

ATF EXPLOSIVES Industry Newsletter

Third Quarter FY 2002 (issued November 2002)

Editor, Gene Baker

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A MESSAGE FROM THE CHIEF, ARSON & EXPLOSIVES PROGRAMS DIVISION

As the new Chief of the Arson & Explosives Programs Division, it is a real pleasure to speak to the explosives community and all of you who are involved in enforcing the various Federal, State and local laws pertaining to the use of explosives. In my short term as the Chief, I have come to realize that the A & E Programs Division is truly a professional organization, with many talented and skilled persons covering a broad spectrum of involvement with the explosives community – whether it be answering technical questions on explosives, assisting bomb or accident investigations on-scene, providing answers on regulatory matters, canine operations, arson investigations, or research on explosives, the members of the A & E Pro-

grams Division are ready to meet any challenge. In addition, the personnel in the A & E Programs Division meet continuously with their counterparts in other governmental agencies having oversight over explosives, as well as international, state and local officials. I am very proud of all of the people in AEPD, and want to assure you that if you have any questions or there is anything we in the division can do to assist you, please do not hesitate to contact us at any time.

Recently, ATF held an Explosives Industry Executive Conference in Washington, D.C. that was the first formal outreach to everyone involved in the explosives community, to better understand each other and to find ways to work together effectively to promote better safety and security in the explosives arena. It goes almost without saying that since September 11th the need for such interaction is greater than ever. We hope to continue these outreach efforts on a regular basis, and the Arson & Explosives Programs Divisions stands ready to assist in that effort to the fullest of our capability.

— Carson Carroll

ATF HOSTS EXPLOSIVES INDUSTRY EXECUTIVE MEETING

Explosives Industry and ATF Management meet in Washington

ATF held the first ever Explosive Industry Executive meeting on August 27, 2002, at the Renaissance Hotel Auditorium in Washington, DC. A total of 86 members representing various segments of the explosives industry and related organizations attended the meeting. A total of 59 ATF representatives from Bureau Headquarters and the various Field Divisions were also present.



**WORKING FOR A SOUND
AND SAFER AMERICA**

ATF Deputy Director David Benton welcomed everyone to the meeting and provided opening remarks. Assistant Director, Firearms, Explosives and Arson (FEA) John Malone, followed and commented on the partnership that exists between ATF and the explosive industry, a partnership made even more crucial following the events of September 11th, 2001.

ATF representatives within the FEA Directorate and Field Operations provided overviews of the activities in the Public Safety Branch, ATF Field Operations, the National Licensing Center and the proposed changes in the Explosives Laws. Four separate panels consisting of representatives from The Environmental Protection Agency (EPA), The Department of Transportation (DOT), The Transportation Security Administration (TSA), as well as ATF discussed how their various areas of responsibility involved the explosives industry, and answered questions on a variety of topics from the industry members. One of the topics eliciting a considerable interest revolved around the proposed new explosives legislation. The pending "Safe Explosives Act" (S. 1956) in the Senate, and the "Anti-Terrorism Explosives Act of 2002" (H.R. 4864) in the House, have been reported out of the House and Senate Judiciary Committees. These bills are ready for action on the floor of both the House and Senate should Congress choose to take up the matter during the remainder of the legislative session.

ATF will, of course, provide as much information to the explosives industry as soon as possible regarding any possible changes the proposed legislation might require. However, as we went to press the proposed changes have not gone forward.

Feedback from the attendees was very positive and ATF is considering have more such meetings with the industry on a recurring basis, to possibly include locations outside of the Washington, D.C. area.

VARIANCES

Procedures for processing outlined

One of the other issues discussed at the Explosives Industry Executive Meeting was how variances from regulatory requirements should be submitted, and what the criteria for approval are. Within the explosives regulations, the section on variances -- or alternate meth-

ods or procedures -- is contained in section 55.22. ATF may approve a variance request, which in essence is an alternate method or procedure different from the requirements otherwise contained in Part 55. These may be approved under the following conditions:

- (1) There must be good cause for the alternate method or procedure;
- (2) The alternate method or procedure is substantially equivalent to the prescribed method or procedure; and
- (3) The alternate method or procedure is not contrary to law and will not result in an increased cost to or otherwise hinder the government.

Any variance request should contain the following information:

- (1) The date of the request.
- (2) The license or permit number, if any.
- (3) A description of the specific issues mitigating the request.
- (4) When the variance request involves storage, the name and address of the local fire safety authority should also be included.

Variance requests should be addressed to the Director, ATF, and submitted through your local Director of Industry Operations. This would allow local ATF inspectors to review the application and determine if the variance requests meet the standards noted above, prior to forwarding it to the Public Safety Branch (PSB) in ATF Headquarters in Washington, D.C. You should also include sufficient support data in the form of diagrams, drawings or photos to assist the specialists in PSB in reviewing the variance request. The Public Safety Branch normally processes variance requests on explosives matters, and they will either approve the variance, or provide an explanation as to why they cannot approve the variance request. You should always check with State or local officials prior to submitting any variance request to insure that the proposed method or procedure does not violate State or local requirements. Any further questions on this topic should be addressed to the Public Safety Branch.

A & E personnel attend International Pyrotechnics Convention

Public Safety Branch Chief Gail Davis and Explosives Industry Analyst Gene Baker attended the

54th Annual Meeting and Convention of the American Pyrotechnics Association (APA) in San Diego in September. In addition to providing an ATF booth at APA's trade show, Gail and Gene participated in a panel discussion covering current topics of high interest to the APA membership. The subject of proposed law changes was again an item of considerable interest to many of the APA members. The APA members also suggested that we include a section in the Explosives Newsletter on "Frequently asked questions" or FAQ's. We are currently exploring the feasibility of including such a section in future newsletters.

We would like to thank the APA for inviting ATF to be a participant in their annual convention. We would also like to express our thanks to the San Diego Area Office of ATF for their valuable assistance in setting up and maintaining the booth at the APA trade show.

EPA AND THE TOXIC SUBSTANCES CONTROL ACT

Environmental Protection Agency cites reporting requirements

The Environmental Protection Agency (EPA) is working to ensure that all companies making or importing high explosive materials report the manufacture or importation to EPA under the **Toxic Substances Control Act (TSCA)**. Under the regulations of TSCA, companies must report to EPA every 4 years if they import or manufacture more than 10,000 pounds annually of chemicals used to make high explosives. The TSCA Inventory Update Rule (IUR) and the TSCA import certification requirement are essential for EPA to determine which chemicals are moving in trade channels.

Since 1986, the IUR under TSCA § 8(a) has required manufacturers and importers of certain chemical substances listed on the **TSCA CHEMICAL SUBSTANCES INVENTORY** to report their production volume, plant site locations, and site-limited status of these chemicals every 4 years. The EPA relies on the accuracy of this data to monitor and estimate health and safety risks, and incorporates this information into its regulatory decision-making process to ensure responsive and effective regulation of the chemical industry. **The 2002 IUR reporting period is now in effect from August 26 to December 23, 2002.** A

complete reporting package including the forms, instructions, contacts and database needs, is available on the EPA site, <http://www.epa.gov/opptintr/iur>. Companies subject to the TSCA reporting obligations that fail to submit information under the IUR are in violation of TSCA after December 23, 2002, and may be subject to substantial penalties.

Importers of chemical substances and mixtures must comply with the same obligations imposed on domestic manufacturers, as well as the TSCA import certification requirement. Importers must certify at the time of importation that the chemical substances or mixtures are: (1) in compliance with TSCA §§ 5, 6, and 7 (known as a positive certification); or (2) not subject to TSCA (known as a negative certification). Under TSCA § 13, the Secretary of the Treasury may refuse entry into the U.S. for a shipment of any chemical substance or mixture if it fails to comply with any TSCA rule or regulation or is offered for entry in violation of certain sections of TSCA. Therefore, Customs can refuse entry of any shipment that does not have a TSCA certification.

For more information about import certification requirements, EPA asks that you visit their website, <http://www.epa.gov/opptintr/chemtest/sect13.htm>.

Companies that import or manufacture chemicals should also become familiar with EPA's "Self-Disclosure Policy," entitled— Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, published in 65 Fed. Reg. 19618 (April 11, 2000), whereby violations that a company discovers and discloses to EPA in writing within 21 days of discovery of a violation may result in a reduction or elimination of a penalty. Disclosures should be sent to the **U.S. ENVIRONMENTAL PROTECTION AGENCY, TOXICS AND PESTICIDES ENFORCEMENT DIVISION (2245A), 1200 PENNSYLVANIA AVE., NW, WASHINGTON, D.C. 20460-0001**. More information is available at <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>.

The EPA provides a service for any questions about TSCA rules or on how to report through the **TSCA Hotline at (202) 554-1404**, or by e-mail at **TSCA-Hotline@epa.gov**.

NEW INDUSTRY CIRCULARS

ATF issues new rulings on explosives storage

ATF recently issued new guidelines to cover storage requirements under certain circumstances. These rulings, ATF Ruling 2002-3 and 2002-4, are the first in a number of years involving explosives issues. The rulings in their entirety are printed below:

ATF Ruling 2002-3

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1): INDOOR STORAGE OF EXPLOSIVES IN A RESIDENCE OR DWELLING

ATF will approve variances to store explosives in a residence or dwelling only upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification.

ATF Rule. 2002-3

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received questions concerning indoor storage of explosives in a residence or dwelling and whether such storage must comply with State or local law.

Section 842(j) of 18 U.S.C. states: "It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary."

The regulations in 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1) specify that no indoor magazine is to be located in a residence or dwelling. Section 55.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, section 55.22(a)(3) provides that such "variances" are permissible only in certain circumstances, including where "the alternate method or procedure will not be contrary to any provision of law and will not . . . hinder the effective administration of this part." ATF has been advised that certain variances previously approved for storage of explosives in residences or dwellings are in violation of State or local zoning law. ATF believes it is important to ensure that approval of variances is in compliance with all State and local provisions.

To obtain a variance for indoor storage of explosives in a residence or dwelling, ATF has deter-

mined that a person must submit to ATF a certification signed under penalty of perjury along with the request for the variance. The certification must:

1. State that the proposed alternative storage method will comply with all applicable State and local law;
2. Provide the name, title, address, and phone number of the authority having jurisdiction for fire safety of the locality in which the explosive materials are being stored; and,
3. Demonstrate that the person has mailed or delivered the certification to the authority identified in (2).

When required by the Director, such persons must furnish other documentation as may be necessary to determine whether a variance should be approved.

Held, ATF will approve variances to store explosives in a residence or dwelling only upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification.

Date signed: August 23, 2002

ATF Ruling 2002-4

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1): INDOOR STORAGE OF EXPLOSIVES IN BUSINESS PREMISES DIRECTLY ADJACENT TO A RESIDENCE OR DWELLING

ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received questions concerning indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

Section 842(j) of 18 U.S.C. states: "It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary."

The regulations in 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1) specify that no indoor magazine is to be located in a residence or dwelling. Section 55.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, section 55.22(a)(3) provides that such "variances" are permissible only in certain circumstances, including where

"the alternate method or procedure will not be contrary to any provision of law and will not . . . hinder the effective administration of this part."

ATF has been asked whether businesses that are directly adjacent to living quarters may lawfully store explosive materials in the business premises. The issue presented is whether the premises amount to a "residence or dwelling" within the meaning of the regulations cited above.

Even where the business premises are segregable from the living quarters by the existence of a door or a common wall, the business premises retain their character as a residence or dwelling. Accordingly, indoor storage of explosives in such premises is generally prohibited and can be allowed only pursuant to an approved variance.

Held, ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling. ATF may approve such variances upon receipt of all appropriate certification and other documentation as may be requested.

Date signed: August 23, 2002

INTERNATIONAL EXPLOSIVES ASSISTANCE & COORDINATION

ATF representatives attend International Explosives Symposium

In September members of the Arson and Explosives National Repository Branch and the Intelligence Division; Deputy Assistant Director Field Operations (Central) Guy Hummel; and Assistant Director, Firearms, Explosives & Arson, John Malone attended the International Explosives Symposium 2002 in Bad Kissingen, Germany. The conference was organized by the German Bundeskriminalamt. It was designed to assist investigators of explosives incidents and to provide updated methods and information to experts on defusing improved explosive and incendiary devices. This was one of the major explosives seminars held worldwide this year, and perhaps the largest ever held in Europe. A number of European explosives manufacturers supplied booths to provide information on current explosives products available. ATF attends this conference annually.

Canadian Explosives Officials Meet with Public Safety Branch

On September 17, 2002, Inspectors David J. McCulloch and Neil MacLean, of Natural Resources Canada (NRC), Office of the Chief, Explosives Inspector (CIE), visited their counterparts in ATF. CIE is essentially the Canadian version of ATF's Public Safety Branch, and is responsible for implementing and enforcing Canadian regulatory controls pertaining to the importation, manufacturing, distribution, and storage of explosive materials. ATF had previously met with Dr. Chris Watson, Chief Explosives Inspector, NRC, and his staff, in Washington, DC in October 2001, and again in Ottawa in April 2002, to discuss items of mutual interest regarding regulation of commercial explosives products.

FUGITIVE CORNER

Reward for Fugitive Steve Anderson Increased

Karl Stankovic, the ATF Special Agent in Charge in Louisville, Kentucky, announced an increase in the reward for information leading to the arrest of ATF Fugitive **STEPHEN HOWARD ANDERSON**. The reward has been increased from \$5,000 to \$20,000.

Anderson was featured in the Fugitive Corner in an earlier edition of the Explosives Newsletter. Anderson allegedly fired multiple gunshots at a Bell County, Kentucky Deputy Sheriff after fleeing from a traffic stop. Anderson's abandoned vehicle was recovered near Middlesboro, Kentucky. A search of the vehicle resulted in the recovery of a large amount of ammunition and several pipe bombs. As a result of the search of Anderson's vehicle and a subsequent search of his residence in Pulaski County, Federal explosives charges have been filed against Anderson in U.S. District Court in the Eastern District of Kentucky. ATF is assisting the Kentucky State Police in the investigation.

Wanted by the Kentucky State Police and the Bureau of Alcohol, Tobacco and Firearms

A \$20,000

**Reward is being offered by ATF
for information leading to the
arrest of**

STEPHEN HOWARD ANDERSON
(also known as Steve Anderson)



DESCRIPTION

Date of Birth: July 16, 1947

Height: 6'2"

Weight: 235 pounds

Eyes: Green

Hair: Dark/Short

Aliases: Steve Anderson

Anderson is wanted by the Kentucky State Police for Attempted Murder. He is also wanted by ATF for violations of Federal explosives law. Anderson should be considered armed and dangerous – do not attempt to apprehend him on your own. **If you spot Anderson, immediately notify your local law enforcement agency, the Kentucky State Police at (606) 573-3131, or (800) 222-5555, or ATF at (888) 238-8477.**

EXPLOSIVE QUESTIONS

We welcome any questions or topics that you would like to have presented. You may contact the Public Safety Branch in Washington, DC, by mail, phone, or fax, as follows:

Bureau of Alcohol, Tobacco & Firearms -
Public Safety Branch

Room 710, Tech World South Building,
Washington, DC 20001

Phone: (202) 927-7930 Fax: (202) 927-8887

NEWSLETTER DISTRIBUTION

Have you recently changed your address, or do you know someone in the industry not currently on the distribution list that may wish to receive the ATF Explosives Newsletter? If so, please notify the Public Safety Branch by phone or Fax us the following information and we will change your address or add their names to the distribution list. All we need is the following information:

Name: _____

Company: _____

Address: _____

City/State _____

Zip code _____

Phone No. (optional) _____

e-mail: (Optional) _____

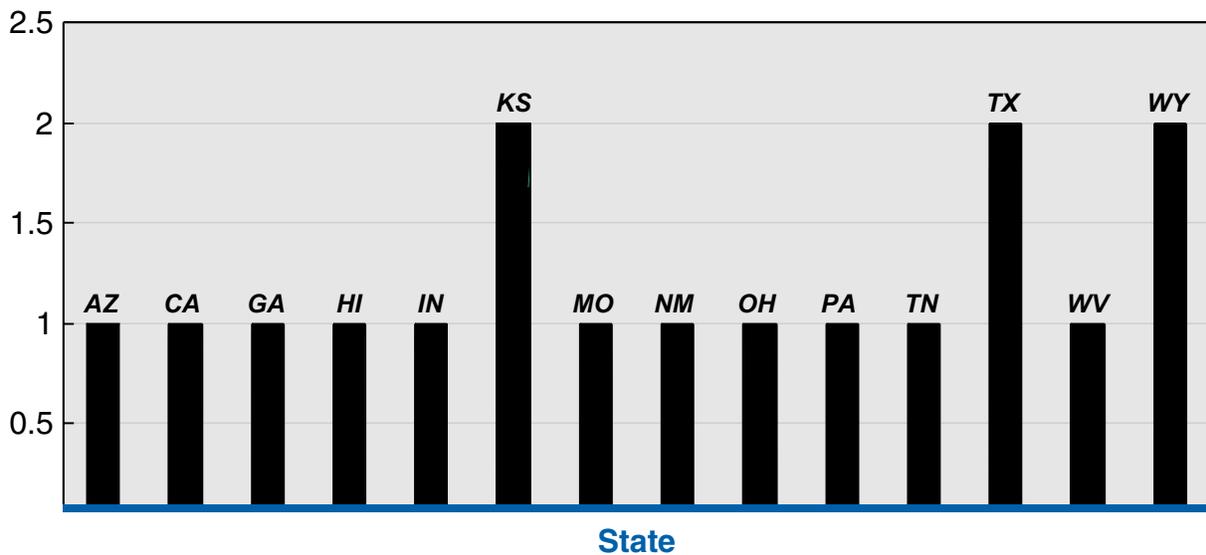
THIRD QUARTER 2002 EXPLOSIVE THEFTS

ATF would like to remind everyone using or storing explosives of the critical need to maintain proper security and safety with respect to the explosive materials. It is vitally important to keep proper inventory records to assist you in determining the type and quantity of any explosive materials that may be lost or stolen. The discovery of a loss or theft of explosive materials must be reported to ATF immediately, as well as to your State and local law enforcement authorities. You may report thefts to ATF at (800) 461-8841 during the normal working hours of 8:00 a.m. – 5:00 p.m. EST, or after hours or on weekends at (888) 283-2662.

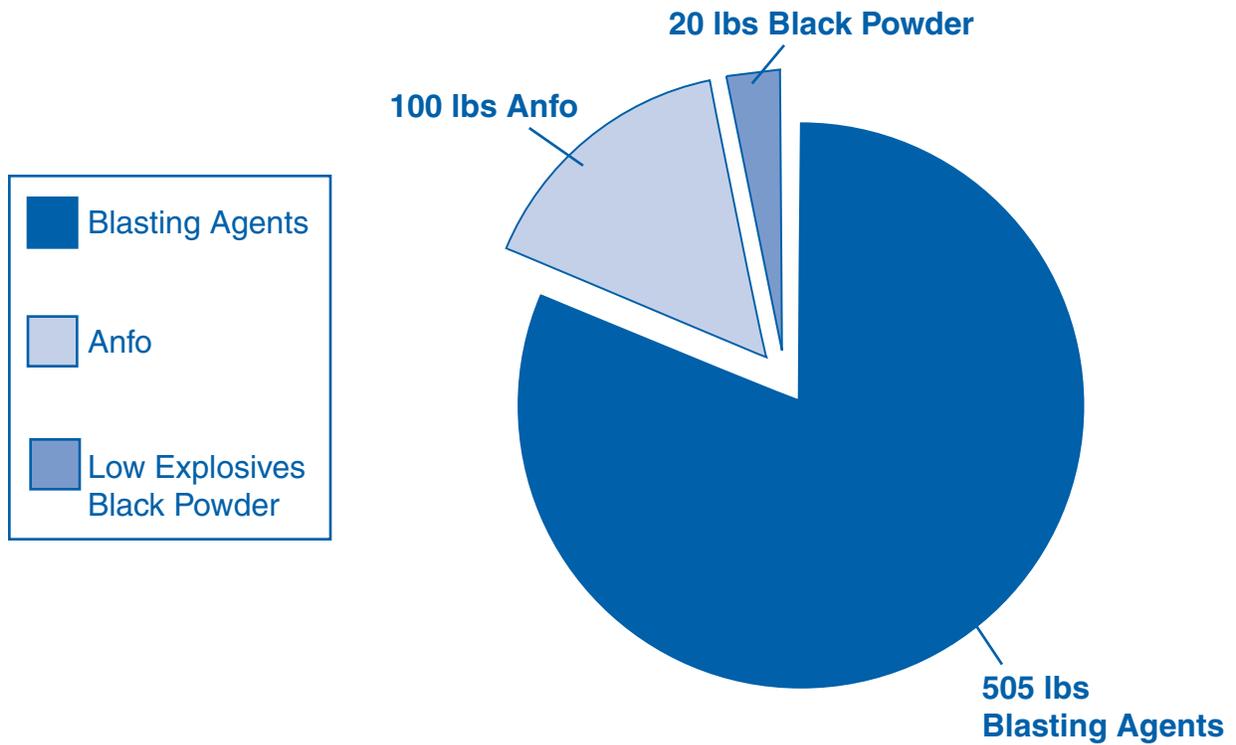
ATF Intelligence Research Specialist Anthony Purpura in the Arson and Explosives National Repository Branch provided the following data on explosives thefts during the July-September 2002 quarter.

THEFTS OF EXPLOSIVES BY STATE

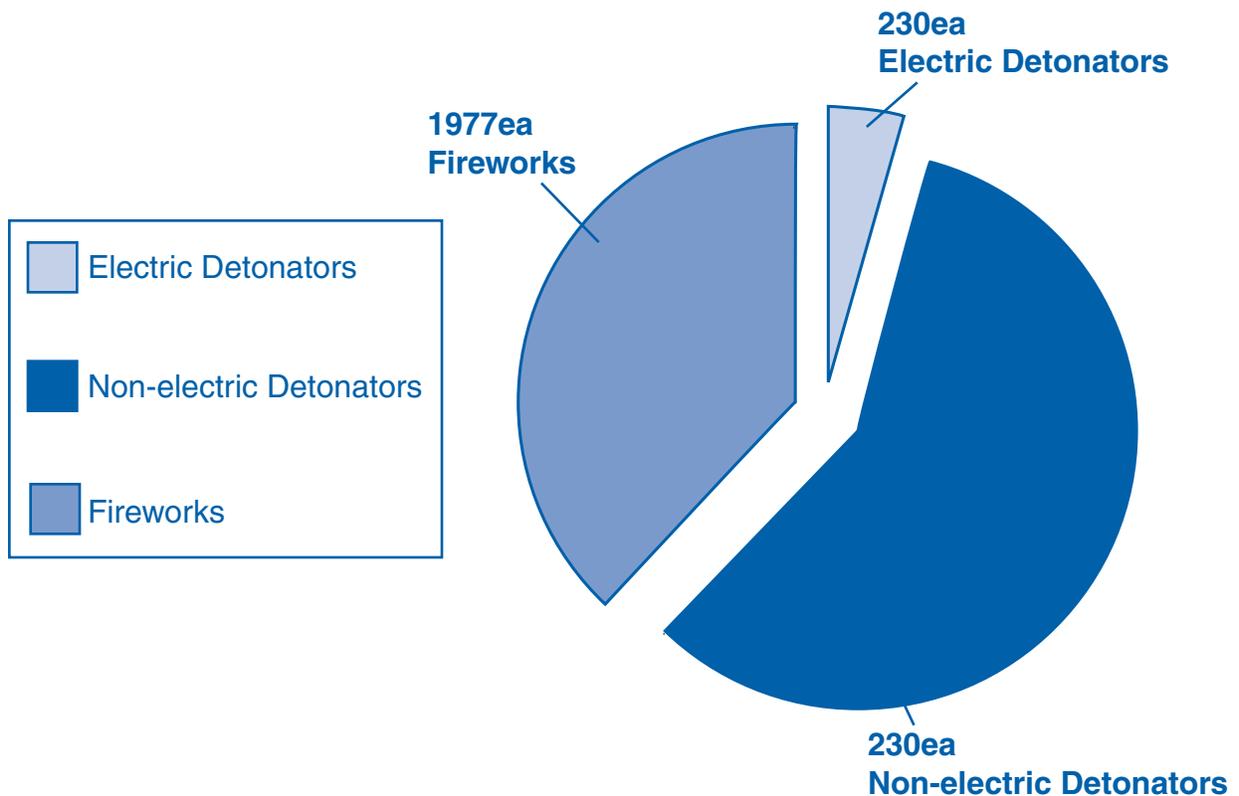
Number of thefts



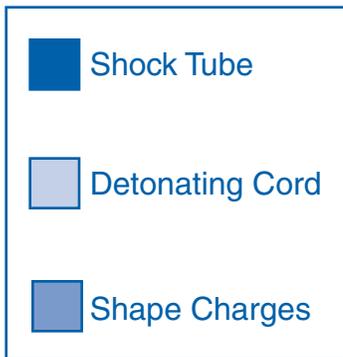
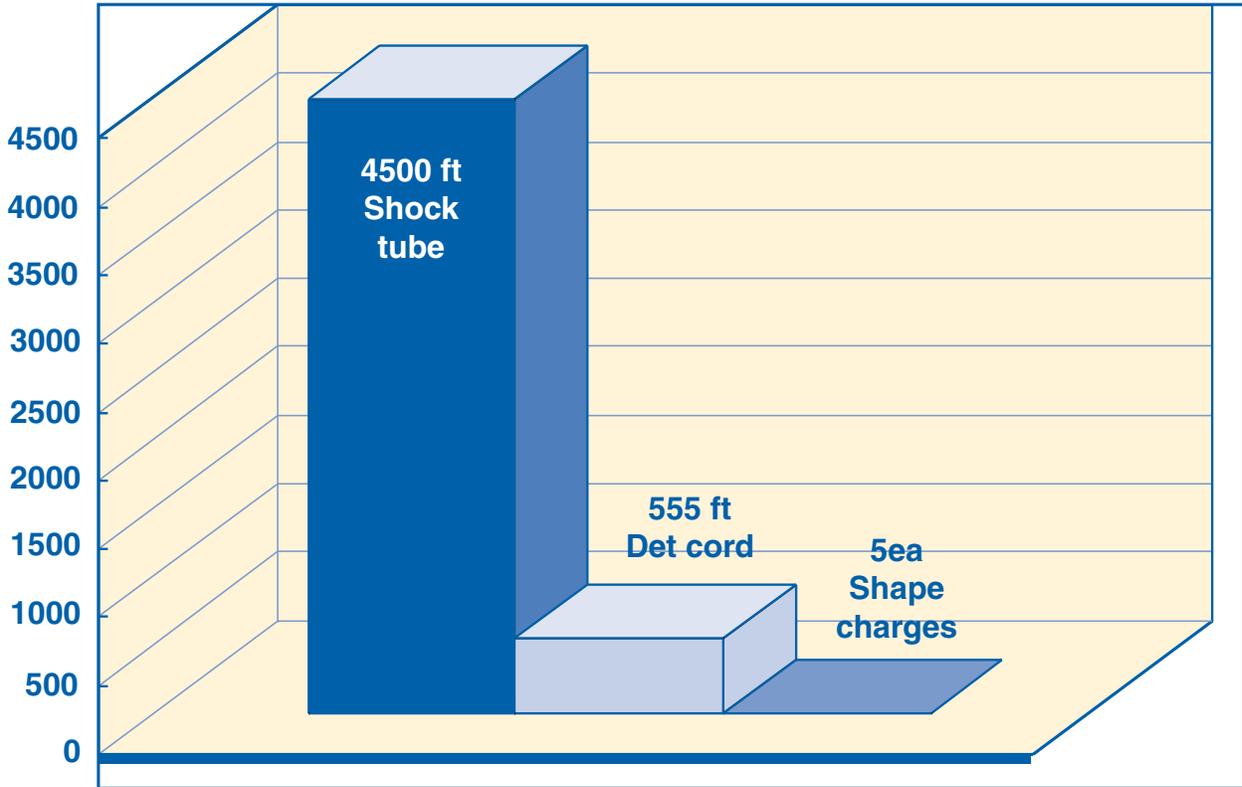
HIGH AND LOW EXPLOSIVES



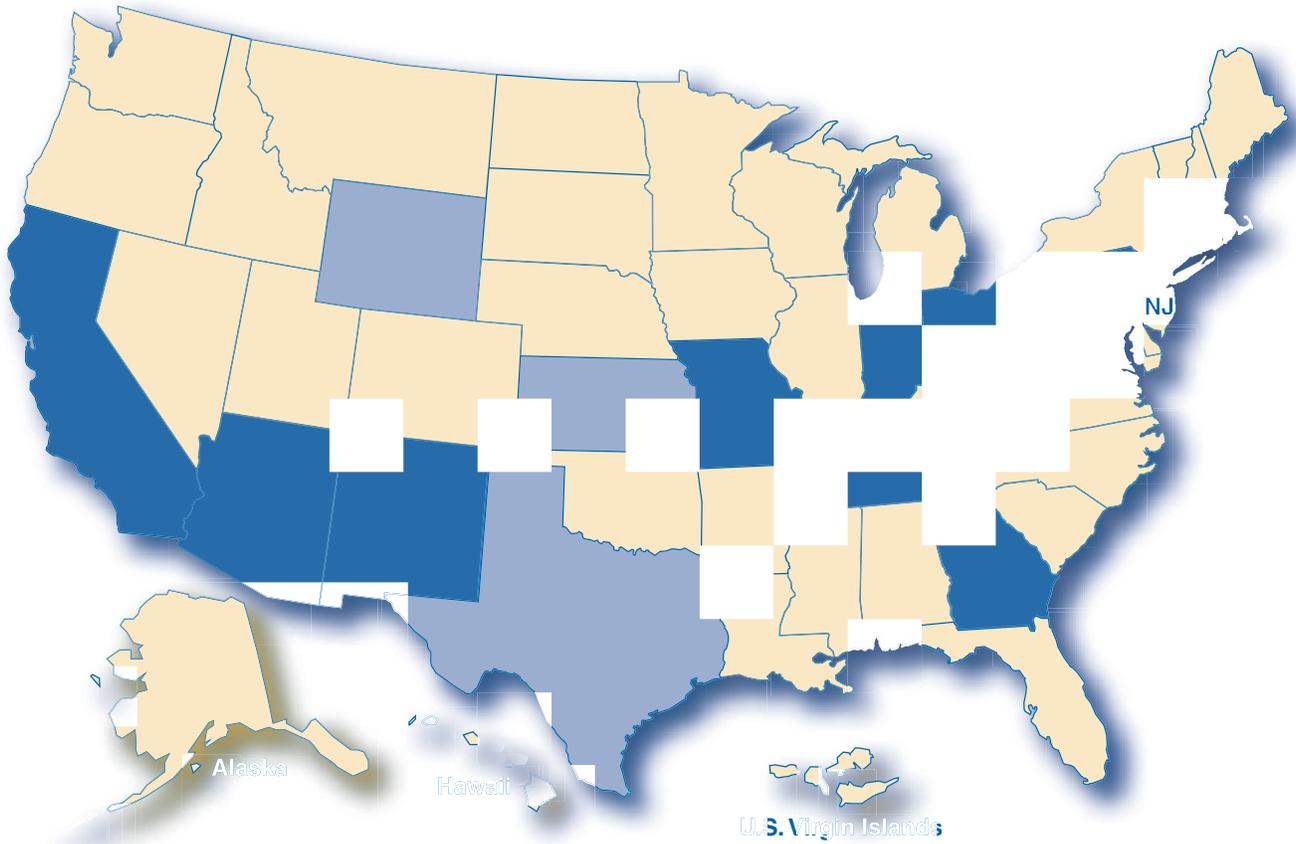
IGNITION SYSTEMS



OTHER EXPLOSIVES



THEFTS OF EXPLOSIVES BY STATE



1 July to 30 September 2002

■ One theft per state (11)

■ Two thefts per state (3)



Bureau of Alcohol, Tobacco and Firearms
National Licensing Center
2600 Century Parkway
Suite 400
Atlanta, Georgia 30345 - 3102

PRESORTED
FIRST CLASS MAIL
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