



ATF EXPLOSIVES Industry Newsletter

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Deputy Division Chief **Debra Satkowiak**

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**Working for a Sound and
Safer America**

New Appointments in Enforcement Programs and Services—Assistant Director and Deputy Assistant Director

Mr. Arthur Herbert was appointed as the Assistant Director for the Enforcement Programs and Services Directorate (EPS) in May 2010. Mr. Herbert began his career with ATF in 1976. He has served as the Director of Industry Operations for the Chicago, Washington and Baltimore Field Divisions and as Division Chief of the Alcohol and Tobacco Programs Division. Mr. Herbert was selected as Deputy Assistant Director of the Office of Public and Governmental Affairs in 2009 before his appointment in EPS. Mr. Herbert is responsible for directing the development of policy guidance, exercising oversight of program implementation and technical and enforcement support to firearms, explosives and arson, and alcohol and tobacco related mission functions.

Ms. Teresa Ficaretta was appointed as the Deputy Assistant Director for Enforcement Programs and Services in May 2010. Ms. Ficaretta joined ATF in 1982 as an attorney and became Deputy Chief Counsel for ATF in 2007. Ms. Ficaretta has been an invaluable asset to both our regulatory mission and our discussions with the explosives industry. Ms. Ficaretta replaces former Deputy Assistant Director Audrey Stucko who was appointed as Deputy Assistant Director for the Office of Training and Professional Development, effective May 2010.

The EPS Directorate and the Firearms and Explosives Industry Division welcome both Mr. Herbert and Ms. Ficaretta and look forward to a continued collaboration with the explosives industry.

New Appointment in Field Operations—Deputy Assistant Director, Industry Operations

The Bureau of Alcohol, Tobacco, Firearms and Explosives has appointed Harry L. McCabe as the Deputy Assistant Director, Industry Operations, within the Field Operations Directorate. Mr. McCabe has served as the Director of Industry Operations in the Nashville Field Division since 1998. He joined ATF in 1976 as an Inspector in Raleigh, North Carolina and has served as Area Supervisor in Detroit, Chief of the Market Compliance Branch, Technical Advisor for the Alcohol and Tobacco Programs Division, and Program Manager in the Tax Compliance Branch. Deputy Assistant Director McCabe acts as the principal advisor to the Assistant Director (Field Operations) in the management and functional direction of Industry Operations programs and field operations, including oversight of all regulatory offices and activities in the field. Mr. McCabe has been a member of International Society of Explosives Engineers (ISEE) for several years, and has spoken at the 2009 ISEE Conference in Denver and several ISEE local chapter meetings in Nashville. Mr. McCabe looks forward to continuing and expanding the partnership between ATF and the explosives industry.

Firearms & Explosives Industry Division

The Explosives Industry Programs Branch (EIPB) has moved to the new Firearms & Explosives Industry Division. This reorganization within the Office of Enforcement Programs and Services was initiated to optimize ATF's resources in providing services to both the firearms and explosives industries. The Firearms & Explosives Industry Division (FEID) is headed by Division Chief Chad J. Yoder.

Chief Yoder joined ATF in 1997 and has served in the Public Safety Branch, the Inspection Division, the Field Management Staff, and as Area Supervisor of the Falls Church, Virginia, area office. Having worked with the explosives industry as a field investigator, a headquarters specialist, and an area supervisor, he is pleased to be overseeing the activities of the Explosives Industry Programs Branch. "Industry members and associations have been proactive in working with ATF to develop better processes, regulations, and guidelines for explosives

safety and security. I have had many positive experiences with explosives professionals in the regulated community, and I look forward to again being a part of ATF's excellent relationship with this industry."

The Arson and Explosives Programs Division, EIPB's former home, has joined the Office of Field Operations in order to more closely align arson and explosives enforcement programs with the associated field activities. ATF strongly believes that these changes offer the best organizational structure to achieve our strategic vision of "Working for a Sound and Safer America... Through Innovation and Partnerships."

Additionally, Deb Satkowiak, former Chief of EIPB, has been promoted to Deputy Chief, FEID. In this capacity, Deb will continue to be involved in the explosives projects and policies affected by EIPB.

Change of Ownership versus Change of Control

When applying for a Federal Explosives License or Permit (FELP), an applicant must identify what type of entity is conducting the business and/or operation (i.e., individually owned, a partnership, a corporation or other). ATF issues the FELP for the appropriate entity. However, subsequent changes to the entity or business structure may involve a change of ownership or a change of control. In such cases, the Federal explosives regulations require that the licensee or permittee take certain actions. It is important to understand that, for licensing and permitting purposes, a change of ownership and a change of control are mutually exclusive. The event may be either one or the other—it cannot be both.

Change of Ownership: The regulation at 27 CFR 555.53 governs changes of ownership. FELPs do not transfer between entities. A new FELP is required when there is new ownership or a new business entity. For example, when a sole proprietor incorporates or becomes a limited liability company, a new FELP is required under the new corporation, even though the same individuals may be involved with both entities.

Similarly, if a corporation is purchased, or is part of a merger, where the original corporation will not survive, then this is a change of ownership and a new FELP is required prior to commencing operations under the new entity.

Change of Control: By contrast, a change of control typically involves a change of actual or legal control of a corporation or LLC by a change in stock or membership interest distribution or a majority change of organization officers. In this situation, the corporation or LLC survives the event intact. Under the regulation at 27 CFR 555.57, the licensee or permittee must report the change of control to the Federal Explosives Licensing Center (FELC) within 30 days of the change and add any new responsible people and employee possessors. Upon expiration of the FELP, the licensee or permittee must submit a new application under Section 555.45 and pay the renewal application fee. The licensee or permittee will retain their existing FELP number unless they ask FELC to issue a new number.

Other factors that may affect a change of ownership versus a change of control determination are complicated corporate hierarchies involving a parent company and one or more wholly owned subsidiaries, corporate mergers with State conversion statutes, and joint ventures that must be addressed individually on a case-by-case basis. You may contact the Federal Explosive Licensing Center (FELC) or your local ATF area office for further guidance. In addition, a change of ownership versus a change of control guide will soon be posted on the ATF website.

Storage of Shock Tube with Detonators

The Federal explosives regulations at 27 CFR 555.213 require that detonators be stored in separate magazines from other explosive materials, except under certain circumstances. The exceptions under Section 555.213(b) allow detonators that do not mass detonate to be stored in a Type-4 magazine with electric squibs, safety fuse, igniters, and igniter cord; and allow any detonators to be stored with delay devices and the above items in a Type-1 or Type-2 magazine.

ATF has determined that the practice of storing shock tube with detonators does not pose a mass detonation hazard and consequently, has approved variance requests for the storage of shock tube with non-mass detonating detonators in a Type-4 magazine. In January 2003, ATF published a notice of proposed rulemaking (NPRM 968) which included an amendment to 27 CFR 555.213(b) to allow shock tube to be stored in a Type-4 storage magazine with detonators that will not mass detonate or in a Type-1 or a Type-2 magazine with any detonators.

The Department of Justice issued a final rule in January 2010 that allows shock tube to be stored in the same magazine with detonators under certain circumstances. The full text of the final rule may be found on the ATF website at www.atf.gov/regulations-rulings/rulemakings/final-interim.html. Specifically, the final rule, effective March 22, 2010, amends 555.213(b) to read:

- (b) Detonators are not to be stored in the same magazine with other explosives materials, except under the following circumstances:
- (1) In a Type-4 magazine, detonators that will not mass detonate may be stored with electric squibs, safety fuse, shock tube, igniters, and igniter cord.
 - (2) In a Type-1 or Type-2 magazine, detonators may be stored with delay devices and any of the items listed in paragraph (b) (1) of this section.

Federal explosives licensees and permittees should be aware that this final rule has no impact on Mine Safety and Health Administration (MSHA) requirements or any other State/local regulations. Therefore, industry members operating under MSHA regulations, or who are required to comply with another agency's stricter regulations must continue to comply with those storage requirements.

ATF believes that this final rule will benefit the explosives industry by reducing the number of explosives magazines used exclusively to store shock tube. Explosives industry members may now consolidate detonators and shock tube within one magazine, which will reduce the costs associated with maintaining additional magazines and additional handling of shock tube for storage that may have previously been necessary.

ATF Rul. 2010-2 Placement and Visibility of Containers in Magazines

The Federal explosives regulation at 27 CFR 555.214(b) requires that containers of explosive materials be stored so that marks are visible. Stocks of explosive materials must be stored so they can be easily counted and checked upon inspection. These marks include, among other information, the manufacturer's name and date/shift code.



Industry members have informed ATF that it is often impractical to store explosive materials in such a way that the label on each container of explosive materials is visible. For example, multiple containers of explosive materials may be stacked on pallets for shipment from an importer, manufacturer, or distributor. Also, magazine space limitations may compel proprietors to arrange containers of explosive materials in consecutive rows, with little or no space between the rows.

While such arrangements of explosive materials may be beneficial for shipping and conservation of space, they do not lend themselves to easy access and identification for inventory and inspection purposes.

Explosive material containers positioned in the center of the pallet, or behind rows, are not readily visible and therefore the labels and marks on such containers are not visible when inventory is conducted.

The purpose of the regulation at 27 CFR 555.214(b) is to ensure that the proprietor and ATF officials can efficiently conduct inventories or inspections while minimizing the movement of explosive materials during these activities. When industry members store explosive materials together that have identical marks on container labels, the fact that the marks on some containers are not readily visible does not negatively affect ATF's or the proprietor's ability to verify inventory. Consequently,

ATF has issued ATF Ruling 2010-2, which concluded that storage configurations consistent with the practices described above comply with the purpose of 27 CFR 555.214(b) so long as the explosive material containers stored in close proximity to each other have the same explosive materials with identical marks, and the stocks of explosive materials can reasonably be accessed, counted, and checked upon inspection.

Further, ATF Ruling 2010-2, which may be found in its entirety at <http://www.atf.gov/regulations-rulings/rulings/>, permits a "mixed" storage configuration in which stacked containers hold different quantities, sizes and/or types of explosive materials; or hold the same quantities, sizes and types of explosive materials, but are labeled with different date/shift codes. ATF has determined that such a mixed storage configuration is acceptable so long as: (1) the licensee or permittee maintains and keeps available for inspection an accurate, complete, and updated list of all the explosive materials on the pallet or in the stacked group, including the marks for each container (manufacturer's name or brand name and date/shift code), and the quantity and description (type of explosive materials); and (2) the licensee or permittee ensures that the stocks of explosive materials can reasonably be accessed, counted, and checked upon inspection in accordance with 27 CFR 555.214(b). The configuration should enable an accurate accounting with minimal movement of explosive materials, and permit random sampling for verification, without imposing a significant burden on the ATF official conducting the inventory.

Inspecting Magazines

Federal regulations at 27 CFR 555.204 require all persons storing explosive materials to inspect their magazines at least once every 7 days. This inspection must be sufficient to determine whether there has been any unauthorized entry or attempted entry into the magazines, or unauthorized removal of the contents of the magazines. While this inspection does not require an actual inventory, licensees and permittees should keep in mind that maintaining the magazine in an orderly fashion will aid them in meeting this inspection requirement.

Recently, ATF Industry Operations Investigators (IOIs) have encountered magazines that were over-packed or in such a state of disorder that the proprietors were not aware of the contents of the magazines. In some cases, ATF IOIs discovered deteriorating explosives behind multiple layers of packaged explosives. These conditions are dangerous for licensees or permittees as well as the IOIs. The issuance of ATF Ruling 2010-2, (see prior

article) presents an opportunity for all industry members to assess their explosives storage practices and to eliminate potential safety risks caused by disorderly or over-packed explosives magazines.

Type-5 Locking Requirements

Federal regulations allow each door on Type-5 trailers, semitrailers, and similar vehicular magazines to be locked with one steel padlock (which need not be protected by a ¼" thick steel hood) having at least five tumblers and a case hardened shackle of at least ⅜" diameter, if the door hinges and lock hasp are securely fastened to the magazine and to the door frame. However, this provision only applies to mobile magazines or those magazines equipped for vehicular transport.

Recently, ATF has received inquiries regarding the locking requirements for portable Type 5 magazines commonly referred to as ocean freight containers, sea containers, or ISO containers. The locking exception indicated above does not apply to portable Type-5 magazines or those magazines that are not equipped for vehicular transport. Under 27 CFR 555.211(a)(4), each door on portable Type-5 magazines must be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must be protected with ¼" steel hoods.

There are also situations where explosives industry members place portable Type-5 magazines on top of flat-bed trailers or use a freight container manufactured to fit a trailer chassis. In these scenarios, the portable Type-5 magazine may be locked with one unhooded steel padlock if the magazine is securely placed on top of the trailer. The padlock must have at least five tumblers and a casehardened shackle of at least ⅜" diameter and the door hinges and lock hasp must be securely fastened to the magazine and to the door frame. However, if the portable Type-5 magazine is removed from the mobile trailer, it no longer qualifies as a mobile magazine and must be locked in accordance with the aforementioned standard locking requirements.

Rubberized Lining in Type-3 and Type-4 Magazines

ATF frequently receives questions regarding the use of rubberized lining to create a non-sparking surface in Type-3 and Type-4 magazines. ATF has determined that rubberized liners containing a polyurethane-polyurea elastomer generally constitute a nonsparking surface.

The regulation at 27 CFR 555.210 requires Type-4 magazines to be fire-resistant, weather-resistant, and theft-resistant. The floors and walls of Type-4 magazines need to be covered with non-sparking materials. The regulations do not specify the type of non-sparking materials to be used in the magazine's construction. Therefore, Federal explosives licensees and permittees may use a rubberized coating fitting the above description for their Type-4 magazine interior lining.

By contrast, the Federal regulation at 27 CFR 555.209 specifically requires Type-3 magazines to be constructed of not less than number 12-gauge (0.1046 inches) steel, lined with at least either ½" plywood or ½" Masonite-type hardboard. Therefore, Federal explosives licensees and permittees must obtain a variance from ATF in order to use a rubberized liner in lieu of either ½" plywood or ½" Masonite-type hardboard in a Type-3 magazine.

Reviewing Variances

Activities and operations undertaken by Federal explosives licensees and permittees are governed by 18 U.S.C. Chapter 40 and 27 CFR Part 555. Occasionally, a licensee or permittee may wish to use a method or procedure other than one that is specified in Part 555. In these cases, licensees or permittees may petition ATF for a variance from the regulatory requirements, pursuant to section 555.22.

ATF reviews variance requests on a case-by-case basis and may approve a written application for an alternate method or procedure different from the requirements in Part 555. ATF will approve such applications when it finds that:

1. There is good cause for the alternate method or procedure;
2. The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the prescribed method or procedure, and is substantially equivalent to that prescribed method or procedure; and
3. The alternate method or procedure is not contrary to any provision of law and will not result in an increased cost to the Government or otherwise hinder effective administration of Part 555.

Alternate methods or procedures may not be employed until an application for a variance is approved by ATF. Permittees and licensees operating under an alternate method or procedure must comply with the terms of the approved variance. ATF may withdraw its authorization of any alternate method or procedure whenever it finds that continuation of the alternate method would hinder the effective administration of Part 555.

Federal explosives permittees or licensees who have obtained a variance from ATF in the past should review the terms of the variance to determine if the variance is still required or if it should be updated. For example, a variance from magazine construction requirements may have been granted for a magazine no longer in use, or a variance permitting the use of a specific lock may need to be updated if the type of lock has changed. Permittees or licensees who need to have a previously issued variance rescinded or updated should submit a request to the Explosives Industry Programs Branch through the local ATF Area Office.

Fireworks and Fires in the United States

Fireworks-related fires are responsible for numerous injuries and millions of dollars in property damage each year. According to the National Fire Protection Association (NFPA), more fires are reported in the United States on a typical Independence Day than on any other day of the year, and fireworks cause half of those fires. NFPA reports indicate that fireworks caused over 32,000 reported fires, including 1,700 total structure fires (900 residences) and 600 vehicle fires in 2006. These fires resulted in an estimated 6 civilian deaths, 70 civilian injuries, and \$34 million in property damages.

Fires and Losses Associated With Fireworks Reported to U.S. Fire Departments (Direct Property Damage in Millions per NFPA)

Year	Residential Structures	Nonresidential Structures	Total Structures	Vehicles	Outside	Total
2006	\$28	\$3	\$31	\$1	\$1	\$34
2005	\$26	\$10	\$37	\$2	\$1	\$41
2004	\$15	\$5	\$20	\$2	\$1	\$22
2003	\$48	\$13	\$60	\$4	\$1	\$65
2002	\$26	\$5	\$31	\$4	\$1	\$35
2001	\$34	\$17	\$50	\$5	\$4	\$59
2000	\$36	\$6	\$42	\$3	\$3	\$48

Improper use of and experimentation with both consumer and display fireworks contribute to the number of injuries caused each year. Homemade fireworks pose a particular risk for injury because the people preparing these materials may lack both the knowledge and experience to safely manufacture these devices. Because fireworks can sometimes be unpredictable, the Centers for Disease Control and Prevention (CDC), the CPSC and ATF recommend that only professionals manufacture and handle fireworks.

Illegal explosives devices generally found during fireworks season—such as M-80s, M-100s, quarter sticks, cherry bombs, silver salutes, etc.—are considered “banned hazardous substances” because they exceed the Consumer Product Safety Commission’s (CPSC’s) limits for consumer fireworks. The U.S. Department of Transportation classifies these explosive devices as “forbidden explosives” because they have not been submitted for appropriate testing and evaluation. Additionally, it is unlawful to engage in the business of distributing these devices, or to receive or transport them without an ATF Federal explosives license or permit. Further, proper storage is required by law.

The occupant of this home was constructing M-80 type devices when an explosion occurred. The occupant was severely burned but was able to exit the structure.



Shortly after the fire department arrived, approximately 20 pounds of flash powder detonated. The home was destroyed and the dwellings on either side were damaged.

By identifying and eliminating illegal or overloaded products and unsafe practices, the legitimate use of fireworks can continue to flourish as both an industry and as a valued tradition enjoyed by many Americans.

Theft Discovery and Reporting

On April 21, 2007, 4 men in Montana used a tow rope and a truck to pull the door off of a magazine and stole 250 pounds of explosive materials.

On April 23, 2007, the theft was discovered and reported to local law enforcement and ATF. Using tire tracks and other evidence obtained from the scene, ATF agents were able to identify probable suspects.

On April 25, 2007, ATF agents recovered the stolen explosives and obtained sufficient evidence for prosecution.

In January 2008, the defendants were sentenced to a total of 35 months in prison, 14 years of supervised release and/or probation and \$4,600 in fines and restitution.

The successful investigation, recovery and prosecution of cases like this are frequently dependent upon early detection of the theft by the licensee or permittee, immediate reporting of the theft, and the preservation of evidence.

ATF appreciates the explosives industry's continued dedication to preventing the theft and criminal misuse of explosive materials. Inspecting your magazines at least once every seven days, as required by Federal explosives regulations, can reduce the time between when a theft occurs and when it is reported. This may significantly increase the probability of recovery and prosecution of the perpetrators if a theft does occur.

Orange Book Errata

The July 2009 printing of the 2007 ATF Publication 5400.7, *ATF Federal Explosives Law and Regulations* (the "Orange Book"), contained a second page 92 and no page 93. The printing error affected the list of explosive materials subject to regulation under 18 U.S.C. Chapter 40. The current and complete list of explosive materials regulated by ATF may be found at <http://edocket.access.gpo.gov/2010/pdf/2010-45.pdf>. ATF will correct these errors to the publication for future distributions. Anyone who has the misprinted edition should be aware of these errors and make corrections accordingly.

Newsletter Distribution

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 Explosives Industry Newsletter, ATF M 5400.3.

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U.S. Department of Justice

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