



ATF EXPLOSIVES Industry Newsletter

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Changes Within the Office of Enforcement Programs Services

Mr. Wally Nelson, Deputy Assistant Director for Enforcement Programs and Services, Retires.

After more than 33 years of Government service, Wally Nelson, the Deputy Assistant Director for Enforcement Programs and Services, retired on November 1, 2005. Wally's contribution to ATF has been enormous. He worked hard to ensure that ATF fairly and consistently enforced the regulations, focused on the best interests of public safety at all times, provided assistance and guidance to the industry whenever possible, and took appropriate administrative actions when necessary. Wally's knowledge and experience are greatly missed, and we thank him for his hard work and dedication to ATF.

Arson & Explosives Programs Division (AEPD)

Division Chief

Joseph M. Riehl

Deputy Division Chief

Mark A. Siebert

Explosives Industry Programs Branch (EIPB)

Branch Chief

Gary L. Bangs

Explosives Technology Branch (ETB)

Branch Chief

Mark D. Martin

Arson and Explosives Enforcement Branch (AEEB)

Branch Chief

Vacant

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**Working for a Sound
and Safer America**

Ms. Audrey Stucko appointed as the Deputy Assistant Director for Enforcement Programs and Services.

In October 2005, Audrey Stucko was selected as the Deputy Assistant Director for Enforcement Programs and Services. She started her career with ATF in 1977, and her field assignments have included New York City, NY, Philadelphia, PA, Baltimore, MD, and Washington, DC.

She has held a variety of positions within ATF, including North-Atlantic Division Director (in which she managed all industry inspections in the northeastern United States), and Director of Industry Operations for Pennsylvania and New Jersey. Ms. Stucko also spent a number of years managing the national inspector training program and as a member of ATF's Legislative Affairs staff.

In May 2002, she returned to Washington, DC, as the Chief of Staff for the Enforcement Programs and Services Directorate. While in that position, she aided the overall implementation of the Safe Explosives Act. She also spent a year as Chief of the Firearms and Explosives Services Division.

Ms. Stucko has made "good customer service" her motto. She is a believer in monitoring the explosives industry for compliance with the Federal laws and regulations while also ensuring overall industry satisfaction with all of ATF's services.

Changes in the Arson and Explosives Programs Division

Industry Analyst Robert (Bob) Pumpelly Retires.

Bob Pumpelly, Industry Analyst with ATF's Arson and Explosives Programs Division, retired in September 2005. Bob was promoted to the position in May of 2005 from the Seattle Field Division, where he gained 30 years of regulatory experience. He used his extensive knowledge of explosive materials, of conducting inspections, and of working with the industry to help instruct ATF's next generation of investigators at ATF's National Academy and at ATF's Advanced Explosives Training for Investigators. In addition, Bob had traveled extensively throughout the United States to meet with explosives industry members at their annual symposiums and conferences. We appreciate all of Bob's hard work with ATF and wish him well on his retirement.

Explosives Industry Programs Branch (EIPB) Is Now on the Web!

The EIPB has a new link (<http://www.atf.gov/expl arson/eipb.htm>). It can be found under Arson and Explosives: Programs on ATF's website. This webpage will showcase new rulings, newsletters, or other information useful to the explosives industry, law enforcement or other government entities, and the general public.

The page currently has links to the regulations, past newsletters, the list of explosives, the application for the relief from explosives disabilities, our new e-mail address, and a list of ATF's field divisions and offices. Links to the licensing center and to special notices or other releases will be added to the webpage shortly. If you have any suggestions for additional links or information that might be useful, please contact the EIPB.

You've Got EIPB-Mail!

The EIPB has two new e-mail addresses. Please feel free to send your general questions or variance requests to EIPB@atf.gov. A separate e-mail address exists for relief from disability questions at EIPBEROD@atf.gov.

ATF's Response to Hurricanes Katrina and Rita

ATF is continuing to participate in the coordinated hurricane recovery efforts. We request that all explosives industry members in areas affected by the hurricanes assist us in our efforts by notifying ATF of any damaged or destroyed business premises or storage facilities and to immediately report any explosives that were lost, stolen, or destroyed.

The nationwide toll-free telephone numbers to report thefts or losses are 1-800-461-8841 (between 8 a.m. and 5 p.m. EST, Monday through Friday) and 1-888-283-2662 (after hours and on weekends).

Please be sure to notify ATF of any recovered explosives as well.

ATF has also posted a *Special Notice to Federal Explosives Licensees and Permittees in Hurricane Katrina Damaged Areas* on our website, (www.atf.gov). The notice outlines procedures for licensees and permittees to follow when explosives are lost, stolen, or damaged, and procedures for reporting damaged business premises, new or temporary storage locations, or destroyed records and inventory. If you do not have access to the website, please contact the EIPB at 202-927-2310 for a copy of this notice.

Changes in ATF Regulation 27 CFR 555.55

Licensees and permittees are currently required to identify the class of explosive materials involved in their business or operations (e.g., black powder to dynamite) on their applications, renewals, or amended applications. While ATF will continue to obtain this information during the application process, as of July 26, 2005, the information will no longer be used to designate licenses or permits by "class" of explosive materials. Licensees or permittees will receive a Manufacturer of Explosives License, Importer of Explosives License, Dealer of Explosives License, User of Explosives Permit, or a Limited Permit, without the designation of High, Low, Blasting Agents, etc.

The final rule on this change can be found in the Federal Register, Volume 70, Number 102, Docket Number ATF 5F. The reason for this change is to provide greater flexibility to the explosives industry in terms of the classes of explosive materials involved in their businesses.

The elimination of these classifications has no effect on the regulations contained in Subpart K, or the requirement to notify ATF of any changes in storage as required in 27 CFR 555.201.

Submission of Employee Possessor Questionnaires

Employee possessor questionnaires (EPQs) must be submitted with original or renewal applications for explosives licenses. Newly hired employee possessors must also submit EPQs within 30 days of hiring. A “possessor of explosives” is *someone who has actual physical possession or constructive possession, which means the person has dominion or control over explosives.*

ATF has determined that an employee possessor who has previously submitted an EPQ since the enactment of the Safe Explosives Act (SEA) may opt to resubmit a copy of the same EPQ **provided:**

- ” That the employee possessor verifies that **all information on the form is true and correct;**
- ” The employee possessor places his or her initials next to questions 17-25; and
- ” The employee possessor signs an original signature to the form again and places the date of signature on both pages of the EPQ before the licensee or permittee submits it.

Any questions on these procedures may be addressed by contacting the Federal Explosives Licensing Center (FELC) at 877-283-3352 or 404-417-2750.

New Requirements for Identification Markings on Explosives Materials

On May 27, 2005, ATF published the final rule regarding the marking requirements for imported explosive materials in the Federal register. The following is a list of questions and answers that might be useful for those affected by these new requirements:

How did this rule affect the explosives industry?

This final rule revised the current regulations in 27 CFR 555.109 to require that imported explosives have substantially the same marks of identification as domestically manufactured explosives. Among other things, the final rule requires licensed importers who import explosive materials for sale or distribution to properly mark explosives no later than 15 days after the date of release from Cu oyoms cu oyody.

The rule also clarifies that licensed manufacturers who manufacture explosives materials for sale or distribution mu o erly mark explosives at the time of manufacture. In addition, the rule extends to licensed importers the general explosives marking identification requirements and exceptions that are currently applicable to licensed manufacturers.

What is the purpose of this rule?

This rule is intended to protect the p blic from the misu P f explosives, to more easily identify explosives and to successfully trace explosives u P d in crimes. P reviou y, the ab P nce of required identification markings on imported explosives hindered ATF’s ability to effectively achieve these goals.

When will the final rule be effective?

The final rule was effective on July 26, 2005.

What a e the requi ed identification ma kings for imported explosive materials?

The required identification markings on imported explosives are:

- ” The importer’s name and address (city and state).
- ” The location where the explosive materials were manufactured (city and country).
- ” The date and shift of manufacture.

A foreign manufacturer does not need to show the shift of manufacture if he operates his plant for only one shift a day.

The required identification marks on domestically manufactured explosives remain the same as in the previous rule (i.e., name of manufacturer, and location, date and shift of manufacture). The new final rule clarifies that a manufacturer does not need to show the shift of manufacture when he only operates his plant for one shift during the day.

Where on the imported explosives must the required markings be placed?

The identification marks on imported explosives must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported for sale or distribution, as well as on any outside container used for their packaging. These are the same requirements that have applied and continue to apply to domestically manufactured explosives.

How is the importer to mark the imported explosives?

The identification marks on imported explosives must be permanent, legible, and in the English language, using Roman letters and Arabic numerals. Domestically manufactured explosives' identification marks currently must be legible and, under the new final rule, also must be permanent and in English using Roman letters and Arabic numerals.

When must the importer mark imported explosives that will be sold and distributed?

The required markings must be placed on the explosives prior to distribution or shipment for use, and in no event later than 15 days after the date of release from Customs' custody.

If the marks of identification requirements are substantially the same, will the current "exceptions" for licensed explosives manufacturers also apply to licensed explosives importers?

Yes, the exceptions to the marking requirements currently found in 27 CFR 555.109(b) have been revised to apply to both licensed explosives manufacturers and licensed explosives importers.

Therefore, in the case of blasting caps, licensed manufacturers or licensed importers are only required to place the identification marks on the containers used for the packaging of blasting caps. Additionally, the Director may authorize other means of identifying explosive materials, including fireworks, if the alternate means does not hinder the effective administration of Part 555.

Do importers have to mark explosives that will be imported for their own use?

No. Additionally, there is no requirement for permittees to mark explosives they import, since any importation by them would be for their own use. However, ATF encourages the industry to mark all imported explosives, regardless of whether they are for their own use or not.

Are markings required on pyrotechnic compositions

Definition of "Highways" as Defined in 27 CFR 555.11 and Guidance on Different "Private Roads"

that outdoor magazines in which high explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored than the minimum distances specified in the table of distances for storage of explosive materials in section 555.218 of the regulations. 27 CFR 555.206.

Section 555.11 of the regulations defines the term “highway” as “[a]ny public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.”

In Scenario A, a private road owned by a corporation is used by the general public as an access road to a parking lot owned by the corporation. The road is near an explosives magazine. The road does not have a gate, sign, or other means of restricting access to the road. The road is also used by the general public on a daily basis to gain access to other public streets.

In Scenario B, a company that manufactures display fireworks, a logging company, and an individual who owns buildings utilized to store his collection of automobiles all occupy property to which the only access is a privately owned road. A separate party that leases to these three entities owns the property. The road is located on private property, and a locked gate at the entrance to the road prevents access by the general public. The display fireworks company, the logging company, and the individual storing automobiles all have keys to unlock the gate and travel on the road when needed. The gate is locked at all times, and there is no evidence that the road is open to anyone other than the two businesses and one individual who require access to their property.

In Scenario C, an explosives company maintains explosives magazines in a quarry area that has a roadway traversing through the quarry. The quarry owns the property, and the road is maintained by the quarry. The road has a gate and there are signs advising no trespassing. However, when ATF officials visited the location on several occasions, the gate was left open and members of the public regularly utilized the roadway as a shortcut between two major highways. There were no indications the owner of the property took any steps to prevent members of the public from utilizing the roadway.

Applying the regulatory definition of “highway” to the three scenarios, the road in Scenario A is clearly a highway that is subject to the tables of distance in

Part 555. Although it is privately owned, it is regularly and openly traveled by members of the general public without restriction.

The roadway in Scenario B is not a “highway” as defined. Access is restricted at all times and there is no evidence the general public regularly travels on the roadway. Access to the road is provided to only a limited number of persons who have a legal right to travel the road.

Accordingly, this road is not regularly and openly traveled by members of the general public.

ATF concludes that the roadway described in Scenario C is a “highway” as defined in 27 CFR 555.11. Although access to the roadway is restricted by a gate and “No trespassing” signs are posted, the gate is not closed at all times. Furthermore, ATF observation indicates that the roadway is regularly and openly traveled by members of the general public. Based on these facts, the roadway is a highway which is subject to the tables of distance in 27 CFR Part 555.

Held, a private road with no gate, signs, or other means of restricting access that is used by the general public as an access road to a parking lot and as access to other public streets is a “highway” as defined in 27 CFR 555.11.

Held further, a private road with a locked gate at the entrance that is locked at all times and used by a limited number of persons leasing or owning property accessed by the road is not a “highway” as defined in 27 CFR 555.11.

Held further, a private roadway traversing a quarry with a gate restricting access and a “no trespassing” sign is a “highway,” as defined in 27 CFR 555.11, because the gate is not locked at all times and the general public regularly utilizes the roadway as a shortcut between two public highways.

Construction and Recordkeeping: Storage Bins for Blasting Agents

ATF would like to clarify a common misunderstanding regarding the locking requirements for blasting agents in bins. Federal regulation 27 CFR 555.211(a)(4) states the following:

*“Each door is to 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 have at least five tumblers and a case-hardened shackle of at least 3/8 inch diameter. **Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps and staples...**”*

Bins, tanks, silos, and other similar structures that store blasting agents such as ANFO or Division 1.5 emulsions must meet the requirements of a Type-5 outdoor permanent magazine. All doors and any other means of access to the explosives stored in these containers must have two hooded padlocks. However, these containers may be constructed in a manner that is not suitable to meeting these requirements. For example, a container

may have a valve on the bottom of the tank that may not be big enough to support two hooded padlocks. As such, the licensee or permittee will need to apply for a variance to use an alternate method of restricting access to the explosives.

To date, ATF has approved a number of these types of variances with minor modifications. Fences, security patrols, cameras, locked out controls, elevated and locked ladders, monitored alarms, and combinations thereof are some of the means industry members are using to meet these requirements. Always remember that any alternate method must be substantially equivalent (defined in 27 CFR 555.22) to the requirements of subpart K. Please note, the licensee or permittee must apply for and receive a variance before he can use an alternate method.

There is also some confusion regarding the recordkeeping requirements for these structures. A licensee or permittee must maintain a daily summary of magazine transactions for each bin of bulk explosive materials. These structures function as Type-5 magazines, and not maintaining a daily summary is a violation of the Federal regulations.

However, ATF is aware of the inherent properties of these bulk materials and various external factors that lead to fluctuations in exact measurement. Proprietors are strongly encouraged to establish written standard operating procedures for measuring, shipping, and accounting for these bulk products. Standard procedures will allow a proprietor and ATF Industry Operations Investigators to more readily account for those unusual fluctuations that may cause concern or indicate possible diversion.

Similarly, bulk trucks used for storage of blasting agents must meet the regulatory requirements for vehicular Type-5 magazines. Most proprietors are aware that this practice requires a "preloading" variance from ATF. Although two hooded padlocks may not be required on vehicular Type-5 magazines, access to the explosives must be restricted by a padlock or the equivalent and daily summaries must be maintained just as with other vehicular Type-5 magazines, such as drop trailers.

Variations for Continuing Authority Concerning Preloading of Trucks for Temporary Storage of Fireworks for Shows

One area of concern for the fireworks industry members and ATF, particularly during the busy Fourth of July season, has been the timely application and receipt of temporary storage variances to store fireworks in trucks at the licensed premises.

ATF recognizes that many licensees and permittees must preload fireworks on trucks prior to shipment for various shows and events. Therefore, EIPB has begun issuing non-expiring variances for the licensed storage premises only.

A licensee or permittee will need to submit a request to EIPB requesting this variance. **Some of the conditions in the variance that must be met include the following:**

- ” The vehicles must be locked and otherwise immobilized by either a standard kingpin locking device or a steering wheel locking device. You must remove the vehicle’s keys and set the brake.
- ” Each vehicle must be placarded in accordance with Department of Transportation requirements.
- ” The doors to each storage compartment containing explosive materials must be locked with at least one steel padlock having at least five tumblers and a casehardened shackle of at least 3/8-inch diameter. The padlock does not need to be protected by a steel hood.
- ” Daily Summary of Magazine Transaction records must be maintained for each vehicle, in accordance with 27 CFR 555.127.
- ” Each vehicle must be in compliance with the Table of Distance requirements set forth in 27 CFR 555.224 for the storage of display fireworks.
- ” Each vehicle must be attended at all times for security purposes. A vehicle is attended when an employee is within 100 feet of all temporary storage and has an unobstructed view of the trailer(s) containing the explosive materials.
- ” The area surrounding each vehicle must be kept clear of rubbish, brush, or dry grass.
- ” Volatile materials must be kept a distance of not less than 50 feet from each vehicle.
- ” The proprietor will be responsible for notifying in writing the authority having jurisdiction for fire safety in the locality where the explosive materials are being stored.

Please note that the variance will not expire unless ATF finds that continuation of the approval would hinder effective administration of the Federal explosives laws. In that case, EIPB will consult with the affected ATF field office as well as local fire officials. A proprietor will be required to notify his or her local Area Office and the EIPB if there are any changes to a proprietor’s operations that affect the variance.

In addition, fireworks licensees and permittees are required to obtain a variance for all temporary storage of explosive materials at locations other than the licensed premises, including show sites. For annual events and shows, the EIPB and local field offices will consider issuing a non-expiring variance as described above.

REMINDER: Licensees and Permittees are Required to Maintain Records

Recent ATF inspections have disclosed that some licensees and permittees are not maintaining all of the records required by the Federal explosives regulations. These records are vital for tracing stolen or lost explosive materials and for the prevention of diversion. Please ensure that your records are clear, concise, and up-to-date.

Newsletter Distribution

Have you recently changed your address, or do you know someone not currently on the distribution list that may wish to receive the ATF Explosives Newsletter? If so, please notify the Explosives Industry Programs Branch by phone, Fax, or e-mail with the following information:

Name: _____

Company: _____

Address: _____

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Phone No.: *(optional)* _____ e-mail: *(optional)* _____

U.S. Department of Justice

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