



ATF EXPLOSIVES Industry Newsletter

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Mr. Mark D. Jones Appointed as the Deputy Chief, Arson and Explosives Programs Division

In May 2006, Mark D. Jones was selected as the Deputy Division Chief for the Arson and Explosives Programs Division (AEPD). He started his career with ATF in 1991 as a criminal investigator in the Kansas City Field Division, bringing with him prior law enforcement service with Glencoe, Illinois, Department of Public Safety and the U.S. Bureau of Diplomatic Security.

In addition to his extensive field experience, Mr. Jones has spent time in the State and International Training Division managing the international postblast training program for foreign law enforcement officials. He has also been the ATF representative to the FBI Counterterrorism Center and Chief of the Arson and Explosives Intelligence Branch. Mr. Jones served as Group Supervisor of the Washington Ceasefire office in 2003 and has returned to the arson and explosives community as the Deputy Chief for AEPD.

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| Arson & Explosives Programs Division (AEPD) | |
| Division Chief | Joseph M. Riehl |
| Deputy Division Chief | Mark D. Jones |
| Explosives Industry Programs Branch (EIPB) | |
| Branch Chief | Gary L. Bangs |
| Explosives Technology Branch (ETB) | |
| Acting Branch Chief | Richard Campbell |
| Arson and Explosives Enforcement Branch (AEEB) | |
| Acting Branch Chief | Christopher Porecca |

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and Safer America**

"The Arson and Explosives Programs Division is committed to providing the highest level of service to our partners in the explosives industry and the public safety community. I intend to work diligently towards that end and seek every opportunity to improve our relationship with those we serve."

Compliance Issues Involving the Fireworks Industry

Storage

One of the most common problems ATF encounters during inspections of display fireworks licensees and permittees is inadequate storage for the type of operation conducted. All fireworks licensees and permittees must have the means to properly store their explosive materials.

ATF has encountered numerous situations where licensees/permittees have acquired fireworks several days or weeks before their intended use without having a storage magazine of their own. These licensees/permittees had "contingency plans" in place if they needed storage, but the contingency storage facilities listed by the licensees/permittees were often several hundred miles from the location where the fireworks were to be used.

Contingency storage agreements must specifically state where explosive materials will be stored in the event that storage of the explosives is required. The contingency storage location must be reasonably close to the event location or business premises. Although there are no specific regulations addressing the distances for contingency storage, generally contingency storage that is located several hours away from the site where the fireworks will be used is unreasonable and will not be approved. In these situations, ATF will instruct the applicant to find a more suitable storage location before recommending the issuance of a license or permit.

Aside from the contingency storage issue, ATF has also encountered instances in which trucks temporarily storing display fireworks were positioned in violation of the table of distances requirements. In some instances, display fireworks left over from events were never returned to safe storage as required.

These violations place the public at significant risk. While ATF realizes the fireworks industry is under extreme pressure and time constraints during the holiday season, it is for these reasons that compliance with the storage and table of distances and adherence to approved variances becomes even more critical. When people are under pressure and distracted, accidents are more likely to occur.

If you have questions about contingency storage or any other compliance issues, please contact your local ATF office.

Table of Distances

ATF has determined that there is some confusion as to storage and table of distances requirements for persons who manufacture fireworks for a noncommercial enterprise. While such persons may manufacture fireworks, including display fireworks, without holding a Federal manufacturer's license, they must still comply with the storage requirements.

The explosives storage regulations are located at 27 CFR 555.201 to 555.224. Among these regulations are provisions that impose quantity and distance limitations pertaining to the manufacture or assembly of fireworks and articles pyrotechnic. These provisions are in the regulations at 27 CFR 555.221 to 555.224.

For example, the regulation at 27 CFR 555.223 specifies the amount of distance between a fireworks process building and certain specified areas. Fireworks process buildings are used in the manufacture of fireworks and are usually under the control of an entity licensed by ATF as a manufacturer. However, there are individuals and permittees who are not licensees and use structures to manufacture their own fireworks for hobby activities or a noncommercial use. These buildings still fall within the definition of a process building, and the persons using these buildings must comply with table of distances requirements.

The Federal explosives law at 18 U.S.C. 842 makes it unlawful for any person to store any explosive materials in a manner that does not conform to the regulations

promulgated by the Attorney General. Accordingly, individuals and permittees who do not hold an ATF manufacturer's license are still required by law to comply with the distance requirements in 27 CFR 555.223 and any other applicable storage regulations, the same as the manufacturers.

License or Permit

Questions have been raised about fireworks licensees and permittees hiring contractors who do not hold an ATF license or permit to independently conduct fireworks displays on behalf of the licensee or permittee. The Federal law at 18 U.S.C. 842(b) makes it unlawful for any licensee or permittee to knowingly distribute explosive materials to any person other than a licensee, holder of a user permit, or holder of a limited permit who is a resident of the State where the distribution is made and in which the premises of the transferor are located. The Federal law at 18 U.S.C. 842(a)(3) makes it unlawful for any person other than a licensee or permittee to knowingly transport, ship, cause to be transported, or receive any explosive materials.

Therefore, fireworks licensees and permittees who transfer or give display fireworks to independent contractors who do not hold an ATF license or permit, and the unlicensed contractors who receive the fireworks, are in violation of Federal law. The Federal law at 18 U.S.C. 844(a) provides penalties in the form of fines, imprisonment for not more than 10 years, or both for any person who violates the laws cited above.

Shooters who are legitimate employee possessors of the fireworks licensee or permittee may independently handle, possess, or shoot fireworks, but non-employees, whether they are contractors or volunteers, may not work independently without a responsible person or employee possessor present.

Incomplete Applications

Delays in processing applications for explosives licenses or permits are often due to incomplete applications. In some cases, an incomplete application may even result in denial.

One of the most common omissions is the fee. When an application arrives without the fee, the examiner at the Licensing Center must spend additional time making telephone calls or mailing letters to secure it. More time is

lost waiting for receipt of the fee and its clearance through the bank in order to minimize delays, please ensure that you remit the appropriate fee with your application. Please submit your renewal application as soon as possible after you receive it to minimize the possibility of having your old license expire before your new one is issued.

ATF works hard to process your applications as quickly as possible. Your efforts to submit a complete application with the correct fee are greatly appreciated.

Securing Storage Magazines

ATF regulations require that magazine doors be secure from theft and provide five methods for doing this. For example, a Type-1 magazine can effectively be secured by: (1) two mortise locks; (2) two padlocks fastened in separate hasps and staples; (3) a combination of a mortise lock and a padlock; (4) a mortise lock that requires two keys to open; or (5) a three point locking device. When padlocks are used, they must be protected with not less than 1/4-inch steel hoods constructed to prevent sawing or lever action on the locks, hasps, and staples.

At times ATF finds a particular style of lock hoods consisting of a large diameter pipe welded over the locking area such that the lock can be accessed only from the front. Recent thefts have occurred from such magazines due to the easy access to the locks. Because these hoods do not adequately discourage prying of the lock, they do not meet the ATF regulations for hoods.

Owners of magazines with a pipe style hood must equip the magazine with a hood that meets ATF requirements. In some cases, the pipe hood can be modified by welding a cap on the end and cutting a hole underneath, provided that the lock cannot be compromised by sawing or lever action on the locks, hasps, and staples.

Any questions pertaining to securing explosives magazines should be directed to your local ATF field office.

Daily Summary of Magazine Transactions (Revisited)

Maintaining a Daily Summary of Magazine Transactions (DSMT) correctly continues to be important for security and the prevention of theft. Yet the regulation for maintaining a DSMT, stipulated under 27 CFR 555.127, is often misinterpreted. The following is a reprint of an article from our February 2002 explosives newsletter, describing the correct means of maintaining a DSMT.

ATF reminds all persons or companies holding an ATF license or permit that the requirements for keeping magazine transaction records, as specified in Section [5]55.127 of the Federal Explosives Regulations, pertains to all explosive items received in and removed from the magazine daily. This includes items that may have been removed in the morning, but returned later in the day. For example, if the magazine keeper removes 20 items from the magazine to use at a job site, and returns 5 unused items at the end of the day, the records should reflect the movement of the product out of the magazine, a portion subsequently returned, and the balance on hand at the conclusion of the day's activities. Please contact the [Explosives Industry Programs Branch] in ATF headquarters if you have any further questions regarding this record.

Questions and Answers

ATF has received several questions from industry members regarding important topics. We believe the answers to these questions would be beneficial to share to all industry members.

1. There have been comments within the industry that ATF is contemplating replacing the "lost" explosive category to "unaccounted for." Is this being considered?

Current law requires any person, including Federal explosives licensees and permittees (FELs), to report any "theft or loss" of explosive materials within 24 hours of discovery. 18 U.S.C. 842(k). Current law also requires any FEL/FEP to report any thefts within 24 hours of discovery. 18 USC 844(p). Any replacement of the statutory term "loss" in section 842(k) would require legislation.

2. Is Notice of Proposed Rulemaking (NPRM) 968 still under consideration by ATF?

Yes. However, due to the length and complexity of the issues in this NPRM, ATF has decided to proceed with a number of smaller final rules. ATF has pulled specific proposed regulations from the NPRM, analyzed the comments, and is in the process of preparing a final rule on those proposals. We hope to submit the final rule to the Department of Justice in the near future.

3. Are the American Table of Distances storage guidelines going to continue to be in the regulations in Part 555?

Any changes to the Tables of Distance in Part 555 must be made in accordance with the notice and comment provisions of the Administrative Procedures Act. At this time, no changes are being contemplated.

4. Some comments have been circulating that ATF is considering a method of "confiscation of assets" as a tool in its explosives enforcement activity. Is something like this likely and, if so, what are the potential mechanics?

ATF may bring forfeiture proceedings, when authorized, against any property used in violation of Federal law. ATF does not "confiscate" assets, but rather utilizes Federal forfeiture proceedings to ensure appropriate due process is provided to individuals who have had property seized. Forfeiture proceedings are governed by existing asset forfeiture statutes and regulations, all of which provide the opportunity for Federal court review if the individual(s) in question so choose.

5. Will ATF notify us if they are agreeable to explosives reported as "lost/stolen" being removed from the category if the actual disposition has been found?

ATF is not agreeable to removing this information from the ATF database. If the proprietor reports lost explosives and subsequently reports that the same explosives are not lost (i.e., there is an actual disposition), then ATF makes a new entry into the database called "lost reconciliation." ATF will consider incorporating into its analysis of explosives theft or loss data those "lost reconciliations" as reported by industry.

6. Since many suppliers of explosives are now packaging cases by exact cartridge counts as opposed to weight, is this an acceptable unit of measure to use for recordkeeping purposes?

Yes. The regulations pertaining to recordkeeping have always allowed recording explosive materials by applicable units such as numbers of detonators, numbers of boosters, numbers of display fireworks shells, or numbers of "sticks" of dynamite. However, proprietors should be aware that the weight marked on cases is not always accurate. Tables of distances are based on total weight of explosives, rather than units. Accordingly, ATF recommends that proprietors relying on case weights for Tables of Distances add a proper safety margin to ensure compliance with the law and regulations.

7. Generally we inventory detonating cord by the roll. However, as we use product on blasts, we end up with partial rolls. We estimate the length of detonating cord remaining on the roll given what had been used. Recently we acquired small scales to weigh the partial rolls and determine the number of pounds remaining. How does ATF view either of these approaches to accounting for partial rolls of detonating cord in the required records?

Either approach would be acceptable.

8. Recently we purchased a new lock that was marked as having a 3/8-inch casehardened shackle. However, if the shackle is measured with a caliper, it is slightly less than 3/8 inch. Are we in violation if we utilize this lock?

No. You purchased a lock that meets set lock industry standards and are complying with Part 555 regulations. The slight industry variation experienced in the shackle thickness would have no noticeable impact on theft resistance standards in the regulations.

9. When determining the required distances between high explosives magazines and blasting agent magazines, or between two or more blasting agent magazines, is it necessary to use both the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" at 27 CFR 555.220 and the "Table of Distances for Storage of Explosives Materials" at 27 CFR 555.218?

Yes. 27 CFR 555.206(c)(2) provides that the minimum distance for magazines in which explosives and blasting agents are stored from inhabited buildings, passenger railways, public highways, and other magazines may not be less than the distances specified in the table of distances for storage of explosives materials in section 555.218. Distances must be calculated under both tables, and the more restrictive distance applies. Be aware that, when high explosives are stored in proximity to blasting agents, the distance requirement under the table at Section 555.220 must be calculated using the high explosives weight as the "donor" weight. Otherwise, the magazine containing the greater weight of explosives materials is the donor.

10. Section 555.206(c)(1) provides that outdoor magazines in which blasting agents in quantities of more than 50 pounds are stored must be located no closer to inhabited buildings, passenger railways, or public highways than the minimum distances specified in the table of distances for storage of

explosives materials in section 555.218. Does this mean there are no table of distances requirements for the storage of 50 pounds or less of blasting agents?

No. 27 CFR 555.206(c)(2) provides that the minimum distance for magazines in which explosives and blasting agents are stored from inhabited buildings, passenger railways, public highways, and other magazines may not be less than the distances specified in the table of distances for storage of explosives materials in section 555.218.

We appreciate all correspondence from the explosives industry and encourage additional questions or constructive comments. It is ATF's priority and mission to provide the explosives industry with a clear and consistent interpretation of the regulations. Additional questions may be submitted by e-mail to the Explosives Industry Programs Branch at the following address: EIPB@atf.gov.

Newsletter Distribution

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