



EXPLOSIVES INDUSTRY NEWSLETTER

October 2021

To keep Federal explosives licensees and permittees (FEL/Ps) abreast of changing Federal explosives laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide an annual Explosives Industry Newsletter. Previous editions of the Explosives Industry Newsletters are available on ATF's website (<https://www.atf.gov/resource-center/publications-library>).



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New Assistant Director, Enforcement Programs and Services

Alphonso Hughes was appointed in May 2020 to the position of Assistant Director, Office of Enforcement Programs and Services (EPS). Mr. Hughes was formerly the Deputy Assistant Director in the Office of Professional Responsibility and Security Operations (OPRSO) serving as the agency's Deputy Chief Security Officer. Previously, he served as National Firearms Act (NFA) Division Chief and as both Deputy Division Chief and Division Chief of the Firearms & Explosives Services Division (FESD) from October 2012 to April 2017. Mr. Hughes began his ATF career as an Inspector/Industry Operations Investigator in June 2000 and later served as Area Supervisor of the Harrisburg II Field Office and as Director of Industry Operations in ATF's Philadelphia Field Division.

Mr. Hughes brings a variety of leadership experiences to ATF, including more than 20 years' military service in the U.S. Air Force (active duty and reserve retired). He successfully completed the Senior Executive Service Candidate Development Program through the U.S. Department of Commerce, earning OPM certification in November 2017. Mr. Hughes succeeds Marvin Richardson, who became ATF's Associate Deputy Director in October 2019.

New Deputy Assistant Director, Enforcement Programs and Services

Andrew Graham was appointed to the position of Deputy Assistant Director, EPS, in May 2020 and has national oversight of the Bureau's Programs and Services divisions located at Bureau Headquarters and at the

Updated Form for Explosives Theft or Loss

Under Federal law, 18 U.S.C. § 842(k) makes it unlawful for "any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Attorney General and to appropriate local authorities." The regulations implementing this requirement are at 27 CFR 555.30. ATF Form 5400.5 – Report of Theft or Loss – Explosive Materials must be used to report any theft or loss of explosive materials in accordance with the instructions on the form.

You may order these forms using the following link: <https://www.atf.gov/distribution-center-order-form> or download a copy at <https://www.atf.gov/explosives/docs/form/report-theftloss-explosive-materials-atf-form-54005/download>.

Explosives that fail to function and are unable to be retrieved are "losses," and must be reported on ATF Form 5400.5. In response to a petition from an explosives industry association, Item #2 on this form has been amended to include additional categories to describe different types of "loss" along with a description and example scenarios. For some types of losses, ATF has included instructions to complete only certain items on the form. In addition, Item #16 has been amended to facilitate the reporting of new information regarding previously reported losses.

Industry members who have questions regarding the completion of ATF Form 5400.5 should contact their local ATF office (<https://www.atf.gov/contact/atf-field-divisions>) or the U.S. Bomb Data Center at 1-800-461-8841.

Articles Pyrotechnic Exemption

It has recently come to ATF's attention that companies who do not possess an ATF explosives license are importing articles pyrotechnic (e.g. launchable projectiles, pyrotechnic grenades) and distributing them to customers who also do not possess an ATF explosives license or permit.

The regulation at 27 CFR 555.141(a)(7) exempts "[t]he importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and that are generally known as 'consumer fireworks' or 'articles pyrotechnic.'"

ATF defines the term articles pyrotechnic as "[p]yrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such

National Services Center in Martinsburg, West Virginia. EPS is responsible for policy matters and regulatory oversight of ATF's National Tracing Center, National Firearms Act Branch, Firearms and Ammunition Technology Division, Firearms and Explosives Services Division, Firearms and Explosives Industry Division, and the Office of Regulatory Affairs. Mr. Graham began his career with ATF in 1985 with the National Firearms Act Branch in Washington, DC, and in 1986 joined the Field Operations ranks as an Inspector where he served for 14 years. His next position with ATF was the ATF National Academy where he served as Program Manager over new Investigator training for four years. In 2004, he was promoted to the position of Area Supervisor in the Phoenix Field Division and had oversight of regulatory operations in Colorado, Wyoming, and Utah. In 2007, when ATF stood up its 24th Field Division, he was promoted to and served as the first Director of Industry Operations in the Denver Field Division. In 2014, ATF's Executive Staff selected Mr. Graham to serve as Deputy Assistant Director (Industry Operations) Field Operations at Bureau Headquarters where he served for six years.

Prior to joining ATF, Mr. Graham was enlisted in the United States Air Force, served in the District of Columbia Air National Guard, and continued service in the Tennessee Air National Guard for nine years while he was a field inspector in Nashville, Tennessee. He attended George Mason University as a Business Administration major. Mr. Graham succeeds Curtis Gilbert who recently became Deputy Assistant Director of ATF's Office of Public and Governmental Affairs.

FEID Personnel Changes

In February 2020, Marianna Mitchem took over as the Chief of the Firearms and Explosives Industry Division (FEID). Prior to holding this position, Ms. Mitchem was the Chief of Field Management Staff and the Chief of Staff of Field Operations from April 2018 to February 2020. Before coming to ATF's Headquarters, she was the Director of Industry Operations (DIO) in the Phoenix Field Division from December 2014 through December 2017. Prior to becoming the DIO of the Phoenix Field Division, she was an Area Supervisor in the Denver Field Division. Ms. Mitchem began her career with ATF and received the ATF Honor Graduate Award in recognition of graduating from Inspector Basic Training at the top of the class in 2005. Prior to joining ATF, she graduated cum laude from Providence College with a Bachelor of Arts in Psychology in 2004. Ms. Mitchem succeeds Krissy Carlson who recently became DIO in the Dallas Field Division.

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." 27 CFR 555.11.

The classification of a device by the U.S. Department of Transportation as a UN0431 or UN0432 articles pyrotechnic does not automatically exempt the device from ATF's explosives regulations at 27 CFR Part 555. Rather, the exemption applies only to those articles pyrotechnic that meet all of the criteria set forth in the above stated definition, which are as follows:

1. The device must be classified by the U.S. Department of Transportation as UN0431 or UN0432;
2. The device must be for professional use only and cannot be intended for or labeled for consumer use;
3. The device must be similar in chemical composition and construction to consumer fireworks; and
4. The device must meet the weight limits for consumer fireworks.

Any articles pyrotechnic that does not meet the aforementioned criteria can only be imported into the United States by companies or persons who possess an ATF explosives license and can only be distributed to companies or persons who possess an ATF explosives license or permit.

The necessary information to start the explosives application process can be found at <https://www.atf.gov/explosives/apply-license>. Questions regarding the licensing process can be submitted to the Federal Explosives Licensing Center at (877) 283-3352 or at FELC@atf.gov. Companies or persons who require an articles pyrotechnic determination can contact ATF's Explosives Industry Programs Branch at (202) 648-7120 or at EIPB@atf.gov.

Overview of IMESA FR

Since the implementation of the Federal explosives regulations in 1971, industry members storing high explosives and blasting agents in outdoor explosives storage magazines have been required to meet minimum specified distances to inhabited buildings, highways, passenger railways, ammonium nitrate storage, and other explosives storage magazines. The regulations at 27 CFR 555.206 require the storage of high explosives and blasting agents to meet the minimum specified distances as prescribed in the tables of distances at 27 CFR 555.218 and 555.220. While these requirements have remained effective, in part, because the risk of magazine explosions is relatively low, they are based solely on the net explosives weights in the magazines, their distances to exposed sites (e.g.,

inhabited buildings), and barricading. However, ATF's quantity and distance requirements do not quantify the risk to the public at explosives storage sites and similarly cannot measure risk when changes are made at those sites.

Over the past 50 years, the commercial explosives industry generally has seen an increase in use of less sensitive explosive materials and significant improvements in explosives safety management practices. These changes, and the desire to quantify risk from explosives operations, have compelled the explosives industry to develop an alternative model to ATF's traditional quantity and distance requirements. The new model, Institute of Makers of Explosives Safety Analysis for Risk (IMESA FR), is based on quantitative risk assessment methods that assess the risk to the public, taking into account the significant safety strides the explosives industry has made.

IMESA FR is a program developed by APT Research, Inc. (APT) in collaboration with the Institute of Makers of Explosives (IME). The program has its roots in the Safety Analysis for Risk (SAFER) software originally developed by APT for the U.S. Department of Defense for assessing risk in its explosives operations. Since 2014, ATF has accepted variance requests from industry members who show good cause to exceed the maximum allowable explosives weights in 27 CFR 555.218 and 555.220 based, in part, on the evaluation of the explosives storage site using IMESA FR.

While ATF's traditional quantity and distance requirements take into account the amount of explosives, the type of receptor, and the distance to the receptor, IMESA FR requires significantly more data to evaluate the storage site. In order for ATF to efficiently and effectively evaluate IMESA FR variance requests, industry members are encouraged to submit the following information with their request:

1. IMESA FR computer file.
2. Site map including the locations of all explosives storage magazines.
3. Distances between all magazines and all exposed sites (e.g., inhabited buildings, highways) that fail ATF's quantity and distance requirements.
4. Explosives storage magazine information:
 - a. Photos of all magazines
 - b. Magazine description worksheets
 - c. Desired net explosives weight and the type/class of explosive materials for each magazine
 - d. Distances between magazines (if not on the site map)
5. Photos and addresses of all inhabited buildings that fail ATF's quantity and distance requirements.
6. Highway information

- a. Name of all highways that fail ATF's quantity and distance requirements.
 - b. Speed limit and traffic count for each highway.
7. Additional policies and procedures the industry member has in place that exceed ATF's regulatory requirements, and that help reduce risk (e.g., employee training programs, self-inspections.)

ATF may approve requests to deviate from the explosives regulations if: (1) good cause is shown for the use of the alternate method or procedure; (2) the alternate method or procedure is within the purpose of, and consistent with the effect intended by the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and (3) the alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of Part 555. ATF believes that the IMESA FR quantitative risk assessment tool provides a valid method for evaluating risk from explosives storage magazines to persons within inhabited buildings and in vehicles on highways.

Approved variances to use IMESA FR typically contain a condition that the industry member must provide ATF with a reevaluation of the storage site every three years and whenever changes occur. Such a reevaluation must take into account any significant changes to exposed sites on your premises or in the area surrounding your premises (e.g., new or modified public roads or inhabited buildings). Additionally, any changes to the magazine locations or changes in the net explosives weight requires a reevaluation. The variance expiration date is tied to the renewal date of the explosives license or permit.

ATF encourages industry members who want to learn more about IMESA FR to contact IME and/or APT. Industry members who have questions regarding ATF's variance process should contact the Explosives Industry Programs Branch at ejpb@atf.gov or 202-648-7120.

Reporting Employee Possessors

Federal law, 18 U.S.C. § 843(a), requires an applicant for an explosives license or permit to include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials. Any new employee possessors must be reported to ATF within 30 days of hire on the Employee Possessor Questionnaire form per 27 CFR 555.57.

An employee possessor (EP) is an individual who has actual or constructive possession of explosive materials during their course of employment. Actual possession exists when a person is in immediate possession or

control of explosive materials (e.g., an employee who physically handles explosive materials as part of the production process; an employee who handles explosive materials in order to ship, transport, or sell them; or an employee, such as a blaster, who actually uses explosive materials). Constructive possession exists when an employee lacks direct physical control over explosive materials, but has the power to exercise control over the explosive materials, either directly or indirectly through others (e.g., an employee at a construction site who keeps keys for magazines in which explosive materials are stored.)

It is important to note that an employee of a different FEL/P, a worker who is employed by a temporary labor company, and other persons who are not bona fide employees of the FEL/P are not EPs and should not complete ATF Form 5400.28 Employee Possessor Questionnaire (EPQ). To determine who is a bona fide employee (versus a contractor, for instance), one should consider whether the individual acts solely on behalf of the employer FEL/P and is subject to direct supervision by the FEL/P. In an employer-employee relationship, the employer has the right to control the details of how the employee's services are performed.

The following are examples of additional questions that may assist in determining if an individual is a bona fide employee:

- Does the company control or have the right to control what the individual does and how the individual does his or her job?
- Are the business aspects of the individual's job controlled by the payer (e.g., how a worker is paid, whether expenses are reimbursed, who provides tools/supplies)?
- Are there written contracts or employee type benefits (e.g., pension plan, insurance, vacation pay)? Will the relationship continue and is the work performed a key aspect of the business?
- Does the individual receive a W-2 (Wage and Tax Statement) from the FEL/P?

If the FEL/P determines the individual meets the criteria for an Employee Possessor, then the FEL/P must submit an ATF Form 5400.28, Employee Possessor Questionnaire, which can be found at www.atf.gov or through this link, [EPQ](#).

Changes to the List of Explosive Materials

Pursuant to the Federal explosives law at 18 U.S.C. Chapter 40 and the implementing regulations at 27 CFR Part 555, a list of explosive materials determined to be within the coverage of these laws and regulations is

published annually in the Federal Register. The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. § 841(c), subject to regulation under 18 U.S.C. Chapter 40. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage definitions in § 841. No changes to the list were made in 2020.

2019 Changes

Pursuant to the provisions of section 841(d) of title 18, U.S.C., and 27 CFR 555.23, ATF annually publishes in the Federal Register a list of explosives determined to be within the coverage of the Federal explosives laws at 18 U.S.C. Chapter 40, and the implementing regulations at 27 CFR, Part 555.

In 2019, the Department of Justice (DOJ) added four explosives to the list: (1) "dipicryl sulfide" and its synonym "hexanitrodiphenyl sulfide"; (2) "nitrotriazolone" and its synonym "3-nitro-1,2,4-triazol-5-one"; (3) "trinitrobenzenesulfonic acid" and its synonym "picryl sulfonic acid"; and (4) "trinitrofluorenone." None of these four explosives previously appeared on the list under other names.

The Explosives Research and Development Division at ATF's National Center for Explosives Research performs research and analysis on materials that may be characterized as explosive materials. Upon a comprehensive review and research, including review of the Department of Transportation's Hazardous Materials Table, the National Oceanic and Atmospheric Administration's CAMEO database, and other explosives community accepted materials, ATF determined that each of these substances is an explosive under 18 U.S.C. § 841(d).

Note: The addition of these four explosives to the annual list of explosive materials creates interagency consistency with the classification of these materials as regulated materials by ATF, the Department of Homeland Security (DHS), and the Department of Transportation (DOT). All of these substances are listed on DHS's Chemical Facility Antiterrorism Standards Appendix A: Chemicals of Interest List, see 6 CFR Part 27 Appendix A; and DOT's Hazardous Materials Table, see 49 CFR 172.101.

Report Suspicious Activity

ATF reminds all FEL/Ps of the importance of security when storing, handling, using, and transporting explosives.

In light of recent events of civil unrest and additional threats of violence, ATF encourages you to exercise increased vigilance. To help ensure public safety, ATF asks that you consider voluntary measures to heighten

security at your premises. Such measures could include frequent inventory verifications, examining magazines daily for signs of theft or unauthorized entry, and heightened key control.

Please review [ATF P 5400.15, Safety and Security Information for Federal Explosives Licensees and Permittees](#), a publication that ATF produced with the Institute of Makers of Explosives and the International Society of Explosives Engineers. This publication can help FEL/Ps identify potential weaknesses in security and offers precautions to prevent thefts and the illegal use of explosives.

If you spot any suspicious activity associated with explosives or explosives storage sites, please report it immediately to ATF by calling toll free at **1-888-ATF-BOMB** or contacting your local ATF field office (<https://www.atf.gov/contact/atf-field-divisions>).

Should you have any questions regarding this notice or these recommendations, please contact your local ATF field office.

Underground Storage Reminder

Federal explosives licensees and permittees (FEL/Ps) must comply with all pertinent regulations found under 27 CFR Part 555 – Commerce in Explosives. This includes all storage requirements, whether the explosives are stored above ground or underground (e.g., in a mine). Occasionally, an underground magazine is a dugout or a tunnel. These dugouts or tunnels must meet all requirements in 27 CFR Part 555, Subpart K – Storage.

FEL/Ps who wish to use an alternate method or procedure, including alternate magazine construction, must submit a request showing good cause for variance from the regulations. FEL/Ps should review 27 CFR Part 555, to determine what information to submit to demonstrate how the requested variance would provide levels of safety and security substantially equivalent to the regulatory requirements.

The Mine Safety and Health Administration (MSHA) and ATF have a memorandum of understanding (MOU) to coordinate their efforts in the enforcement of Federal explosives laws at mines under each agency's respective jurisdiction. The MOU sets forth the policy and procedures for cooperation and coordination between the two agencies to ensure effective compliance with Federal explosives laws. MSHA conducts inspections of mine and quarry operators holding Federal explosive licenses or permits. MSHA has agreed to inspect the underground storage at these facilities for compliance with ATF's storage regulations pertaining to safety and security.

For a general overview of ATF underground storage requirements please review the PowerPoint located at

<https://www.atf.gov/explosives/docs/guide/underground-storage-presentation-sept-18-2020/download>.

If you have an underground storage question, please email the Explosives Industry Programs Branch at eipb@atf.gov.

List of Persons Authorized to Accept Explosives

Upon issuance of a Federal explosives license or permit, or when a FEL/P notifies ATF of changes in responsible persons (RPs) or employee possessors (EPs), ATF's Federal Explosives Licensing Center (FELC) provides a "Notice of Clearance" to the FEL/P listing their RPs and EPs who have cleared the background check.

In addition, the regulation at 27 CFR 555.103(b)(2)(ii) requires an FEL/P ordering explosive materials to provide the distributor with a current list of the names of persons authorized to accept delivery of explosive materials on behalf of the distributee. The distributee must keep the list current and provide an updated list to any distributor from whom they order explosives, whenever changes occur.

ATF is aware that some FEL/Ps ordering explosives use their Notice of Clearance as their list of persons authorized to accept delivery of explosives. It is important to note that if an FEL/P does not report the departure of an EP or RP to ATF, then their Notice of Clearance will contain the names of EPs and/or RPs who no longer work for the FEL/P. In such a case, the Notice of Clearance is outdated because it contains the names of persons no longer affiliated with the FEL/P, and it is not appropriate for use as the list of persons authorized to accept explosives for that FEL/P. ATF encourages all FEL/Ps to review periodically their list of persons authorized to accept delivery of explosives to ensure that it contains only the names of current EPs and RPs authorized to accept delivery of explosives.

Q&As

- Q:** Is a special explosive device (SED) exemption specific to the company that applied for the exemption?
- A:** Under the Federal explosives regulations at 27 CFR 555.32, ATF may exempt from Part 555 SEDs that, as designed, do not constitute a public safety or security hazard. An SED exemption pertains to the device itself; therefore, a recipient of a previously exempted SED does not require their own exemption letter. Any person wishing to take advantage of an existing SED exemption should obtain from their supplier the ATF approval

letter and verify the specific device description and other information pertinent to the exemption.

- Q:** May I use epoxy paint, powder coating, or rubberized "truckbed coating" as a "nonsparking" lining for type 3 and type 4 magazines?
- A:** ATF has determined that epoxy paint, powder coating, and rubberized coating are suitable nonsparking lining materials for type 4 magazines. However, because the regulation at 27 CFR 555.209 for type 3 magazines specifically requires an interior of 1/2-inch plywood or Masonite-type hardboard, an FEL/P must obtain a variance from ATF to use epoxy paint, powder coating, or rubberized coating in lieu of plywood or Masonite-type hardboard in a type 3 magazine. In addition, type 3 and type 4 magazines must meet all construction requirements at Section 555.209 and 555.210, respectively.
- Q:** I am applying for my own Federal explosives license/permit (FEL/P). Do I need to submit fingerprint cards and photos if I am already listed as a Responsible Person on another FEL/P?
- A:** In lieu of submitting new fingerprint cards and photos, you can note on the new application the FEL/P number under which your fingerprints and photos previously were submitted.
- Q:** How can I get a copy of my FEL/P?
- A:** You may request a copy of your FEL/P by contacting the Federal Explosives Licensing Center by phone at (866) 662-2750, via email (felc@atf.gov), or write to:
- Federal Explosives Licensing Center
ATF National Services Center
244 Needy Road
Martinsburg, WV 25405
- Q:** I am moving my business to a new location. How do I update my FEL/P to reflect this change?
- A:** Requests to update premises address should be submitted to the Federal Explosives Licensing Center in writing along with the original FEL/P to be amended (with the exception of theatrical flash powder licenses, a new FEL/P number will be assigned if your new premises is in a different state). You must notify ATF of your change in location at least ten days before the move (27 CFR 555.54).

Updated Publications

ATF has updated ATF P 5400.17, *Explosives Magazine Construction Requirements* and ATF P 5400.18 *Daily Summary of Magazine Transactions (DSMT)* for Federal

Explosives Licensees and Permittees. The Magazine Construction pamphlet now includes additional construction and safety information. The DSMT publication has been updated to include information on recording explosive amounts, recording packaged firework shows and updated recordkeeping examples. Both revised pamphlets are available online at <https://www.atf.gov/resource-center/publications-library>.

2020 ATF Webinar

On September 9, 2020, ATF hosted a virtual webinar for members of the explosives industry. ATF officials from the Office of the Director, the Office of Enforcement Programs and Services, the Office of Field Operations, the Federal Explosives Licensing Center, the Firearms and Explosives Industry Division, and the Explosives Industry Programs Branch participated. Opening Remarks were provided by Associate Deputy Director, Marvin Richardson; Assistant Director of EPS, Alphonso Hughes; and Deputy Assistant Director, FO (IO), Megan Bennett.

Topics for the webinar were selected based on questions solicited from the explosives associations including, Institute of Makers of Explosives, American Pyrotechnics Association, International Society of Explosives Engineers, and Association of Energy Service Companies. Based on questions from those members, ATF presented sessions that included: the Institute of Makers of Explosives' Safety Analysis for Risk; underground storage; variance requests; fireworks; type 3 magazines; employee possessors; pending revisions to ATF Form 5400.5 (Explosives Theft/Loss form); licensing; and a final session for general questions and answers.

ATF was pleased to host the virtual event that resulted in an average attendance of 200 explosives industry members per session. Assistant Director, EPS, Alphonso Hughes would like to express his sincere appreciation to all members of the explosives industry who attended the webinar. "We realize the critical role the explosives industry plays in our everyday lives. Explosives are key to our quality of life, whether it be in construction—providing us with shelter or buildings in which to do business; mining—providing us minerals for use in foods, cleaning products or cosmetics; or in manufacturing—creating jobs that contribute to our economy," Mr. Hughes said. "In all this, ATF appreciates your continued dedication to the training and educating of your workforces in explosives safety and compliance. ATF seeks to maintain open lines of communication with you, the industry members, and in working together to ensure public safety is at the forefront of all our endeavors."

PowerPoint presentations used during the webinar may be viewed at ATF's Publications Library webpage at: <https://www.atf.gov/resource-center/publications-library>. In the drop down menu, select 'Guide' as Document Type and 'Category' as Explosives. Scroll down to find a description that indicates 'presentation.' ATF received very positive feedback from this virtual meeting and, as a result, ATF will make available this avenue of communication for future meetings on a recurring basis.

Notice: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or Department of Justice policies.