

ATF EXPLOSIVES Industry Newsletter

December 2019

What's in This Issue

FEID Personnel Changes
ATF Field Division Realignment
27 CFR, Part 555 - Technical Changes
Final Rule Creates Part 771
FEL eZ Check
Preventing Explosives Losses
E-Regulations That Work For You
ATF Explosives Detection Canines
New Mailing Address
Final Rule Removes Reference Note
Explosives Violations
Q&As
Licensee/Permittee Population
Submit a Tip
Explosives Thefts

Firearms & Explosives Industry Division (FEID)
Division Chief **Krissy Carlson**

Explosives Industry Programs Branch (EIPB)
Branch Chief **Valentina Close**

Firearms Industry Programs Branch (FIPB)
Branch Chief **Andrew Perdas**

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FEID Personnel Changes

On September 30, 2019, Krissy Carlson was selected as Director of Industry Operations, Dallas Field Division. Krissy Carlson was appointed on August 5, 2015, to the position of Division Chief, Firearms and Explosives Industry Division (FEID). Krissy Carlson will report to her new position in February of 2020.

On December 23, 2018, Valentina "Tina" Close reported as the new Explosives Industry Programs Branch (EIPB) Chief. Since 2003, Ms. Close has worked in various capacities within the Bureau, including as an investigator in the Baltimore and Tampa Field Divisions, EIPB program manager, and area supervisor in the Houston Field Division. Ms. Close succeeds William "Eddie" Frye, who moved to the Dallas Field Division as an area supervisor.

ATF Field Division Realignment

The ATF Office of Field Operations conducted a comprehensive review and analysis of significant factors (including the size of each ATF field division, the number of judicial districts, number and size of external federal law enforcement partners, square mileage, and population) affecting each field division's oversight. As a result of this review, effective April 1, 2019, the geographic boundaries in six ATF offices were realigned. These changes are:

Dallas Field Division acquired the Las Cruces Industry Operations Satellite Office and its area of responsibility from the Phoenix Field Division.

Kansas City Field Division acquired responsibility for the geographic area encompassed by the Southern Judicial District of Illinois from the Chicago Field Division.

Nashville Field Division acquired responsibility for Crittenden County, Arkansas (West Memphis) from the New Orleans Field Division.

With these changes, the map depicting the area of responsibility for each ATF Field Division has been updated as follows:



27 CFR, Part 555 Technical Changes

ATF has published a Final Rule in the Federal Register to make technical amendments to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations in the Code of Federal Regulations (CFR), Title 27, Part 555. These technical changes remove expired and obsolete information; correct outdated regulations; and reflect changes to nomenclature resulting from the transfer of ATF to the Department of Justice from the Department of the Treasury. This final rule was effective upon publication in the Federal Register on April 8, 2019.

In addition to other minor changes, the final rule effects the following changes:

- Section **555.11 Definitions** of "ATF," "ATF Officer," "Bureau," "Director," "Director, Industry Operations," and "Region" are revised to remove references to ATF's organizational titles and structure prior to its 2002 transfer to the Department of Justice.
- Section **555.27 Out-of-State disposition of explosive materials** has been removed as the provisions of that section expired on May 24, 2003.
- Section **555.30 Reporting theft or loss of explosive materials** has been amended to reflect the correct nationwide toll free telephone number 1-800-461-8841. Also, the reference to obsolete Form number 4712 has been removed.
- Subsections pertaining to licensing and recordkeeping requirements in effect prior to May 24, 2003 have been removed from:

§ 555.41 General.

§ 555.45 Original license or permit.

§ 555.49 Issuance of license or permit.

§ 555.51 Duration of license or permit.

§ 555.102 Authorized operations by permittees.

§ 555.103 Transactions among licensees/permittees and transactions among licensees and holders of user permits.

§ 555.105 Distributions to nonlicensees, nonpermittees, and limited permittees. (Heading of section also revised).

§ 555.125 Records maintained by permittees.

§ 555.126 Explosives transaction record for distribution of explosive materials prior to May 24, 2003 and Limited Permittee Transaction Report for distribution of explosive materials on and after May 24, 2003. (Heading of section also revised)

- Section **555.218 Table of Distances for Storage of Explosive Materials** has been amended to reflect the correct date in the table title "Table: American Table of Distances for Storage of Explosives (December 1910), as Revised and Approved by the Institute of Makers of Explosives—June, 1991."
- Section **555.224 Table of distances for the storage of display fireworks (except bulk salutes)** has been amended to replace "(30 days from the date of publication of the final rule in the FEDERAL REGISTER)" with the effective date of "March 7, 1990" in the third footnote. The footnote now reads "For fireworks storage magazines in use prior to **March 7, 1990**, the distances in this table may be halved if properly barricaded between the magazine and potential receptor sites."

Federal explosives licensees and permittees are encouraged to read the complete text of the final rule which is available at <https://www.atf.gov/rules-and-regulations/rulemaking>.

Final Rule Creates Part 771

The Department of Justice has issued a final rule codifying ATF regulations governing procedures and practices for disapproving applications, denying renewals, and revoking explosives licenses or permits. The new 27 CFR, Part 771—Rules and Practice in License and Permit Proceedings—is based upon the regulations that ATF relied upon prior to its transfer from the Department of the Treasury to the Department of Justice.

When the Homeland Security Act of 2002 divided the regulatory functions of ATF into two separate agencies—the new Alcohol and Tobacco Tax and Trade Bureau (TTB) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives—all regulatory authority under 27 CFR part 71, Rules of Practice in Permit Proceedings, remained in the Department of the Treasury. As a result, ATF could not promulgate new regulations under this part, even though ATF continued to use the regulations in part 71 to administer hearings related to the application and revocation of Federal explosives licenses and permits.

The Department is promulgating regulations in the new 27 CFR Part 771, in order to better govern and administer explosives license and permit proceedings that come under its jurisdiction. This final rule makes minor changes to the current regulations at 27 CFR 478.76 and 555.78 by removing references to 27 CFR Parts 601.521-527 and 31 CFR Part 8, regulations that are particular to TTB. The revisions also remove all references to statutes, regulations, positions, and other terms that are applicable only to the Department of the Treasury and reflect ATF's position as a regulatory and enforcement agency under the Department of Justice.

The final rule clarifies that requests for a hearing can be made as a result of denial of an initial application in addition to the revocation or denial of a renewal application. Also, expert testimony has been added in section 771.82(a) to clarify that both opinion and expert testimony shall be admitted when the administrative law judge is satisfied that the witness is properly qualified pursuant to Federal Rules of Evidence 701 or 702. Specifically, 27 CFR § 555.78 provides that applicants, licensees, or permittees may represent themselves or be represented at a hearing for the disapproval of applications for explosives licenses, and for the denial of renewal or revocation of such licenses or permits under federal explosives law by an attorney, a certified public accountant, or any other person recognized to practice before ATF as provided in 31 CFR part 8, if the representative complies with the applicable practice requirements of 26 CFR 601.521 through 601.527.

Persons planning to use procedures previously addressed under 27 CFR, Part 71 should read the final rule codifying Part 771 published in the Federal Register at 84 FR ____ (November 15, 2019).

FEL eZ Check Application

FEL eZ Check is an online system designed to allow Federal explosives licensees or permittees (FEL/Ps) to verify or authenticate another FEL/P's license or permit prior to shipping or disposing of explosive materials to the requesting FEL/P. The system will verify the information shown on the license or permit to determine if it is still valid but this information may not be used as a substitute for a certified copy of the license or permit to fulfill the regulatory requirements of section 555.103(b) for transfers of explosive materials.



To use the online system:

1. Go to [FEL eZ Check Login](#) to log into the system

Enter the first three characters (e.g. "9 CA") and the last 5 digits of the Federal Explosives License/Permit Number being verified in the blocks provided.

3. Click on the Submit button to verify the license or permit.

If the data you entered is valid and the license or permit is active, the following information about the FEL/P will be displayed:

- License or Permit Number
- Expiration date (If the license or permit has expired, but the FEL/P has requested and obtained a Letter of Continuing Authorization (LOA), the date the LOA was issued by ATF and the expiration date of the LOA will be displayed)
- FEL/P Name
- Trade Name

If all of the information on the license or permit you are verifying does not match the information in the eZ Check system, or if the license or permit has expired, do not complete the transaction without first contacting ATF at (877) 283-3352. If you have any questions concerning the use of "FEL eZ Check", contact the Federal Explosives Licensing Center at FELC@atf.gov.

Preventing Explosives Losses

The theft/loss reporting requirement in the Federal explosives laws at 18 U.S.C. § 842(k) and § 844(p), and the implementing regulation at 27 CFR § 555.30, refers to explosive materials when the owner, authorized possessor or operator has lost possession, care, or control of the explosives materials and cannot account for their absence. In many cases, an apparent loss can be the result of an administrative error in recordkeeping. However, ATF has recently seen an increase in reports of explosive materials lost during transportation, including reports of unsecured explosive materials falling off of vehicles.



Improperly secured explosive materials pose an **imminent hazard** to public safety. ATF encourages all Federal explosives licensees to follow all Federal, state and local laws regarding the security of explosive materials. Further, we would like to remind all those who ship or transport explosive materials of the importance of securing

explosive materials onto or within transportation vehicles prior to transport. This includes materials stored in compartments or magazines during transit.

While ATF generally does not regulate the transportation of explosive materials via railroad, water, highway, or air, which is regulated by the U.S. Department of Transportation and its agencies, ATF requires transporters to report losses under § 555.30. Prompt reporting can help mitigate incidents that may occur because of an explosives loss. In the event of a loss, contact the U.S. Bomb Data Center (USBDC) at 800-461-8841 (weekends or after hours at 888-283-2662) within 24 hours of discovery. Also, contact local law enforcement authorities and the local ATF office. If lost explosives are subsequently recovered, notify the USBDC and any local authorities to whom the initial report of loss was made.

E-Regulations That Work for You

ATF's Office of Regulatory Affairs (ORA) and the Digital Media Division, Public and Governmental Affairs (PGA), have collaborated in developing ATF's eRegulations website to provide users with an open, responsive, informative, and accessible resource. After approximately three years of development, ATF's eRegulations website is now a true "one-stop-shop" for ATF employees, industry, and the public to research, review, and receive guidance relative to ATF laws and regulations.

ATF's digital initiative is compatible with desktop and laptop computers, tablets, and handheld mobile devices, and presents regulations in an easy-to-read format. Further, the site is automatically updated to reflect the most recent changes published in the Federal Register.

Website users will now have ready access to a comprehensive presentation of ATF's regulations and relevant guidance issued by ATF.



Helpful features that users will find on the main landing page for each part of title 27 of the Code of Federal Regulations include suggested important topics and search terms, a table of contents with a search engine and regulation timeline, as well as related laws and additional ATF resources. Additionally, users have the ability to:

- Compare current and former iterations of a regulation;
- Search by topics or terms;
- Reference definitions of terms within each regulation;
- Discover links to statutes, rulings, open letters, newsletters, FAQs and other guidance that are relevant to a particular regulation.

eRegulations is a useful tool not only to industry and individuals seeking to understand ATF laws and regulations, but also an additional asset to ATF personnel in the field. Visit our website at <http://regulations.atf.gov/>.

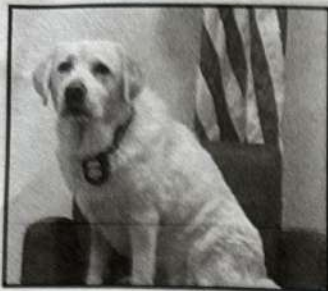
ATF Explosives Detection Canines

ATF Explosives Detection Canines are certified and trained by ATF to find explosives and firearms-related evidence. Through their keen sense of smell, these canines are able to detect up to 19,000 explosives combinations, even in trace amounts. All ATF canine handlers are Special Agents with specialized training and experience in post-blast scenes and explosives recognition, handling, and disposal. ATF's National Canine Division (NCD) also trains explosives and accelerant detection canines for Federal, state, local and international law enforcement and fire investigation agencies.

ATF's canine program, begun in 1986, trains and certifies canines to learn explosives odor recognition through food and praise reward conditioning. To support ATF's mission and that of other law enforcement agencies, ATF has applied knowledge gained from its long established accelerant detection canine program and developed a scientifically based explosives detection canine program that trains dogs capable of detecting a myriad of different explosives compounds. Congress has recognized the proficiency standard, the National Odor Recognition Testing Standard used by ATF, as a benchmark for effective canine explosives detection. ATF is a leading source of specially trained explosives and accelerant detection canine teams. Once trained, the canine teams are assigned to local, state and other Federal law enforcement agencies, as well as selected foreign countries, and regularly lend support to investigations and security efforts.

- From March 2009 through May 2015, ATF's National Canine Division has successfully imprinted 3,656 Department of Defense military working dogs on homemade explosives.
- Since 1990, ATF has trained approximately 837 explosives detection canines and 243 accelerant detection canine teams.
- The National Canine Division initiated the Search Enhanced Evidence K-9 (S.E.E.K) program in 2013 and

currently has 13 teams working throughout the United States.



Congratulations to Nanny (above left), who celebrated her 10 years with ATF as an Explosives Detection K-9 before her well-deserved retirement. Nanny worked in the Houston Field Division's San Antonio Field Office.

Explosives Detection Canine Able (above right) of the Dallas Field Division passed away of a sudden illness in January 2019. Canine Able supported many ATF investigations and security efforts, including the 2015 attack on Dallas Police Headquarters, the 2018 Austin serial bomber, and the Santa Fe High School shooting.

For additional information on ATF's Explosives Detection Canine program, visit our website at <https://www.atf.gov/explosives/accelerant-and-explosives-detection-canines>.

New Mailing Address for New Applications and Renewals

ATF has changed the physical mailing address for Federal explosives license/permit applications and renewals. Beginning immediately, please send all such applications to:

**Federal Explosives Licensing Center
P.O. Box 6200-18
Portland, OR 97228-6200**

Applications previously sent to the old (Atlanta) address were forwarded automatically for a limited time period. However, this forwarding service ended May 1, 2019.

Notices of employee possessor and responsible person changes outside of the license application/renewal process may continue to be sent to the Federal Explosives Licensing Center at 244 Needy Road, Martinsburg, West Virginia 25405.

Please see the ATF webpage for more information: <https://www.atf.gov/resource-center/new-mailing-addresses-many-atf-registration-forms>.

Final Rule Removes Reference Note

The Department of Justice issued a final rule on April 1, 2019, with an effective date of May 31, 2019, that removes reference to an outdated guidance document in note (3) to the Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents at 27 CFR § 555.220. Note (3) stated that, "These distances apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer issued by the Fertilizer Institute. Ammonium nitrate failing to pass the test must be stored at separation distances in accordance with the table in § 555.218." Removal of this outdated reference to The Fertilizer Institute's Definition and Test Procedures for Ammonium Nitrate Fertilizer guidance document; which was used to determine the insensitivity of ammonium nitrate (AN) fertilizer, will clarify the application of the table of distances to all AN.

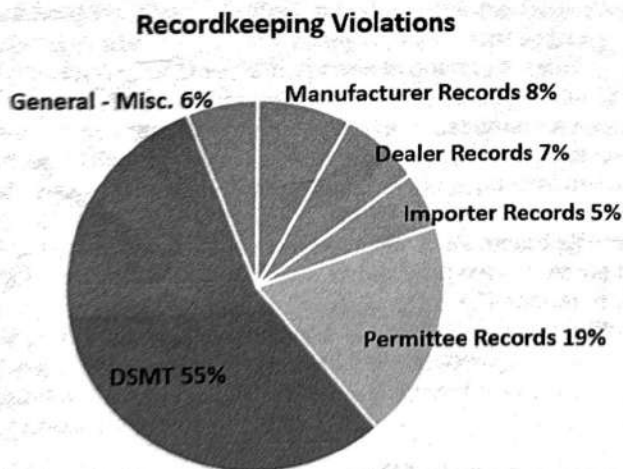
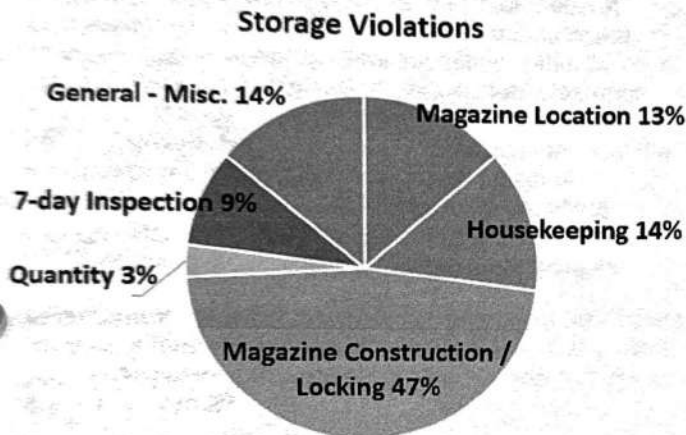
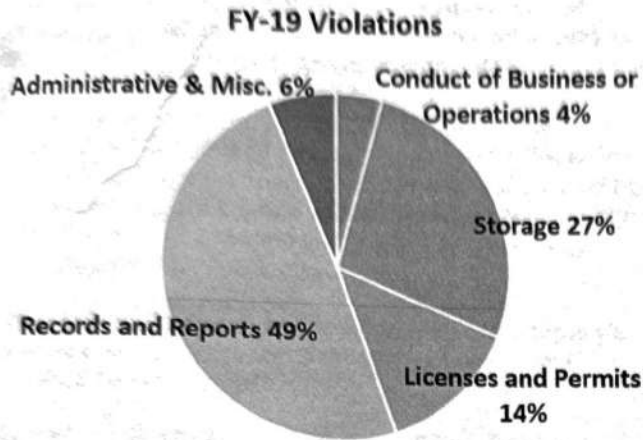
The final rule also clarifies that all AN is subject to the separation distances in § 555.220 when stored within the sympathetic detonation distances of high explosives and blasting agents. In contrast, AN explosive mixtures that are high explosives pursuant to § 555.202(a), or are defined as a blasting agent pursuant to § 555.11, are subject to the table of distances for storage of explosive materials in § 555.218 and to the § 555.220 Table of Distances. As a reminder, when using separate tables to determine minimum distances, the greater of the two distances is required for the separation of the magazines.

ATF believes that this final rule will benefit public safety by ensuring all storage of AN located within the sympathetic detonation distances to high explosives and blasting agents will have to meet minimum distances to inhabited buildings, highways, and passenger railways. Eliminating the reference to specific classification or insensitivity tests will provide industry members with clear regulatory guidance. Further, this rule will not negatively affect the explosives industry because most AN currently located near stores of high explosives and blasting agents is already subject to the sympathetic detonation distance requirements in 27 CFR § 555.220. The full text of the final rule may be found at <https://www.govinfo.gov/content/pkg/FR-2019-04-01/pdf/2019-06266.pdf>

Explosives Violations

Industry and government are jointly responsible for securing explosives to ensure public safety. Although most explosives industry members strive to comply with regulations, violations of the Federal explosives regulations do occur. The discovery of violations during inspections provides an opportunity for licensees 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 charts

show a breakdown for explosives violations cited by ATF during fiscal year 2019.



Suggestions for Improvement

- Maintaining accurate explosives records helps to ensure traceability of explosives in the event of a theft or loss. If you are having accountability issues with your

explosives inventory, consider establishing a more frequent inventory cycle.

- Adhere to housekeeping regulations both in and around magazines to help keep proprietors, employees, and the public safe.
- Remember to *report new* responsible persons (RPs) and employee possessors to the Federal Explosives Licensing Center (FELC) within 30 days. (These individuals are required to pass background checks to ensure they are not prohibited from possessing and receiving explosives.) Contact the FELC if you are unsure whether a change in one of your RPs might result in a change of control for your business entity. A change in control may require additional actions on your part.
- Store explosive materials in appropriate magazines meeting construction, locking, housekeeping, and distance requirements in 27 CFR, Part 555, Subpart K. Regulations are only the minimal standards set by Government agencies. Industry members should consider implementing additional measures to help ensure the safe and secure storage of explosive materials.
- Educate your employees on Federal explosives regulations and requirements. It is up to you to pass along any new information to those employees responsible for explosives operations.
- Establish standard operating procedures for your explosives operations. If something goes wrong, it will be much easier for you 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.
- Invite ATF to visit your premises. 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. If you have a question about a particular requirement, contact ATF before a problem develops. You can find contact information for your local ATF office at <https://www.atf.gov/contact/atf-field-divisions>.

See ATF Publication 5400.15, Safety and Security Information for Federal Explosives Licensees and Permittees at <https://www.atf.gov/file/58701/download> for additional suggestions to improve the safety and security of your explosives business premises.

Q&As

Question: Am I required to report a change in magazines to the local fire safety authority?

Answer: The regulation at 27 CFR § 555.201(f) requires any person who stores explosive materials to notify the

authority having jurisdiction for fire safety in the locality where the materials are being stored of the type, magazine capacity, and location of each storage site. If you make a change that affects the location, type of storage, (e.g. from low explosives to high explosives), or the storage capacity (e.g. adding additional magazines or changing to a larger magazine to accommodate larger quantities of explosives), then the change should be reported to the authority having jurisdiction for fire safety as required under § 555.201(f). Such notification shall be made orally before the end of the day when new storage commenced and in writing within 48 hours from such commencement.

Question: I am a responsible person on my company's license and have recently changed my name. Am I required to report this to ATF?

Answer: Yes. Under 27 CFR § 555.57(b), Federal explosives licensees and permittees must report any change in responsible persons or employees authorized to possess explosive materials to the Chief, Federal Explosives Licensing Center (FELC), including name changes. Such reports must be submitted within 30 days of the change. You may submit your current clearance and name change information via letter to the FELC. Although not required, it is recommended that the licensee or permittee submit the current letter of clearance for amendment with the letter requesting change. This will help to update your records properly and help avoid multiple entries for the same person.

Question: What information should black powder dealers capture in their disposition record when distributing black powder to persons who do not hold a Federal explosives license or permit?

Answer: Licensees have an obligation under 18 U.S.C. § 845(a)(5) to establish to their own satisfaction that purchasers acquiring black powder under the exemption intend to use the powder solely for exempted sporting, recreational, or cultural purposes in antique firearms. However, licensed dealers distributing black powder to non-licensees under this exemption must create a record of disposition. Since the purchaser will generally not have an explosives license or permit, the black powder dealer is not required to record the license or permit number in the record of disposition. The dealer must record all other required information (i.e. the date of disposition, name or brand name of manufacturer (and name of importer, if any), manufacturer's marks of ID, and description and size) in the disposition record. If black powder is being purchased for any other reason, the purchaser must possess a license or permit.

Question: If I am returning product that was purchased from my supplier because it is either defective or an incorrect product, do I have to record the return in any of my records?

Answer: You must treat your return of the product as a transfer with full disposition records as required under 27 CFR Part 555, Subpart F – Conduct of Business (see §§

555.103 and 555.105) and Subpart G – Records and Reports (see §§ 555.123 through 555.126). If the materials were previously entered into your Daily Summary of Magazine Transactions (DSMT), you should also make the appropriate changes to the DSMT record accordingly.

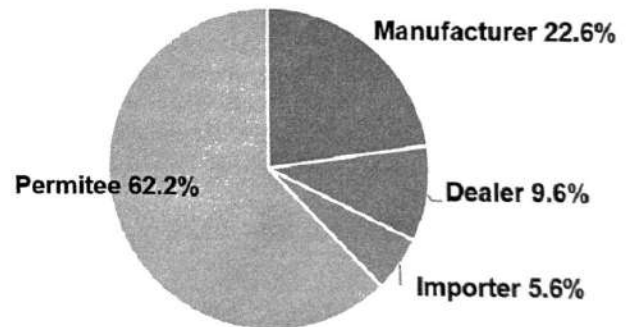
Question: I recently obtained a new Federal explosives permit after I changed from a sole proprietorship to a limited liability company. Is my previously approved variance from ATF still valid under my new permit?

Answer: Variances approved by ATF under 27 CFR § 555.22 allow for alternate methods or procedures and are generally approved for a specific licensee or permittee. If the previous license or permit is no longer valid, then the variance no longer applies and you must obtain a new variance under the new license or permit in order to use the alternate method or procedure.

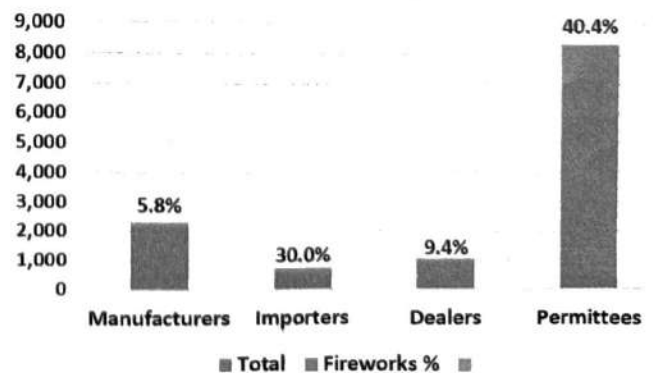
In contrast, a special explosive device (SED) exemption under § 555.32 pertains to the device itself. Therefore, a licensee would not be required to obtain an updated exemption letter under the new license. (However, any alterations to the exempt device or the manufacture of a different device, would render the exemption void and would necessitate a separate request for an SED exemption.)

Licensee/Permittee Population

Licensee/Permittee Population



Type Percentages



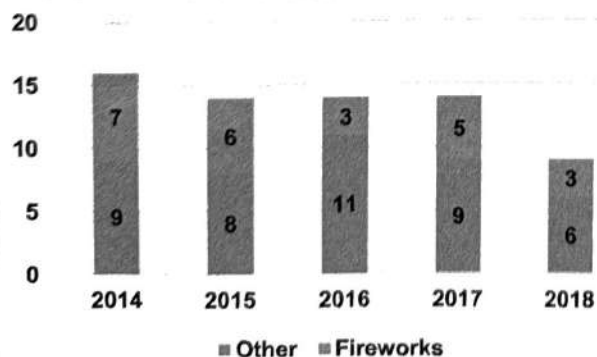
Submit A Tip

Keeping our communities safe is a **partnership between your community and law enforcement**. ATF has partnered with reportit® to provide a simple to use mobile App that allows users to anonymously and confidentially submit tips about crimes that may be happening in your communities that involve firearms, explosives, arson and violent crime. reportit® is an independent entity that provides anonymous communication services to organizations around the world. With reportit® concerned citizens can report suspicious or unusual activities in real time while having the assurance that your identity will remain anonymous and confidential. Use your phone, tablet or computer and attach a photo or video, with confidence that the information is forwarded to us real time. With the time and location of the incident, we can better respond and provide the necessary resources quickly and efficiently. You will have the option to provide your personal information, but this will not be required to submit your tip.

See our webpage at <https://www.atf.gov/atf-tips> for additional information and a link to the reportit® App. We need your help in our efforts to keep our communities safe.

Any time you identify suspicious activity related to your explosives license or permit, please contact your local and/or State law enforcement agency. FEL/FEPs are additionally encouraged to contact their local ATF field office by calling 1-888-ATF-TIPS (1-888-283-8477), or email ATFTips@atf.gov. You can also submit an anonymous tip on "reportit®" or send a text to ATF at 63975.

Explosives Thefts – 2014 thru 2018



Contact ATF

The ATF website includes information and updates for the explosives industry at www.atf.gov.

If you have questions relating to your FEL/FEP, please contact:

Bureau of ATF
Explosives Industry Programs Branch
99 New York Avenue, NE
Washington, DC 20226
Telephone: 202-648-7120
Fax: 202-648-7120

Email: eiopb@atf.gov

To contact your local ATF office go to:
<https://www.atf.gov/contact/atf-field-divisions>.

NOTICE: This is a guidance document that does not have the force or effect of law. It is not a final agency action, has no legally binding effect on persons or entities outside the Federal government, and may be rescinded or modified in the agency's complete discretion. To the extent this guidance document sets out voluntary standards, such as recommended practices, then compliance with those standards is voluntary and noncompliance will not, in itself, result in any enforcement action. However, persons must comply with the requirements of the underlying statutes, legislative rules, and regulations that apply to the facts presented in this guidance document. For further information, see *Memorandum from the Attorney General* (November 16, 2017) at <https://www.justice.gov/opa/press-release/file/1012271/download>



PROTECTING THE PUBLIC
SERVING OUR NATION