



ATF EXPLOSIVES Industry Newsletter

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and Safer America**

Paul W. Brown Selected as Chief of the Explosives Industry Programs Branch

Paul Brown was recently appointed as the Chief, Explosives Industry Programs Branch (EIPB). Mr. Brown succeeds William Miller who became an Area Supervisor in the Kansas City Field Division in August of this year. Mr. Brown worked as a Regulations Officer in the State of Michigan before beginning his ATF career in 2001 as an Industry Operations Investigator in the Detroit Field Division. In 2010, he became the Area Supervisor in Jacksonville, Florida. Mr. Brown, who will become the new EIPB Chief in January 2013, looks forward to a continued partnership with industry members, to fostering open communication and enhancing the explosives industry's awareness of public safety practices.

ATF Explosives Industry Meeting in Washington

ATF held an Explosives Industry Meeting on October 25-26, 2012, at the ATF National Headquarters in Washington, DC. Over 160 people, representing various segments of the explosives industry, related organizations, and industry regulators attended the meeting.

Speakers at the meeting included: Dennis Blasius, Director of Field Investigations for the U.S. Consumer Product Safety Commission (CSPC); Sanji Kanth, Senior Safety Engineer of the Occupational Safety and Health Administration's Directorate of Enforcement Programs; U.S. Mine Safety and Health Administration (MSHA) Deputy Administrator Marvin Lichtenfels; Brian Goepfert, MSHA's Chief for the Division of Metal/Nonmetal; U.S. Department of Homeland Security's Director of the Infrastructure Security Compliance Division Dave Wulf; and Dr. Carole Leblanc, Director of Engineering and Research Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation (DOT).

The industry meeting, sponsored by ATF's Office of Enforcement Programs and Services, featured Program Managers from EIPB who presented regulatory overviews for both the fireworks and commercial explosives industries. In addition, ATF representatives from the Office of Field Operations, the Federal Explosives Licensing Center, the Office of Regulatory Affairs, the Firearms and Explosives Relief of Disability Section, the U.S. Bomb Data Center, and the Explosives Technology Branch spoke on various issues affecting the explosives industries.



Explosives Industry Analyst, Bill O'Brien, responds to questions during the meeting.

Attendees were given the opportunity to ask questions of speakers and panel groups, as well as to meet with regulators on specific concerns or issues. During the meeting, participants were treated to an explosives canine demonstration and a tour of ATF's National Response Team vehicle.

Keynote Speaker, B. Todd Jones, Acting Director of ATF since 2011, spoke on the partnership that exists between ATF and the explosives industry, a partnership made even more crucial following the events of September 11th, 2001:

"As we move forward in improving our regulations and our programs guidance, we continue to rely on the expertise of industry members to help us gather information crucial to ATF's successful regulation of the industry. We appreciate the willingness of the explosives industry to include ATF in meetings and discussions about the safety and security of explosives.

We are approaching the 10th anniversary of the Safe Explosives Act of 2002. This important legislation changed how the explosives industry does business in several important ways. Among the amendments contained in the Act were the requirements for all persons purchasing explosives to have an ATF license or permit, and to have

background checks conducted on all employees handling explosives. The industry has responded very well to these and other provisions in it.

But industry did not stop there. Since 2002, we've also seen a dramatic shift in the industry toward better physical security of explosives. Companies have upgraded locks and even adopted new locking systems. Some have implemented access verification procedures for employees accessing storage magazines, and others continue to develop new processes for inventory verification and accountability. These industry-driven improvements often exceed the requirements of the Federal explosives laws and regulations. ATF has approved some of these processes and systems through variances or rulings.

The associations have also worked with ATF on projects to examine the potential benefits of using risk assessment programs for explosives operations, research better methods for bulk explosives accountability, and develop better standards for bulk truck security. Going further, the associations have partnered with ATF to produce joint publications for explosives safety and security and produce public service announcements to inform the American public about pyrotechnics safety.

I've been told by some in ATF that there is a no more candid and constructive group than the explosives industry. We receive straightforward feedback, suggestions, and even advice, from explosives companies and associations. Not only are the ideas important, but the backdrop of an open forum where industry members and ATF officials openly discuss and debate explosives issues, is invaluable. Our dialogue at conferences and meetings and our continued participation through working groups is part of a model for how industry can work with government to meet regulatory requirements and still succeed in business."

ATF Ruling 2012 5, Type 4 Magazines with Wood-Only Floors

The regulations at 27 CFR 555.210(a)(2) for type 4 magazines state, in part, that "[o]utdoor magazines are to be constructed of masonry, metal covered wood, fabricated metal, or a combination of these materials. Foundations are to be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the building is to be enclosed with fire resistant material."

ATF has received numerous requests from Federal explosives licensees and permittees (FEL/P) for authorization to store explosive materials inside type 4 explosives magazines with wood-only floors. These magazines do not meet the theft and fire-resistance standards prescribed in the regulations because the wood flooring is not covered on the outside with metal. After discussions with industry

members, and in some cases, modifications to industry members' magazines, ATF has approved variance requests for type 4 magazines with wood-only floors when the magazines provided levels of theft and fire-resistance substantially equivalent to the methods prescribed by the regulations.

Under ATF Ruling 2012-5, FEL/Ps may store explosive materials in type 4 magazines with wood-only floors, provided all of the following conditions are met at all times:

1. The ground under the magazine must be completely covered with gravel or another nonflammable material such as concrete or dirt (additional covering is not required if the ground under the magazine is nonflammable);
2. Any gap between the magazine and the ground must be covered with mounded gravel or another nonflammable material such as metal skirting;
3. If skirting is used, it must be securely attached; and
4. The gravel or skirting between the magazine and the ground must remain intact around the perimeter of the magazine so that the underside of the magazine does not become exposed or accessible (i.e., there must be no gaps in the gravel or skirting).

ATF Ruling 2012-5, found in its entirety at <http://www.atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2012-5.pdf>, supersedes all previous variance approvals for the storage of explosives in type 4 magazines with floors constructed of wood, but not covered with metal. Licensees and permittees who comply with all of the conditions set forth in the ruling at all times are not required to obtain a separate, individual variance approval from ATF. Licensees and permittees must comply with all other provisions of 27 CFR, Part 555, as prescribed.

Signage and Placarding at Regulated Mining Sites

Industry members have asked EIPB whether there is a conflict between the ATF explosives regulations at 27 CFR, Part 555 and the Mine Safety and Health Administration (MSHA) regulations at 30 CFR Part 56 (metal/nonmetal), and Part 77 (above ground coal), for the placarding of type 5 magazines at regulated mining sites.

The regulations at 27 CFR 555.211(a)(5) state that, "placards required by Department of Transportation (DOT) regulations at 49 CFR Part 172, subpart F, for the transportation of blasting agents shall be displayed on all magazines." This regulation was implemented to

ensure that emergency personnel responding to a fire at a magazine site would be aware of the contents of a type 5 magazine (for blasting agents). ATF does not require similar signage for other types of magazines, because the materials in types 1 through 4 magazines could be sensitive to bullet-impact, and signs such as DOT placards are often seen as an enticement for firearms enthusiasts to use them as targets.



Conflicting Regulations or Misinterpretation?

The MSHA metal/nonmetal regulations at 30 CFR 56.6132(a)(6) require that magazines be "posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine." MSHA coal regulations at 30 CFR 77.1301(c)(9) state that magazines must be "posted with suitable danger signs so located that a bullet passing through the face of a sign will not strike the magazine." These regulations may create the impression that signage (including placards) for all magazines must not be placed on the side of the magazine. However, this interpretation conflicts with the ATF requirement for type 5 magazines to be posted with blasting agent placards.

Msha Metal/Nonmetal Regulations at 30 CFR Part 56

MSHA regulations define a "magazine" as "A bullet-resistant, theft-resistant, fire-resistant, weather-resistant, ventilated facility for the storage of explosives and detonators (BATF Type 1 or Type 2 facility)." The aforementioned MSHA regulation at 30 CFR 56.6132 (a)(6), restricting the placement of signage, applies only to (ATF) Type 1 or Type 2 facilities. A "storage facility," in contrast, is defined as "the entire class of structures used to store explosive materials. A "storage facility" used to store blasting agents corresponds to a BATF Type 4 or 5 storage facility." (See 30 CFR 56.6000 and 56.2)

The MSHA regulation at 30 CFR 56.6130 pertains primarily to "Explosive material storage facilities" and requires, among other things, that packaged blasting agents be stored in a magazine or other facility; facilities

other than magazines used to store blasting agents must contain only blasting agents; and facilities, bins or tanks must be posted with DOT placards or other warning signs that indicate the contents, and are visible from each approach. Section 56.6130(d), addressing explosive material storage facilities (e.g., ATF type 5 magazines for storage of blasting agents), does not prohibit the placement of the sign (or placard) on the side of the facility, bin, or tank. *Therefore, explosives storage facilities (type 5s containing bulk blasting agents) may meet the ATF requirement for being posted with placards and still remain compliant with MSHA metal/nonmetal regulations pertaining to signage.*

MSHA Coal Regulations at 30 CFR Part 77 (Surface Coal Mines and Surface Work Areas of Underground Coal Mines)

The Coal regulation at section 30 CFR 77.1301(a) states that “Detonators and explosives other than blasting agents shall be stored in magazines.” As noted above, the regulation at 30 CFR 77.1301(c)(9) requires that magazines must be “posted with suitable danger signs so located that a bullet passing through the face of a sign will not strike the magazine.” Accordingly, dynamite, detonators, and other high explosives must be stored in magazines, and signs or placards may not be placed on the side of such magazines. However, the regulation at 30 CFR 77.1304(a) states, “Sensitized ammonium nitrate blasting agents, and the components thereof prior to mixing, shall be mixed and stored in accordance with the recommendations in Bureau of Mines Information Circular 8179, “Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents,” or subsequent revisions.”

Under Paragraph 44 of Circular 8179, the “storage building or van should be well ventilated, kept locked when unattended, and posted with proper warning signs.” Like the regulation at 30 CFR 77.1301(c)(9), paragraph 44 clearly requires warning signs. However, it stops short of specifying that the signs must be placed such that a bullet passing through the sign not strike the building in which blasting agents are stored. *Therefore, explosives storage facilities (type 5 magazines containing only bulk blasting agents) may meet the ATF requirement for being posted with placards and still remain compliant with MSHA coal regulations (above ground) pertaining to signage.*

Explosives Violations

Although most explosives industry members strive to comply with regulations, violations of the Federal explosives regulations occur. The discovery of violations during inspections provides an opportunity for companies to evaluate their internal controls and implement changes that can improve operations and facilitate future inspections. Further, it’s an opportunity for ATF to work with industry members and to offer suggestions to better secure and account for explosives.

The following are the six most frequently-cited violations during ATF inspections from fiscal years 2006 to 2011 in descending order from most to least cited. These have accounted for over 50 percent of the total violations cited in each of these fiscal years.

1. *Failing to maintain accurate explosives magazine inventory records vital to explosives accountability in the event of a theft or loss.* (Accounting for approximately 25 percent of the total violations cited in fiscal year 2011—down 37 percent from 2007; still the most frequently cited violation every fiscal year.)
2. *Failing to maintain accurate explosives acquisition records critical to ensuring traceability of explosives in the event of theft or loss.*
(Numbers 2 and 3 above are the second and third most frequently cited violations each fiscal year and account for about 15 percent of the total violations cited in fiscal year 2011—down 55 percent from 2007.)
3. *Failing to meet housekeeping requirements that ensure explosives storage magazines, in part, are kept clean, dry, and free of volatile materials within 50 feet.* (Adhering to housekeeping regulations helps to keep proprietors, their employees, and the public safe.)
4. *Failing to report changes to responsible persons (RPs) or employee possessors (EPs).* New RPs and EPs must be reported to the Federal Explosives Licensing Center within 30 days. (This is of significant concern to ATF because these individuals are required to pass background checks to ensure they are not prohibited from possessing and receiving explosives.)
5. *Failing to ensure sufficient distance between explosives storage magazines and inhabited buildings, public highways, passenger railways, and other magazines.* (The tables of distances found in 27 CFR, Part 555, Subpart K—Storage have been adopted to protect the public in the event of a magazine explosion.)

6. **Unlawful storage.** (Explosive materials must be kept in appropriate magazines meeting construction, locking, housekeeping, and table of distance requirements in 27 CFR, Part 555, Subpart K, unless they are: in the process of manufacture; being physically handled in the operating process; being used; or being transported to a place of storage or use.)

What Can Explosives Industry Members Do?

1. If you have a question about a particular requirement, contact ATF before a problem develops. Your local ATF office is a great place to start. You can find contact information for your local ATF office at <http://www.atf.gov/field/>.
2. Educate your employees on Federal explosives regulations and requirements. In many cases, the employees responsible for day-to-day operations have not attended the last industry conference or seen our web pages for regulatory updates. It is up to you to pass along any new information to those in your organization responsible for explosives operations.
3. Invite ATF to conduct an educational seminar for your employees at your premises. ATF commonly meets with individual explosives companies for educational purposes and finds the experience beneficial for both industry members and ATF personnel.
4. Establish standard operating procedures for all of your explosives operations. Industry members doing the same process more than one way are likely to create confusion among employees. As a result, they will probably encounter more issues during inspections. If something goes wrong, it will be much easier for you and the investigator to find the source of an issue if you have a standardized process. (These procedures should be re-evaluated on a regular basis and updated when improvements can be made.)
5. Conduct more frequent inventories. If you are having accountability issues with your explosives inventory, then establish a more frequent inventory cycle. The more frequently you conduct inventories, the more quickly you'll discover discrepancies, and the less paperwork you will have to review when an inventory discrepancy is found.
6. Invite ATF to work sites so they can see exactly what you are doing with the explosives. The more an investigator knows about your business operations, the more likely he or she will be able to offer constructive suggestions if problems occur.
7. We should all remember that industry and government alike are responsible for public safety and securing explosives. Partnerships between industry and regulators help ensure these goals are met without negatively

affecting public safety or placing overly burdensome regulations on the explosives industry. Regulations are only the minimal standards set by Government agencies and often become outdated by new technologies. Industry members and regulators can and should look beyond these minimal standards to better conduct explosives operations and to ensure safety and security of explosive materials.

Open Letter on Tables of Distances for Blasting Agents

ATF has issued an open letter concerning the application of the Tables of Distances at 27 CFR 555.218, Table of distances for storage of explosive materials and 27 CFR 555.220 Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents. These tables of distances were adopted to protect the public in the event of a magazine explosion. The table at 27 CFR 555.218 was developed to prescribe minimum distances between storage of high explosives (HE) or blasting agents (BA) and inhabited buildings, highways, and passenger railways. It also addresses minimum separation distances between explosives magazines. The table at 27 CFR 555.220 was developed to prescribe minimum distances between magazines, when HE or BA is the donor and BA or ammonium nitrate (AN) is the acceptor. (This table also includes minimum separation distances when the magazines are barricaded from each other).

The keys to applying the tables at 27 CFR 555.218 and 555.220 to donor/acceptor relationships are the net explosive weight (NEW) of the donor; the distances between magazines; the type of materials in the donor magazine; and the type of materials in the acceptor magazine. The recent open letter addresses issues such as detonator storage near HE, BA or AN; how to determine which storage magazine is the "donor" and which is the "acceptor" when applying these tables; how to account for HE and BA storage magazines that do not meet separation requirements; and when to use the table of distance at 27 CFR 555.218 versus the table at 27 CFR 555.220. Industry members who store blasting agents or ammonium nitrate should read the complete open letter at <http://www.atf.gov/press/releases/2012/09/092412-open-letter-tables-of-distances-sept-2012.pdf>.

Type 19 Licensed Activities

ATF has been recently asked whether a “manufacturer of theatrical flash powder” type 19 license is sufficient for the purchase and/or manufacture of explosives other than premeasured one ounce binary flash powder kits.

The Federal explosives type 19 license was created to allow for the onsite mixing of premeasured, commercially manufactured binary theatrical flash powder kits not exceeding one ounce, at any location in the U.S. At that time, other types of manufacturing licenses limited the onsite manufacture to any location within that ATF region. However, current Federal explosives regulations at 27 CFR 555.41 allow manufacturers to conduct onsite operations in any region in the U.S.

With the goal of ultimately simplifying its licensing and permitting structure, ATF eliminated the requirement to file for an amended license or permit in order to change the class of explosive materials described in a current license or permit. This allowed ATF to simplify its licensing/permitting scheme to eliminate the reference to specific explosives classes. As a result, a manufacturer of explosives, for example, may manufacture any type of explosive materials.

In accordance with this licensing structure, ATF has determined that a holder of a “manufacturer of theatrical flash powder” license may engage in the business of manufacturing any type of explosive material. Similarly, a “dealer of black powder” license entitles the holder to engage in the business of dealing in any class of explosives, and, a display fireworks license or permit entitles the holder to engage in the business or activities covered by the license or permit (e.g., importing, manufacturing, dealing, receipt), for any class of explosive materials. As a reminder, permit holders may not engage in business as dealers, manufacturers or importers of explosives, and all persons must properly store explosive materials. Generally, high explosives must be stored in at least a type 1 or type 2 magazine; low explosives must be stored in at least a type 4 magazine, and blasting agents must be stored in at least a type 5 magazine.

Recording Packaged Displays in the DSMT

This is a follow-up to the “Recording in the Daily Summary of Magazine Transactions” article that appeared in the June 2012 Explosives Industry Newsletter.

ATF has received several inquiries regarding the proper procedures for maintaining the daily summary of magazine transactions (DSMT) for packaged fireworks display shows. As stated in the June 2012 Explosives Industry Newsletter, the regulations at 27 CFR 555.127 allow for display fireworks quantity entries to be expressed in the DSMT, in part, as the number of packaged display segments or packaged displays. However, industry members must provide to ATF upon request, information as to the number and size of display fireworks contained in any one packaged display segment or packaged display.

This allowance for quantity entry of display fireworks is separate from the requirement to record the manufacturer’s name or brand name. The DSMT for packaged fireworks display shows must still include the manufacturer’s name or brand name. ATF has determined that the manufacturer’s name or brand name must be recorded either within the DSMT or within the document containing information as to the number and size of display fireworks inside any one packaged display segment or packaged display.

ATF recommends that fireworks industry members maintain the required information—the number, size, and manufacturer’s name or brand name of the display fireworks (inside packaged displays)—on a separate document that can be provided to ATF on a timely basis. This will assist ATF in the event of an explosives theft or loss and help facilitate the ATF explosives inspection.

Questions and Answers

Question: My company has an exemption letter from ATF for a special explosive device. If we obtain a new license under a new name, will we need to resubmit an exemption request for the same previously exempted device?

AnsWER: Under the Federal explosives regulations at 27 CFR § 555.32, ATF may exempt special explosive devices (SED) that, as designed, do not constitute a public safety or security hazard. While an SED exemption is generally addressed to the requestor (e.g., the manufacturer), the

exemption pertains to the device itself. Therefore, your company would not be required to obtain an updated exemption letter or to have such an exemption transferred to a new license. However, any alterations to the exempt device, the packaging of the device, or the manufacture of a different device, would render the exemption void and would necessitate a separate request for an SED exemption.

Question: Are all items designated by the U.S. Department of Transportation (DOT) as articles pyrotechnic (UN0431 and UN0432) exempt from the ATF explosives regulations?

Answer: No, not all items classified by DOT as articles pyrotechnic are exempt from ATF regulations. To be exempt, the items must meet the full criteria found in the definition for "articles pyrotechnic" at 27 CFR 555.11, "Pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432."

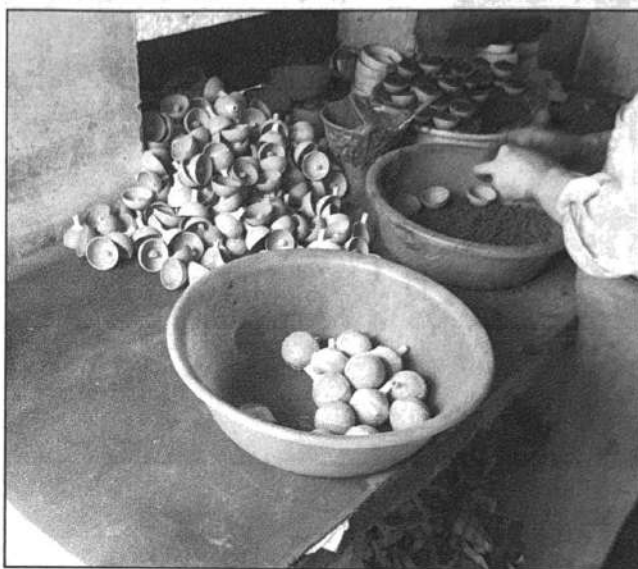
Question: I have noticed several items on your Explosives Industry webpage, under Explosives Industry News, that say, "Agency Information Collection Activities: Proposed Collection; Comments Requested." What information is ATF collecting?

Answer: The agency information collection activities that appear on the ATF webpages are notices published in the Federal Register to obtain comments from the public and affected agencies. Under the Paperwork Reduction Act of 1995, ATF is required to provide public notice when revising forms, sending out industry surveys, or requesting any information, even on a voluntary basis, from 10 or more persons. Often, the notices being published are for a renewal of an existing collection. For example, explosives recordkeeping requirements are generally submitted for public comment every 3 years even when there are no planned changes to the information collection.

Public notices generally include: 1) a title for the collection of information; 2) a summary of the collection of information; 3) a brief description of the need for the information and the proposed use of the information; 4) a description of the likely respondents and proposed frequency of response to the collection of information; 5) an estimate of the burden (in hours) that will result from the collection of information; and 6) information on what points to address, and where to send your comments. Finally, the notices provide the date that comments are due and contact information if additional information is needed regarding the notice.

Industry members are encouraged to view and comment upon all information collection notices published in the Federal Register. ATF posts all such notices on our website at <http://www.atf.gov/explosives/industry/> and at <http://www.atf.gov/forms/federal-register/>.

EIPB at the AFSL Display Fireworks Seminar in China



Explosives Industry Programs Branch Program Manager Mike O'Lena traveled to Liuyang, China, in August to participate in the American Fireworks Standards Laboratory's (AFSL's) fireworks technician training and other fireworks-related events. Liuyang is a city in the Hunan Province of China that is responsible for manufacturing the majority of consumer and display fireworks used throughout the world.

AFSL is an independent non-profit company established in 1989, in part, to develop and maintain voluntary safety and quality standards for each classification of fireworks imported into the U.S. The training is required annually for all AFSL fireworks technicians that examine and test consumer and display fireworks for importation into the U.S. AFSL estimates that their members account for over 80 percent of the total consumer fireworks imported into the U.S. and over 50 percent of the total display fireworks imported into the U.S.

AFSL held a Display Fireworks Seminar for Chinese fireworks manufacturers that included a presentation by Mike O'Lena on ATF and its mission, the classification of fireworks, import and recordkeeping requirements, bulk salutes, and other issues potentially involving display fireworks imported into the U.S.



The seminar included a review of the AFSL display fireworks inspection program, U.S. Department of Transportation requirements, and a factory audit workshop.

Program Manager O'Lena also visited several display and consumer fireworks manufacturing facilities, fireworks testing areas and laboratory facilities in Liuyang.

Dennis Blasius, Director, Field Investigations and Christopher J. Musto, PhD, chemist, from the Consumer Product Safety Commission (CPSC) participated in the events and presented during the Consumer Fireworks Seminar on compliance and laboratory activities. ATF and CPSC emphasized the importance of properly labeling and classifying fireworks intended for import into the U.S.

The seminar also included a review of the AFSL display fireworks inspection program, U.S. Department of Transportation requirements, and a factory audit workshop.



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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 M 5400.3, *ATF Explosives Industry Newsletter*.

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