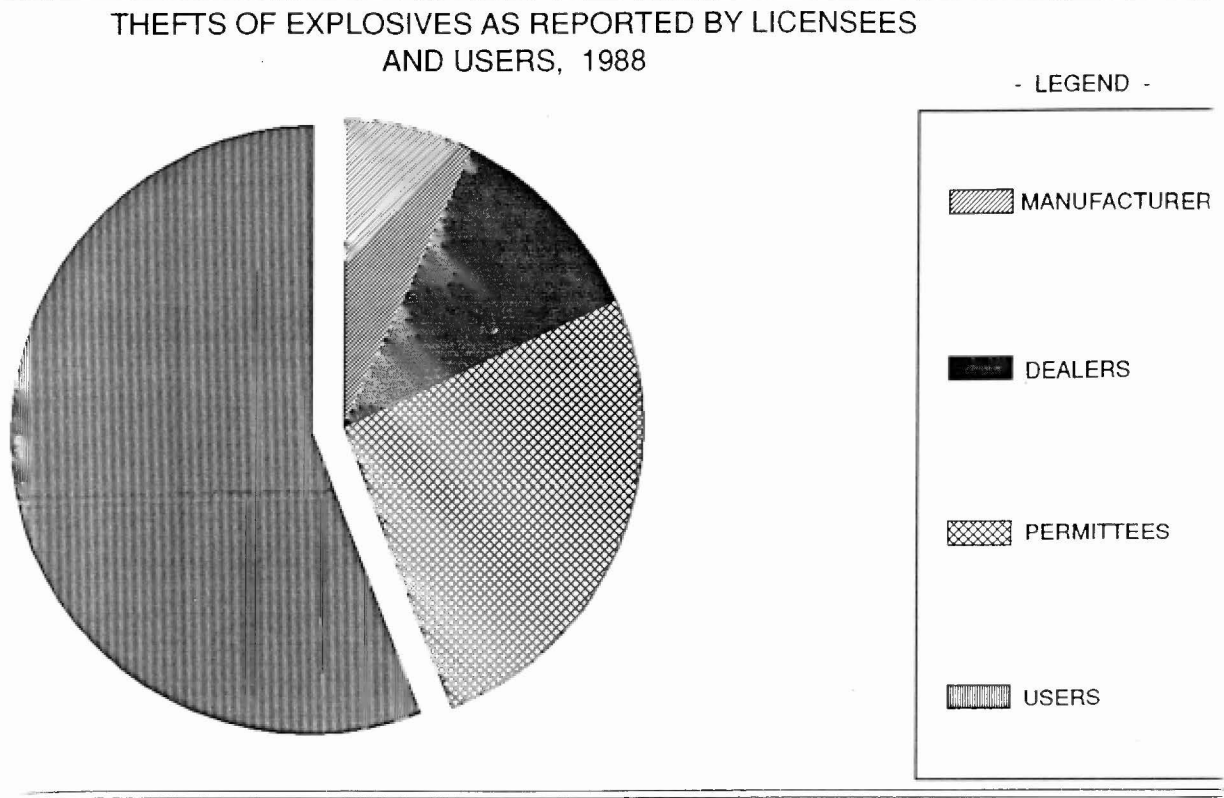
We have compiled summary data relating to thefts of explosives and methods of entry to storage magazine. The data (graphically shown below) was derived from statistics reported to ATF or contributed by the FBI and United States Postal Service (USPS) field offices. These statistics are contained within ATF Publication 5400.10, Explosives Incidents Report, which is published yearly.

GRAPH I - Thefts of Explosives as reported by Licensees, Permittees and Users.

### Theft of Explosives as Reported By Licensees, Permittees, and Users 1979 - 1988

Year		Manufacturer	Dealer	Permittee	User	Total
1979	#	28	30	70	207	335
	%	8.4%	8.9%	20.9%	61.8%	
1980	#	32	38	71	208	349
	%	9.2%	10.9%	20.3%	59.6%	
1981	#	29	19	65	130	243
	%	11.9%	7.8%	26.8%	53.5%	
1982	#	13	30	52	106	201
	%	6.5%	14.9%	25.9%	52.7%	
1983	#	24	24	58	102	208
	%	11.5%	11.5%	28%	49%	
1984	#	9	23	67	113	212
	%	4.2%	10.9%	31.6%	53.3%	
1985	#	12	27	49	131	219
	%	5.5%	12.3%	22.4%	59.8%	
1986	#	7	16	51	96	170
	%	4%	9%	30%	57%	
1987	#	6	16	34	66	122
	%	5%	13%	28%	54%	
1988	#	9	29	58	95	191
	%	5%	15%	30%	50%	
	Total	169	252	575	1,254	2,250 Grand Total
% Grand Total		7%	11%	26%	56%	

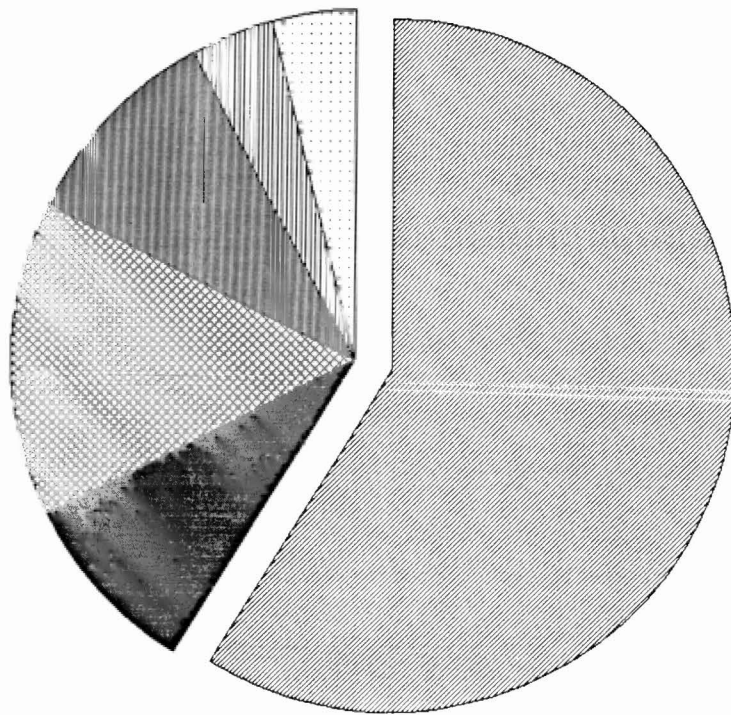
GRAPH II - Percentage of Explosive Thefts as reported by Licensees, Permittees and Users.



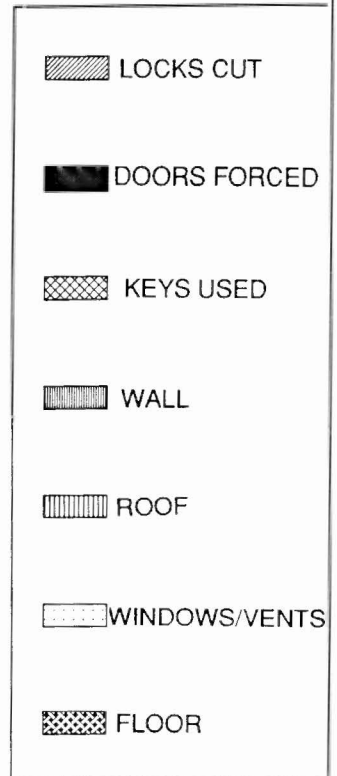
	%
MANUFACTURERS	7
DEALERS	11
PERMITTEES	26
USERS	56

GRAPH III - Methods of Entry Employed in Explosive Thefts.

METHODS OF ENTRY EMPLOYED IN EXPLOSIVES THEFTS 1988



- LEGEND -



	NO.	%
LOCKS CUT	50	60
DOORS FORCED	7	9
KEYS USED	12	15
WALL	8	10
ROOF	3	4
WINDOWS/VENTS	3	4
FLOOR	0	0

## **BINARY EXPLOSIVES REQUIREMENTS**

There has been confusion within the explosives industry regarding the type of license required for binary explosives. The following information should lend assistance.

Binary explosives are commonly sold as two separate components, both of which are inert or non-explosive until mixed, *i.e.*, the separate components do not individually fall within the scope of the regulatory controls as set forth under 18 U.S.C. Chapter 40, and 27 C.F.R. Part 55. These materials are commonly used by persons who mix the components on-site and create "special effects," *i.e.* light and noise effects, for shows and concerts. High explosive types are used for small blasting jobs.

"Explosive materials" is defined by 18 U.S.C. 841(c) as "explosives, blasting agents, and detonators." The term "explosives" is defined by section 841(d) as "any chemical compound, mixture or device, the primary purpose of which is to function by explosion." This section also includes within the term certain specific items, as well as, any additional explosives contained in the "List of Explosives Materials" which is published in the Federal Register annually by ATF.

ATF's position is that "where two substances when combined appear on the List of Explosive Materials or have as a primary or common purpose to function by explosion when mixed, the mixture is an explosive material. Notwithstanding the fact that the substances when not mixed may not be explosive materials. Thus, one may not engage in the business of manufacturing such substances without a manufacturer's license."

Chapter 40 makes it unlawful for any person to engage in the business of manufacturing explosive materials without a license to do so, 18 U.S.C. 842(a)(1). The term "manufacturer" is defined by 18 U.S.C. 841(h) to mean "any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use." Therefore, those who mix the components of binary low explosives on-site for purposes of creating "special effects" and who do so for their own commercial use are manufacturers as that term is defined by section 841(h). Such persons are subject to the licensing and other applicable requirements under chapter 40 and the regulations.

## **BLACK POWDER DEALERS' RECORDS**

ATF Industry Circular 82-8 (July 13, 1982) announced the change in recordkeeping requirements under 18 U.S.C. Chapter 40, and 27 C.F.R. Part 55, as they pertain to the sale of black powder.

Prior to this change, all federally licensed dealers of black powder were required to maintain: physical inventories and records of all receipts and dispositions (27 C.F.R. 55.121-125), daily magazine summaries (27 C.F.R. 55.127), and a file of all ATF Forms 5400.3, Transaction Record for Black Powder to be used in Antique Weapons.

As a result of the change, the preparation of ATF Form 5400.3 was no longer required for black powder sales not exceeding 50 pounds for sporting and recreational uses.

We have since found that some black powder licensees have erroneously ceased maintaining all of the above-mentioned records. Each licensee must still maintain records of receipt of black powder, a daily magazine summary (for each storage box) which lists only the total number of pounds or units sold on a particular day, and a copy of the physical inventory that is required to be taken on an annual basis.

Taking into consideration the size of the average black powder dealer's operations, we are offering a suggested records format below. This is only one option licensees can utilize which

will satisfy all of the recordkeeping requirements mentioned by combining them on a single record. We feel that the suggested format will help licensees save time in maintaining the appropriate records.

NOTE: Any single sale of black powder exceeding 50 pounds to nonlicensees/nonpermittees for sporting or recreational use (or in any quantity when not intended for use as exempted in the law) requires the preparation of ATF Form 5400.4, Explosives Transaction Form.

RECORD OF ACQUISITION, DAILY MAGAZINE TRANSACTIONS  
AND INVENTORY FOR BLACK POWDER SOLD FOR  
SPORTING OR RECREATIONAL USE ONLY IN  
QUANTITIES NOT EXCEEDING 50 POUNDS

DATE	SUPPLIER NAME, ADDRESS & LIC. NUMBER	MANUFACTURER	IDENTIFICATION MARKS	QUANTITY REC'D	QUANTITY SOLD	QUANTITY ON HAND			
						FG	2FG	3FG	4FG

### COMMERCIAL RECORDS

There has been some confusion about the use of commercial records instead of the specific records required in 27 C.F.R. Part 55 Subpart G. **Commercial** records may be used without applying for a variance (section 55.121(a)(1)) if the commercial documents contain all information required by the regulations (section 55.122 through 55.125), as applicable. The commercial records must be kept available for examination by any officer of the Bureau.

#### REQUIREMENTS FOR PRELOADED EXPLOSIVES DELIVERY VEHICLES:

It is becoming a common practice within the explosives industry to preload delivery vehicles for future deliveries. ATF's concerns regarding this practice is from the standpoint of 27 C.F.R. Part 55, Subpart K - Storage. ATF requires the following procedures to be followed:

1. Notify your local ATF Compliance office of the vehicle's existence.
2. These vehicles must be treated as magazines:
  - (a) The American Table of Distance (ATD) must be followed.
  - (b) When unattended, the vehicles must be **immobilized** by kingpin locking devices or other methods approved by the Director.
  - (c) The vehicles must be locked.
3. Delivery vehicles do not provide the bullet resistance required for high explosives storage, therefore, equivalent protection must be provided by holding these vehicles in revetted areas.

## STORAGE REQUIREMENTS FOR NON ELECTRIC DETONATORS

ATF has recently received information from the Institute of Makers of Explosives (IME) regarding tests witnessed by the Department of Transportation (DOT). As a result of these tests, many non-electric detonators were found to be non-mass detonating when packed in original shipping containers and were subsequently classified as Class C explosives by the DOT.

Under 27 C.F.R. 55.203(d), detonators which will not mass detonate may be stored in type 4 magazines.

ATF will approve storage in a type 4 magazine of any detonators in the original shipping container which has the DOT Class C sticker in place. Those which are shipped and labeled DOT Class A explosives must still be stored in type 1 and type 2 magazines.

### SPECIAL NOTICE TO DEALERS OF EXPLOSIVE

We are asking all explosives dealers to inform the purchasers of explosives that there is a Federal requirement for all persons storing explosives to meet minimum storage requirements. We further ask that you inform them of the Federal requirement to report any lost or stolen explosives to ATF within 24 hours of the incident. To report a theft or loss of explosives, the toll free number is **1-800-424-9555**. From Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands call **202-566-7143** collect.

Failure by anyone to meet either of the above storage and reporting requirements carries a maximum penalty of a \$1,000 fine and/or not more than 1 year in prison.



LAW ENFORCEMENT CORNER

### SPECIAL THANKS

We in ATF would like to take this opportunity to thank all of the explosives importers, manufacturers, dealers and users who have assisted us in our endeavors to curtail the illegal uses of explosive materials. Your excellent participation in the Bureau's Explosives Tracing Program has led to the arrest of many persons who have violated Federal explosives laws. Explosives tracing plays a key role in identifying criminals and, consequently, is one of law enforcement's most useful investigative tools.

Without your help, explosives tracing would not be made possible. Therefore, we are asking for your continued support in this important program. Should you detect persons whom you suspect are not legitimate users of explosives attempting to purchase explosives, please contact your nearest ATF office.

## A CAUSE GONE BAD

At 3:24 p.m. on the afternoon of December 10, 1985, an unidentified male telephoned a bomb threat to the New York City Police Bomb Squad. At 3:35 p.m. a destructive device exploded at the Manhattan Women's Medical Center located at East 23rd Street in New York City. Thus began a year of terror for the citizens of America's largest city.

On October 29, 1986, a call was received by the New York City Bomb Squad stating that a bomb was placed at the Eastern Women's Center, an abortion clinic located at 40 East 30th Street. At 1:35 p.m. an explosion rocked the building and sprayed glass fragments into the street, slightly injuring a passerby. Evidence collected at the scene revealed commercial explosives and caps along with other evidentiary materials. The date shift codes on the dynamite had been torn off.

Again, on December 14, 1986, a man walked into a realty office at the Margaret Sanger Pavilion, located at 380 Second Avenue in Manhattan. He had an appointment with a realtor to look at an office in the building which he was interested in renting. During conversations between the man and the realtor, the man pulled a gun and forced the realtor into an upstairs bathroom where he handcuffed him to a radiator. He then went downstairs to place his fourth bomb. This time the bomb did not detonate. The bomb squad was able to disarm 15 cartridges of dynamite, one of the largest bombs ever found in New York City.

The dynamite was the same make as that used in the previous bomb which was discovered 33 days before: Unitegel, an ammonia type dynamite, and again the date shift codes had been torn off — almost. Small traces of the codes were found on a few of the cartridges. This was enough for the ATF National Explosives Tracing Center and the manufacturer to work together in reconstructing the entire missing code and trace it to the Wilkes-Barre, Pennsylvania area. While this was taking place, ATF special agents and Explosives Enforcement officers were pouring over the evidence from the latest bomb, transcripts of all the bomb threats, and other physical evidence. This resulted in a profile being formed of the bomber. A search of over 6,000 blasters' licenses from New York and Pennsylvania was begun. Based on the description from the witness, a photo spread of 28 licensed blasters was selected. Without hesitation the witness picked out the license issued to Albert Alfano, AKA Dennis John Malvasi. The dynamite used in the third and fourth devices was traced to a federally licensed explosive user located in West Pittston, Pennsylvania. Arrests quickly followed which led to the surrender of Dennis Malvasi.

As a result, this federally licensed explosives user pleaded guilty to conspiracy to falsify explosive records. Malvasi's brother-in-law pleaded guilty to conspiracy to distribute explosives to an out-of-State resident. A third accomplice who was waiting sentencing was found dead of a drug overdose at his home. Dennis Malvasi was sentenced to seven years in prison.

## “FATAL ATTRACTION THWARTED”

On April 3, 1988, an individual contacted a Federal agency in North Carolina who stated that he had been contracted to construct a bomb to kill a former girlfriend's lover. This Federal agency referred the information along with the individual's name to ATF for criminal prosecution. ATF agents contacted this individual and found in his possession an unassembled bomb which consisted of three sticks of dynamite, an electric blasting cap, a clock, and a lantern battery. Along with the evidence surrendered and information as to how this bombing was to take place, ATF was able to perfect a criminal case which resulted in the arrest and conviction of three persons for charges involving violations of Federal firearms and explosives laws. Sentencing has been scheduled for a later date.

# ATF'S MOST WANTED / HAVE YOU SEEN THIS PERSON ?



White Male  
25 - 30 Years Old  
5' 10" - 6' Tall  
165 pounds  
Slender Build  
Blond Hair (reddish tint)  
Light Mustache  
Ruddy Complexion  
Wearing Blue Denim Jeans, Gray Hooded Sweatshirt  
Teardrop Sunglasses (smoked lenses)

Since 1978, this bomber has constructed a series of destructive devices that have either been placed or mailed to the victims. One person has been killed and at least 20 injured in the 12 known bombings. On seven occasions, the devices were sent to or placed at university campuses. Other targets have included a commercial airliner bound for Washington, D.C., from Chicago, a former airlines president, and an aircraft manufacturing plant.

The lone fatality occurred as a result of the 11th bombing, which took place on December 11, 1985. The owner of a computer rental store in Sacramento, California, was exiting his business when he observed a package on the ground. This package exploded when disturbed by the victim, killing him instantly. The other bombing incidents occurred in Illinois, Tennessee, Utah, California, Washington, and Michigan.

The U.S. Postal Service has offered a reward of \$50,000 for information leading to the arrest and conviction of any person or persons responsible for these serial bombings. In addition, the University of California at Berkeley is offering a reward of \$10,000 for information. Information can be directed to the ATF office in your area which is in your local directory. You may also call ATF Headquarters toll free, 24 hours a day, at 1-800-424-9555.

## BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

All technical questions concerning Federal explosives laws and regulations may be directed to your local ATF area office located in your local phone directories, or the Firearms and Explosives Coordinator at the appropriate regional office listed below for your vicinity.

6 World Trade Center - 6th Floor  
New York, New York 10048  
(212) 264-1733

Federal Office Building Rm. 6519  
550 Main Street  
Cincinnati, Ohio 45202  
(513) 684-3334

1114 Commerce Street - 7th Floor  
Dallas, Texas 75242  
(214) 767-2277

841 Chestnut Bldg. 3rd Floor  
Philadelphia, Pennsylvania 19107  
(215) 597-2238

230 S. Dearborn Street - 15th Floor  
Chicago, Illinois 60604  
(312) 353-3894

525 Market Street - 34th Floor  
San Francisco, California 94105  
(415) 974-9632

3835 Presidential Parkway  
Atlanta, Georgia 30340  
(404) 986-6040

All calls of suspected criminal activity involving explosives should be directed to your local ATF Law Enforcement office. You may also call ATF Headquarters toll free, 24 hours a day, at 1-800-424-9555.