

44. Q59/2: Ex 7/3/pt. 4

CONTROL OF EXPLOSIVES

Administration and Execution of the Laws Pertaining to
the Control of Explosives

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY
ACT AND OTHER INTERNAL SECURITY LAWS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

—————
PART 4

INSTITUTE OF MAKERS OF EXPLOSIVES

—————
JUNE 22, 1976
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Printed for the use of the Committee on the Judiciary



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RESOLUTION

Resolved, by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That the testimony of Messrs. Brooke J. Calder, Jr., Frank H. Gordon and Harry L. Hampton, of the Institute of Makers of Explosives, taken in executive session on June 22, 1976, be printed and made public.

JAMES O. EASTLAND,
Chairman.

Approved November 5, 1976.

CONTROL OF EXPLOSIVES

Administration and Execution of the Laws Pertaining to the Control of Explosives

TUESDAY, JUNE 22, 1976

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY ACT
AND OTHER INTERNAL SECURITY LAWS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:50 o'clock a.m., in room 324, Russell Senate Office Building, Senator Strom Thurmond presiding.

Also present: Richard L. Schultz, chief counsel; Robert J. Short, senior investigator; David Martin, senior analyst.

Senator THURMOND. The subcommittee will come to order.

The Internal Security Subcommittee meets this morning for the purpose of receiving testimony relating to our continuing inquiry concerning the control of explosives.

We are pleased to welcome before the subcommittee this morning Mr. Brooke J. Calder, Jr., vice president of manufacturing of the Austin Powder Co., Cleveland, Ohio. It is my understanding that Mr. Calder is appearing here today as a spokesman for the Institute of Makers of Explosives and is accompanied by the association's general counsel, Mr. Frank H. Gordon and Mr. Harry L. Hampton, who is executive director of the Institute of Makers of Explosives.

We are glad to have all you gentlemen here. We welcome you to the Internal Security Subcommittee and are looking forward to your testimony. Prior to presenting your prepared remarks will you please rise and be sworn?

Will you raise your right hand, please.

Do you solemnly swear that the evidence you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

The WITNESSES. We do.

Senator THURMOND. Mr. Calder, we will recognize you first. Would you like to offer your prepared statement for the record, and present a summary at this time?

Mr. CALDER. Yes, I would.

STATEMENT OF BROOKE J. CALDER, JR.

Senator Thurmond and members of the Senate Internal Security Subcommittee:

My name is Brooke J. Calder, Jr. I am vice president of manufacturing of Austin Powder Co., Cleveland, Ohio. I am appearing here today as spokesman for the Institute of Makers of Explosives, New York, N.Y., as its president. Accompanying me are Frank H. Gordon, general counsel to the Institute and Harry L. Hampton, Jr., its executive director.

The Institute of Makers of Explosives is a trade association whose member companies manufacture approximately 85% of the commercial explosives and blasting agents used annually in the United States. They also produce and distribute most of the blasting supplies and accessories such as blasting caps, safety fuse, detonating cord, blasting machines and related tools. IME has genuine concern for, and makes continuing efforts towards, the promotion of safety in the manufacture, transportation, storage, and use of commercial explosives in this country.

We appear before you today because, in addition to our interest in safety, we share the concern you have expressed for illegal and terroristic use of explosives. We welcome your invitation to present our views on the need for new or amended Federal legislation to augment measures to prevent the misapplication of our products for subversive purposes.

At the outset, we wish to commend the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury for its able administration of the existing Federal statute governing criminal activity using explosives—chapter 40 of title 18 of the United States Code, enacted as part of the Crime Control Act of 1970. IME has been privileged to offer technical and legal assistance to the Bureau in carrying out its critical regulatory responsibilities under title 18. We believe that the statute provides comprehensive licensing procedures that are essential to avoid improper use of explosives, and that BATF's enforcement of these procedures has been effective. There are, however, some amendments to the legislation which we propose for the subcommittee's consideration at this time to further uniform control over the misuse of explosives.

In our view, subversives and terrorists have three sources for explosive materials: (1) purchase under false identity in legitimate channels, (2) theft or embezzlement, and (3) homemade manufacture. IME's basic thesis is that there should be adequate and uniform safety and security controls over explosive materials from the powder mill to the bore hole as the best way to counter supply from such sources. The Institute is continually engaged in communication with all the Federal agencies having jurisdiction over explosives—BATF, the Department of Transportation, the Occupational Safety and Health Administration, the Mining Enforcement and Safety Administration, and the Environmental Protection Agency—to bring about, in the interest of safety, uniform provisions in Federal regulations governing these dangerous but essential materials. We also encourage all of the States to adopt uniform regulations and have made a model law and regulations available. There still remain several areas of conflict among

the explosives regulations of the Federal agencies which IME hopes will be resolved by the Congress if they cannot be resolved among the agencies. However, we will address today those problems of misuse of explosives of particular concern to your committee which we believe can be alleviated by uniform statutory provisions.

First, as to purchase in legitimate channels, IME urges that the "contiguous State" exemption in section 842(a)(3) of title 18 be repealed. This provision exempts from the requirement of a license or permit a person who lawfully purchases explosives materials from a licensee in a State contiguous to the State in which he resides, and permits such a person to ship or receive such explosive materials to or within the State in which he resides if this shipment or receipt is permitted by the law of the State in which he resides. This exemption allows the acquisition of explosives by persons who are not required to have a license or permit, and has therefore fostered instances where persons not experienced in, or intent upon the improper use of explosives, including terrorists and those otherwise engaging in illegal activities, to have ready access to these hazardous articles. A prime example of this was the accidental destruction several years ago of a house in Greenwich Village in New York City by a terrorist group apparently operating a bomb factory. Federal authorities traced an undetonated stick of dynamite found in the remains to an explosives dealer in Keene, N.H., who had sold a lot of explosives to a purchaser posing as an employee of an unlicensed resident of Brattleboro, Vt., a State contiguous to New Hampshire which would allow receipt of explosives by nonlicensees.

IME believes that this and other similar occurrences can be avoided by requiring all purchasers of explosive materials moving in commerce to have a license or permit, Federal or State. The fee does not have to be excessive—\$5 to \$15 is a suggested range. What is important is that the distributor of explosives be informed by means of display of the license or permit that the materials are most likely to be used by one who knows their hazards and who has previously satisfied BATF, or other law enforcement officials, that they will be handled safely and for a legitimate purpose. To exempt such a large class of persons dealing with explosives from license or permit requirements affords terrorists a ready source. Mandating a license or permit will not completely insure against terrorism with explosives, but it will close a loophole of legitimate acquisition for illegitimate purposes that has made it all too likely that such activity can occur.

In this connection, IME proposes that chapter 40 of title 18 also be amended to provide a uniform permit number system throughout the 50 States. This will afford distributors of explosives an efficient method of recording explosive purchases, and identifying purchasers, and will further afford BATF an efficient method of recordkeeping for investigations. The advantages of such a uniform numbering system to BATF's enforcement program under title 18 are manifest. It might also encourage uniform State action.

With regard to theft, we would like to address the question of storage. From our experience, the storage provisions of title 18 and BATF's regulations are adequate from a security standpoint. Moreover, improvement in security technique is a subject more for regulations than for statute. However, IME recommends a return to the 5-pound restriction on the amount of black powder permitted to be

stored in an enclosure which is not a magazine. BATF recently increased the permissible storage amount from 5 to 50 pounds, in accord with Public Law 93-639, 18 United States Code 845(A)(5). Black powder is one of the oldest explosives in this country, and lends itself to terrorist use since its container can be disposed of when a bomb is made. Excessive amounts of black powder not stored in magazines pose clear security and safety hazards. Here is an unlocked source! As a matter of safety and security, BATF should be authorized to return to the 5-pound limitation. Congress should amend title 18 so to provide. This would not impose an undue hardship on the muzzle-loader enthusiasts.

As to embezzlement, such as pilfering by an employee at a mine or construction site, there is little if anything to be accomplished by legislation that we know of. Likewise, homemaking of explosives is not readily subject to control. On the other hand, the techniques of self-manufacture of explosives are not widely known, and the materials not readily available.

Finally, we understand that you have been interested in the matter of tracing materials in packaged explosives, which could be detected after detonation, as well as the possibility of introducing some ingredient which would make it possible to identify the presence of undetonated explosive materials in a package or luggage. These are strictly law enforcement activities, not related to safety in the regular legitimate commerce in commercial explosives. Accordingly, the cost should not be imposed upon the law-abiding citizens dealing in or using explosives properly, so as to protect the public at large against law violators who would use explosives improperly.

Therefore, we feel that the cost of any "tagging program" should be borne by Government. Industry will cooperate in introducing the taggants to its products, and keeping necessary records, but we strongly urge that the taggants should be paid for by BATF, and their issue controlled by BATF, as the only way to make the program effective. We assume that the modest added expense of the manufacturing and recordkeeping processes would be a deductible expense.

Thank you for giving the explosives industry this opportunity to present its views on the desirability of amended legislation to control abusers of commercial explosives in the United States.

TESTIMONY OF BROOKE J. CALDER, JR., INSTITUTE OF MAKERS OF EXPLOSIVES, NEW YORK

MR. CALDER. I think the Institute's position has been constant for approximately 8 to 10 years, that we believe the best control would be a nationwide licensing program where the purchaser of explosives would be required to show to the seller identification, cleared by some enforcement agency, to allow the seller to have confidence that the man is first bona fide to buy, and second, is who he is said to be.

We in industry have a very difficult time trying to ascertain the validity of people who are not in the large consuming element of the industry. For example, operators of coal companies, construction companies, they are easily identified because you deliver to their site; but a person who wants to buy a small quantity, it is very

difficult to identify properly that that man indeed is who he represents that he is. So, one of the things we feel would be the best control would be a nationwide licensing program under an enforcement agency.

Senator THURMOND. Who do you think ought to issue the license? Would it be a new agency, or an existing agency?

Mr. CALDER. I think the BATF would be the most qualified. They now take care of the licensing for the manufacturing, distribution and the storage of explosives. They would have the bona fide people as starting points; they would know who the people are who are selling, and many of the people who are receiving.

Senator THURMOND. You might spell out the initials you used.

Mr. CALDER. The Bureau of Alcohol, Tobacco and Firearms.

Mr. SCHULTZ. If I may at this point, Mr. Chairman; in effect, what this licensing would do would be to shift the burden from the seller, or give him some method by which he can at least make a minimum assessment as to who the purchaser is. He will have a number, a license, or permit number that he can record when he sells explosives.

Mr. CALDER. That is correct.

Mr. SCHULTZ. The statute now requires, if the seller has "reason to believe" that the explosives will be used for some unlawful purpose, he is not to sell them. The seller has the burden of making that determination, but no ability to make it; there is nothing required for the purchaser to present to the seller so that he can make the "reasonable belief" determination.

Senator THURMOND. Now, do you think it would be better to place the burden on the BATF by issuing a license, rather than to place the responsibility on yourself, as I understand you?

Mr. CALDER. I think they have the capacity, through relationships with other agencies, to determine whether the man should be able to purchase explosives.

Senator THURMOND. If a man sold explosives, then, and a fellow came up with a license to buy, then he would know it's all right to sell it; if he didn't have it, he wouldn't sell it.

Mr. CALDER. That is right.

Senator THURMOND. So, that puts the burden on the seller not to sell to anybody who does not have a license to purchase.

Mr. CALDER. That is correct.

Mr. GORDON. I want to suggest a simple illustration of this point, Senator. If the purchaser has a criminal record and the seller is not supposed to sell to somebody with a criminal record, he has no ability to determine whether that would-be purchaser has a criminal record.

But if the purchaser has to get a license and somebody checks on whether he has a criminal record, then they would know, if he has a license, that he is cleared from that standpoint. I just give that as a simple little illustration.

Senator THURMOND. That would protect the seller, too.

Mr. SCHULTZ. That, of course, brings up the related issue that merely a fee for a license would not be enough, but there would have to be a collateral investigation in connection with the applicant, to determine that he is a qualified individual to handle explosives.

Senator THURMOND. Well, under this plan, as I understand it, BATF would not issue a license until they investigated this person, his

record, and so forth; and if he has a good record and a good reason for wanting these explosives, then they would issue a license, otherwise not; is that your understanding?

Mr. GORDON. That is right, Senator. Also, we feel that the legitimate user would have no trouble in getting a license, and we would not have the licensing costly. We are talking about a small amount, \$5, \$10, \$15, the further down on the line that you got the less you would be charged. So, that would not be a burden, but it would be a requirement to keep our products in the hands of legitimate people from the place where they are manufactured to the place where they are exploded.

Senator THURMOND. Well, something has to be done because the way these terrorists obtain these explosives and are killing people and maiming people is outrageous, and it has got to stop somewhere.

Now, did you have anything else?

Mr. CALDER. One of the other points we present for consideration is the reversal of the exemption on black powder. There was an exemption, I believe, on 5 pounds, and then it was raised to 50 pounds. This is unregulated, does not have to be locked, under control.

Our point is that we believe it should go back to a 5-pound limit, and then be properly stored and controlled. There have been occurrences noted in the newspapers where commercial stores have blown up because there had been black powder stored improperly, in our judgment, for safety purposes, but stored legally in the building. They had a fire in the building, and the building has been blown up. There was a case in Indiana and a case in Ohio where these two conditions existed.

Mr. HAMPTON. Incidentally, the BATF made the very same recommendation here within the past year, and it was the judgment of the Senate committee then, holding the hearings, to disregard that recommendation.

Senator THURMOND. Was that the judgment of the Judiciary Committee?

Mr. HAMPTON. I believe so.

Mr. SCHULTZ. I believe it was, Senator. I believe the reason for the increase was the idea that those who are muzzle loaders needed more black powder than 5 pounds—it didn't give them enough to adequately load.

Mr. HAMPTON. That this may in fact inhibit certain legitimate users of black powder. But from a pure local safety standpoint, I don't believe you or anybody else wants to live next door to 50 pounds of black powder that is not kept in a proper magazine.

Senator THURMOND. Yes.

Mr. HAMPTON. For the same reason you don't want to be next door to somebody who has a 55-gallon drum of gasoline; and most local regulations prohibit such storage of gasoline. The same logic would apply, it seems to me, to black powder. The BATF feels the same.

Senator THURMOND. Do you have anything else?

Mr. GORDON. Just in connection with that, Senator, the pressures, the motivation for raising that limit to 50 pounds was from the muzzle loaders, people who had a legitimate use for the black powder. But it was our thought that there probably are a lot of groups that go in for this sort of thing, they have yearly parties where they go out and re-do

the battle of White Plains, or something like that, from the revolutionary days. There is no reason why those groups could not have an excess amount of powder in a magazine.

Senator THURMOND. Five pounds, for one man, is a lot of powder.

Mr. GORDON. Yes, sir. So, they could have the extra quantity stored in a magazine and made available to them on these legitimate occasions. There is a dual problem. There is not only the problem of somebody stealing it and making a bomb out of it, but there is the problem that Mr. Hampton mentioned, that if somebody who is a buff, somebody who is a muzzle loader, has 50 pounds in his garage and there is a fire that certainly is a hazard to the neighborhood. So that you could not only have a terrorist explosion, but an accidental explosion which would do just as much harm to the people that were in the vicinity.

That is something we think ought to be reversed, and go back to the original limit.

And the other point that is in the written statement that Mr. Calder didn't emphasize now is the question of neighboring States, contiguous States. The licensing requirements that presently exist permit somebody to buy from a neighboring, contiguous State, and while BATF has done its best to require certain forms within the scope of its regulations, nevertheless, there is no permit requirement that covers that interstate transportation which the United States has control over under the Constitution, from one State to the next.

We gave a little illustration where somebody could come over from Vermont to New Hampshire and say, Farmer Brown wants to shoot some stumps, and I'd like a case of dynamite, and he can get a case of dynamite, and there is no Federal control over him. We think there is no reason for that. We have some idea how it got in there originally.

Mr. SCHULTZ. If the licensing recommendations you made were put into effect, do you believe that that would eliminate partially the problem of the exception contained in the contiguous States provision?

Mr. GORDON. That is correct.

Mr. SCHULTZ. So, the licensing aspect may be more important than trying to repeal the contiguous State exception contained in title 18.

Mr. GORDON. It would do both.

Mr. CALDER. If you did have a licensing requirement, then the contiguous States would not have an exemption from that licensing requirement, it would be a moot point. But if it still had the exemptions it would not be to what we think would be a benefit.

Mr. SCHULTZ. Senator, I know that you have another meeting to attend, would you entertain a motion for us to send additional questions that we do have and ask for a response in writing?

Senator THURMOND. Off the record.

[Discussion off the record.]

Senator THURMOND. Would you respond to some questions we will send you, and answer them for the record?

Mr. CALDER. Yes; we would.

Senator THURMOND. I have some questions here, and there may be more that arise out of this hearing. It would be well for you to take time and think of additional questions, and for them to take time and supply answers.

[The questions and answers referred to will be found on p. 154]

Now, how many different types of explosives are there? You've got black powder, you've got dynamite, and what else?

Mr. HAMPTON. The explosives list is three columns wide and one full page long, as published by BATF.

But those that are in common use, as far as commercial application, Mr. Calder can tell you better than I.

Senator THURMOND. Would you please provide the subcommittee with a list of all the explosives that are most commonly used.

Mr. CALDER. There are about a dozen common uses.

Senator THURMOND. I think the record ought to show that.

Now, one thing that strikes me, the National Guard Armory, people break in and steal guns; they are breaking in people's homes and stealing guns; they break in stores and steal guns. If they wanted this explosive and you had 50 pounds, they would run the risk of breaking in to get 50 pounds.

In other words, if a fellow is allowed to purchase 5 pounds instead of 50 pounds, it is more inducement for a man to go after that 50 pounds, if he can't get it legally, don't you think?

Mr. CALDER. My opinion would be, no. The only reason why I say that, I think the people who legitimately want the product will go by the rules of the game to use it.

Senator THURMOND. I'm not speaking about those—sure, they will. I am speaking about the fellow who wants to get it illegally. Wouldn't it be more inducement to him if he can get 50 pounds instead of 5 pounds, to break in a home or store?

Mr. CALDER. Oh, yes, I see what you mean; certainly, it would be.

Senator THURMOND. And isn't it a temptation to people where they can't get it legally because they have a criminal record, or some other reason would prevent them from getting it legally, to follow a course of action to get it illegally. Of course, that would be to steal it or get it in some other illegal manner.

Are there any other statements you have to make?

Mr. GORDON. Just in connection with that, Senator, all explosives that are required to be kept stored in a magazine, and there are five types that have been set up by BATF in their regulations, every one of those five types requires a lock on it.

Now, there are thefts from magazines, but there we have said in the statement that we don't recommend legislation so much as a continuing development of security devices on magazines to prevent thefts. We think BATF is doing a good job in that area.

But it does go with your thought that if you have to keep any significant quantity of explosives in a magazine you have some security because it is locked up, and that is a deterrent to the terrorist in his efforts to acquire these explosives.

Senator THURMOND. Off the record a minute.

[Discussion off the record.]

Senator THURMOND. Back on the record. What type of magazine are explosives stored in?

Mr. CALDER. The BATF set up five categories of magazines for different types of explosives. There are cap sensitive explosives that they ask to be stored in a bullet-resistant type of construction.

Senator THURMOND. Would you answer that more fully for the record when you answer these questions that we will send to you?

[To counsel.] You might propound a question on that.

Mr. SCHULTZ. All right.

Senator THURMOND. Those different types of magazines in which explosives are stored, and the protection the magazines give.

Mr. SCHULTZ. May I ask one general question, Senator?

Do you see any need for regulations concerning the related materials, the caps, the fuses—some of the items that go with explosives. As I understand it, there is very little regulation on the handling, the purchase, and the storage of those.

Mr. HAMPTON. That is not true.

Mr. CALDER. They fall within that same category.

Mr. SCHULTZ. In other words, fuses are fully regulated?

Mr. GORDON. A safety fuse is put in the category of an explosive.

Mr. SCHULTZ. I stand corrected.

Senator THURMOND. A safety fuse contains explosive material.

Mr. GORDON. It contains black powder to make it burn.

Mr. SCHULTZ. Are there storage requirements for fuses?

Mr. GORDON. Oh, yes; and the requirement that caps, fuse caps not be stored in the same magazine with explosives.

Mr. SCHULTZ. I'm aware of that.

Mr. GORDON. There are regulations on all of those materials.

Mr. HAMPTON. And they are subject to the same inventory process that applies today to dynamite, whereby the magazine must be—what is it, three times a week?

Mr. CALDER. Yes, three times a week.

Mr. HAMPTON. An inventory record must be maintained on a 48-hour basis.

Mr. SHORT. But is this in fact actually done?

Mr. HAMPTON. As long as they are licensed by BATF.

Mr. CALDER. They are diligently checking that enforcement. They are around very often. They check the records of the people on the consuming side, and also at the distribution points.

Senator THURMOND. Now, are there any other statements you gentlemen want to add? On these questions that are propounded, if you think of anything else you think would help the course here, why, feel free to make them.

Mr. CALDER. Yes, sir.

Senator THURMOND. Anything else?

Mr. SCHULTZ. No, sir.

Senator THURMOND. I want to thank you gentlemen very much for your presence here.

These terrorist activities are increasing over the country and over the world, and it seems to me that we have got to take some steps.

Mr. CALDER. Thank you for the opportunity, Senator.

Senator THURMOND. We've got to come up with some legislation. I think after we get the record all completed and the answers to these questions that will be submitted, the record will probably reveal that we need legislation; and if we do, that will be the responsibility of the subcommittee to prepare and bring to the floor and the full committee.

Thank you very much.

[Whereupon, at 11:10 a.m., the subcommittee adjourned, subject to the call of the Chair.]

SUPPLEMENTAL QUESTIONS AND ANSWERS

[Referred to on p. 151]

Question. Are all of the largest companies which manufacture explosives members of the Institute of Makers of Explosives?

Answer. Yes, except for Gulf Chemical and Independent Powder Co., Cleveland, Ohio, who are not members.

Question. Is the makeup of your membership substantially inclusive of the manufacturers of explosives so that you truly speak for the industry?

Answer. Yes.

Question. You note in your statement that you have encouraged the several states to adopt uniform regulations and have made a model law and regulations available. Would you amplify on this?

Answer. IME Publication No. 3, entitled "Suggested Code of Regulations for the Manufacture, Transportation, Storage, Sale, Possession and Use of Explosive Materials" has been circulated to the Governors and legislative leaders of all 50 states.

Question. What inconsistencies have you found and what recommendations have you made?

Answer. The principal inconsistencies in state regulations governing explosives derive from the failure of many states to update their regulations. Two notable examples of this are (1) the American Table of Distances for a table of safe distances between magazines and inhabited buildings, public highways, etc., which was revised by IME on November 5, 1971 but not by several states; and (2) the old classification of magazines by three types instead of the five types which IME has adhered to since the latter were prescribed by regulations of the Bureau of Alcohol, Tobacco and Firearms, 27 CFR 181.183. BATF's regulations provide for storage facilities for blasting agents which are safe but less restrictive than those for explosives. We have recommended that the revised American Table of Distances and the BATF classification of magazines be adopted by the states. In addition, some states do not require permits for intrastate purchase of explosives. We have recommended that the permit requirement of Title 18, Chapter 40, U.S. Code, for explosives purchases be adopted by all the states.

Question. You note that there are several cases of conflict among the explosive regulations of the Federal agencies and you suggest that these should be resolved by the Congress if they cannot be resolved among the Agencies. Would you identify these areas of conflict?

Answer. IME has recommended that Federal agencies have similar basic requirements for explosives, such as definitions, with diverse requirements in their respective particular areas of expertise so long as such diversity is practicable. The principal areas of conflict among the explosives regulations of Federal agencies concern the definition of the term "blasting agent" and the provisions for shipment of electric blasting caps with high explosives.

The Bureau of Alcohol, Tobacco and Firearms has adopted the Congressional definition of "blasting agent" (18 U.S.C. § 841(e)), while the Mining Enforcement and Safety Administration has adhered to a definition with reference to regulations of the Department of Transportation which exclude certain materials that are defined as a blasting agent under the BATF definition. This has caused great confusion among users of non-cap-sensitive blasting materials, who must label, use and store such materials under one set of requirements by BATF and another by MESA if the materials are used in mining operations.

The regulations of the Department of Transportation permit shipment of electric blasting caps in the same vehicle as explosives, while those of the Occupational Safety and Health Administration do not. This results in the practical problem of lawful compliance with DOT regulations during interstate shipments of electric blasting caps and high explosives but unlawful violation the moment such shipments arrive at explosives operations under OSHA's jurisdiction.

Question. Do any of these areas of conflict result in loopholes or lack of regulatory enforcement, as a result of which explosives may come into the hands of those who will use the explosives for illegal purposes?

Answer. Under the regulations of the Bureau of Alcohol, Tobacco and Firearms, 27 CFR 181.183(e), blasting agents are required to be stored in theft-resistant magazines. Regulations of the Mining Enforcement Safety Administration, 30 CFR § 55.6, 56.6 and 57.6 do not require storage of blasting agents in magazines of any type. It is clear that blasting agents used in surface or underground mining operations may come into possession of persons who will use them for illegal

purposes because of the absence of a requirement by MESA that they be stored in magazines which are theft-resistant. IME has proposed to MESA that it adopt BATF's storage regulations for blasting agents to close this loophole and achieve uniformity of Federal regulation in this area.

Question. You suggest that the contiguous state exemption embodied in section 842(a)(3) of Title 18 be repealed. Isn't the difficulty here the fact that the statute places the burden upon the licensee through the language "has reason to believe intends to transport", without providing the licensee the ability to check the status or the requirement that he do so?

Answer. The problem with the contiguous state exemption in 18 U.S.C. 842(a)(3) is that it exempts certain purchasers of explosive materials from the requirement of a license or permit. As we explained in our testimony, this fosters instances where inexperienced persons or persons intent upon the improper use of explosives can have ready access to these dangerous articles.

Question. With regard to your suggestion that purchasers of explosive materials which move in inter-state commerce be required to have a license or permit—how do you envision this would work, and which Agency would have jurisdiction over the enforcement of this aspect?

Answer. State authorities would administer the license or permit requirement for purchasers of explosive materials, with the Bureau of Alcohol, Tobacco and Firearms having jurisdiction to enforce the requirement. The Bureau would issue licenses or permits in states which do not have their own licensing procedures for purchasers.

Question. And do you envision the need for criminal sanctions to be imposed for a violation?

Answer. Yes.

Question. Does the Institute of Makers of Explosives maintain any statistics pertaining to the theft or miscellaneous disappearance of explosives?

Answer. Yes.

Question. Do you have any statistics relating to where these thefts or miscellaneous losses occur?

Answer. Yes. Enclosed are IME's records of theft reports for the years 1973-75. [Approximately 80 reports were furnished and retained by the subcommittee.]

Question. Is there a serious theft of explosives from interstate shipment?

Answer. See answer to the previous question.

Question. Are each of your members called upon by the Bureau of Alcohol, Tobacco and Firearms to provide them with information concerning the date shift code and first purchaser of explosives?

Answer. Yes.

Question. Does your organization provide guidance and counsel to your membership concerning how your members can best be in compliance with the existing regulations pertaining to the control of explosives?

Answer. Yes.

Question. Does your Association recommend any standards which are more stringent than those required by Federal statute or regulation?

Answer. Yes.

Question. Is the focus of IME primarily safety as it relates to the handling, storage and transportation of explosives?

Answer. The focus of IME is safety in the manufacture and use of explosive materials as well as in their handling, transportation and storage.

Question. Do you keep statistics relating to the civil penalties imposed or criminal sanctions imposed against any of your membership?

Answer. No.

Question. Do you record the violations which prompted such action?

Answer. No.

Question. Does your Association conduct an in-house investigation or inspection for your membership?

Answer. Upon request.

Question. Do you see a need for greater control on blasting supplies and accessories, such as blasting caps, safety fuses, detonating cords, blasting machines, and related tools?

Answer. Not separately, but as part of control of all explosive materials.

Question. Do you see the need for a background investigation for all individuals who handle, possess or use explosives?

Answer. Only for persons who are not recognized legitimate users of explosives.

Question. Do you see the need for better training of those individuals who actually handle explosives and prepare them for detonation?

Answer. In IME's view, this is purely a local matter.

Question. Is there a dissemination of information between your membership relating to better control of explosives?

Answer. Yes.

Question. Does your Association have an active program designed to keep explosives out of the hands of the criminal element?

Answer. Yes.

Question. Would you please provide a list of explosives and identify those most commonly used?

Answer. Enclosed is the explosive materials lists of the Bureau of Alcohol, Tobacco and Firearms. We have italicized in this list the most commonly used explosives.

[The list will be found on pp. 157-161 of the appendix.]

Question. What types of magazines are used for storage by manufacturers and what protection is afforded?

Answer. The types of magazines used for storage by explosive manufacturers and the protection afforded by such magazines are set forth in regulations of the Bureau of Alcohol, Tobacco and Firearms, 27 CFR §§ 181.181-181.200.

Question. Have you developed anti-theft concepts which would alert magazine keepers as well as law enforcement authorities to unauthorized or unlawful entry attempts?

Answer. Yes.

Question. You advocate licensing for all users of explosives. Do you envision that this license would also serve to identify a standard of proficiency having been attained by the holder?

Answer. Not necessarily. For proficiency in handling and using explosive materials, IME recommends that the principles in its Publication No. 3, referenced above, be followed.

Question. In your prepared statement, you said that IME had proposed that Chapter 40 of Title 18 be amended to provide a uniform permit numbers system through the 50 states. You said that this would afford the distributors of explosives "an efficient method of recording explosive purchases and identifying purchasers, and will further afford BATF an efficient method of record-keeping for investigations." Could you spell out in a little more detail, just what you mean by this proposal?

Answer. IME proposes the establishment and use of a permit system in which permit numbers without duplication are assigned to purchasers of explosive materials. In our view, this would promote record-keeping and traceability of explosives purchases.

Question. Do you think that a permit to use explosives is a sufficiently important document to warrant making it as secure as possible? Do you think for example, that it would be helpful if permits were plasticized with attached photographs of the permittee? And do you think it would be helpful if applicants were warned at the point of application that false statements would make them liable for a charge of false statements?

Answer. IME believes that a use permit is a sufficiently important document to warrant making it secure by a method such as plasticization. However, a photograph is only useful where there is an individual user, it is impossible and impracticable to photograph a multi-user organization such as a contracting company. A warning that an applicant will be liable for false statements in a permit application should be part of the written application, as is the case with many state driver's license applications.

APPENDIX

LIST OF EXPLOSIVE MATERIALS

[Referred to on p. 156]

The following is the 1976 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40. Included are both explosives (including detonators) required by law to be published in the Federal Register, and blasting agents. It is intended that the list include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk*. Although an explosive material may not be on the list, this does not mean that the material is not within the coverage of the law if it otherwise meets the statutory definition in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets.

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex-20 [40% TNT, 20% RDX, 40% Ammonium nitrate].
Amatex-30 [40% TNT, 30% RDX, 30% ammonium nitrate].
Amatex-40 [40% TNT, 40% RDX, 20% ammonium nitrate].
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
**Ammonium nitrate explosive mixtures (not cap sensitive).*
Aromatic nitro-explosive mixture.
Ammonium perchlorate having particle size less than 45 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia].
Ammonium salt lattice with isomorphously substituted inorganic salts.
**ANFO [ammonium nitrate-fuel oil].*

B

Baratol [67% barium nitrate, 33% TNT].
Baronal [50% barium nitrate, 35% TNT, 15% aluminum].
BEAF [1, 2-bis(2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
**Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.*
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis(trinitroethyl)carbonate].
BTNEN [bis(trinitroethyl)nitramine].
BTTN [1, 3, 4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Carboxy-terminated propellant.
Cellulose hexanitrate explosive mixture.
Chlorates and red phosphorus mixture.
Chlorates and sulphur mixture.
Composition A-3 [91% RDX, 9% Wax].
Composition B [40% TNT, 60% RDX].
Composition C-4 [91% RDX, 9% plasticizer].
Copper acetylide.
Crystalline picrate with lead azide explosive mixture.
Cyanuric triazide.

Cyclotrimethylenetrinitramine [RDX].
 Cyclotetramethylenetetranitramine.
 Cyclotol [75% RDX, 25% TNT].

D

DATB [diaminotrinitrotetramethylene tetranitramine].
 DATNB [diaminotrinitrobenzene].
 DDNP [diazodinitrophenol].
 DEGDN [diethyleneglycol dinitrate].
 *Delay powders.
Detonating cord.
Detonators.
 Dimethylol dimethyl methane dinitrate composition.
 Dinitroethyleneurea.
 Dinitroglycerine.
 Dinitrophenol.
 Dinitrophenolates.
 Dinitrophenyl hydrazine.
 Dinitroresorcinol.
 Dinitrotoluene-sodium nitrate explosive mixtures
 Dipicryl sulfone.
 Dipicrylamine.
 DNDP [dinitropentano nitrile].
 DNPA [2, 2-dinitropropyl acrylate].
Dynamite.

E

EDNP [ethyl 4,4-dinitropentanoate].
 Erythritol tetranitrate explosives.
 Esters of nitro-substituted alcohols.
 EGDN [ethylene glycol dinitrate].
 Ethyl-tetryl.
 Explosives conitrates.
Explosives gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
 Explosive mixtures containing sensitized nitromethane.
 Explosive nitro compounds of aromatic hydrocarbons.
 Explosive organic nitrate mixtures.
 Explosive liquids.
 Explosive powders.

F

Fulminate of mercury.
 Fulminate of silver.
 Fulminating gold.
 Fulminating mercury.
 Fulminating platinum.
 Fulminating silver.

G

Gelatinized nitrocellulose.
 gem-dinitro aliphatic explosive mixtures.
 Guanyl nitrosamino guanyl tetrazene.
 Guanyl nitrosamino guanylidene hydrazine.
 Guncotton.

H

Heavy metal azides.
 Hexanite.
 Hexanitrodiphenylamine.
 Hexanitrostilbene.
 Hexogen [RDX].
 Hexogene or octogene and a nitrated N-methylaniline.
 Hexolites.

HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
 Hydrazinium nitrate.
 Hydrazinium nitrate/hydrazine aluminum explosive system.
 Hydrazoic acid.

I

Igniter cord.
Igniters.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
 Lead mannite.
 Lead mononitroresorcinate.
 Lead picrate.
 Lead salts, explosive.
 Lead styphnate [styphnate of lead, lead trinitroresorcinate].
 Liquid nitrated polyol and trimethylolethane.
 Liquid oxygen explosives.

M

Magnesium ophorite explosives.
 Mannitol hexanitrate.
 MDNP [methyl 4,4-dinitropentanoate].
 Mercuric fulminate.
 Mercury oxalate.
 Mercury tartrate.
 Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
 Mononitrotoluene-nitroglycerin mixture.
 Monopropellants.

N

NIBTN [nitroisobuta metriol trinitrate].
 Nitrate sensitized with gelled nitroparaffin.
 Nitrated carbohydrate explosive.
 Nitrated glucoside explosive.
 Nitrated polyhydric alcohol explosives.
 Nitrates of soda explosive mixtures.
 Nitric acid and a nitro aromatic compound explosive.
 Nitric acid and carboxylic fuel explosive.
 Nitric acid explosive mixtures.
 Nitro aromatic explosive mixtures.
 Nitro compounds of furane explosive mixtures.
 Nitrocellulose explosive.
 Nitroderivative of urea explosive mixture.
 Nitrogelatin explosive.
 Nitrogen trichloride.
 Nitrogen tri-iodide.
 Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
 Nitroglycide.
 Nitroglycol [ethylene glycol dinitrate, EGDN].
 Nitroguanidine explosives.
 Nitroparaffins and ammonium nitrate mixtures.
 Nitronium perchlorate propellant mixtures.
 Nitrostarch.
 Nitro-substituted carboxylic acids.
 Nitrourea.

O

Octogen [HMX].
 Octol [75 percent HMX, 25 percent TNT].
 Organic amine nitrates.
 Organic nitramines.
 Organic peroxides.

P

Pellet powder.
 Penthrinite composition.
 Pentolite.

Perchlorate explosive mixtures.
 Peroxide based explosive mixtures.
 PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
 Picramic acid and its salts.
 Picramide.
 Picrate of potassium explosive mixtures.
 Picratol.
 Picric acid.
 Picryl chloride.
 Picryl fluoride.
 PLX [95% nitromethane, 5% ethylenediamine].
 Polynitro aliphatic compounds.
 Polyolpolynitrate-nitrocellulose explosive gels.
 Pottassium chlorate and lead sulfocyanate explosive.
 Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6-trinitramine; hexahydro-1,3,5-trinitro-5-triazine].

S

Safety fuse.
 Salts of organic amino sulfonic acid explosive mixture.
 Silver acetylide.
 Silver azide.
 Silver fulminate.
 Silver oxalate explosive mixtures.
 Silver styphnate.
 Silver tartrate explosive mixtures.
 Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer.
 Smokeless powder.
 Sodatol.
 Sodium amatol.
 Sodium dinitro-ortho-cresolate.
 Sodium nitrate-potassium nitrate explosive mixture.
 Sodium picramate.
 Squibs.
 Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene].
 TATNB [triaminotrinitrobenzene].
 TEGDN [triethylene glycol dinitrate].
 Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
 Tetranitrocarbazole.
 Tetranitromethane explosive mixtures.
 Tetryl [2,4,6 tetranitro-N-methylaniline].
 Tetrytol.
 Thickened inorganic oxidizer salt slurried explosive mixture.
 TMETN [trimethylolethane trinitrate].
 TNEF [trinitroethyl formal].
 TNEOC [trinitroethylorthocarbonate].
 TNEOF [trinitroethyl orthoformate].
 TNT [trinitrotoluene, trotyl, trilitite, triton].
 Torpex.
 Tridite.
 Trimethylol ethyl methane trinitrate composition.
 Trimethylolthane trinitrate-nitrocellulose.
 Trimonite.
 Trinitroanisole.
 Trinitrobenzene.
 Trinitrobenzoicacid.
 Trinitroresol.
 Trinitro-meta-cresol.

Trinitronaphthalene.
Trinitrophenetol.
Trinitrophenylglucitol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates.

X

Xanthomonas hydrophilic colloid explosive mixture.

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