



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Office of the Director*

Washington, DC 20226

**18 U.S.C. 842(j): STORAGE OF EXPLOSIVES**  
**18 U.S.C. 845(a): EXCEPTIONS; RELIEF FROM DISABILITIES**  
**27 CFR 555.22: ALTERNATE METHODS OR PROCEDURES**  
**27 CFR 555.141: EXEMPTIONS**  
**27 CFR 555.205: MOVEMENT OF EXPLOSIVE MATERIALS**  
**27 CFR 555.207 – 555.210: CONSTRUCTION OF MAGAZINES**

*The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorizes State and local tactical response teams and officers to store a limited number of explosive actuated tactical devices within official response vehicles provided all of the conditions of this ruling are met.*

**ATF Rul. 2012-4**

ATF has received requests from State and local law enforcement agencies and a law enforcement association to store noise/flash diversionary devices (NFDDs) and other explosive actuated tactical devices (EATDs) containing a small amount of flash powder or other pyrotechnic material and/or a low explosive fuse or a fuse assembly (also called a “fuze”) in department-issued response vehicles. These requestors assert that authorization to store explosive materials in official response vehicles would increase public safety and ensure that their responses to critical incidents are conducted more efficiently.

NFDDs and other EATDs are used by law enforcement officers in hostage situations, for executing search warrants, and in controlling crowds that threaten public safety. They are used by law enforcement officers to temporarily disable armed or otherwise dangerous persons. State and local law enforcement agencies have informed ATF that ready access to such devices is essential to the success of tactical response operations. They assert that if officers cannot maintain these devices in their response vehicles, they must travel to a central storage location to retrieve them. This could delay their response to emergency situations requiring the use of these devices. Such delays could prove detrimental to the safety of the public in circumstances of civil unrest and to persons involved in hostage situations.

ATF classifies NFDDs, also known as flash bangs, as high explosives due to their flash powder content. Other EATDs, such as powder blast grenades (commonly known as “stingers”) contain flash powder, disperse rubber pellets, and are also classified as high explosives. Possessors of these devices generally must store them within type 1, type 2, or type 3 explosives storage magazines. In contrast, ATF generally classifies non-flash

**LAW ENFORCEMENT SENSITIVE**

## LAW ENFORCEMENT SENSITIVE

- 2 -

powder EATDs containing only a low explosive fuse and/or other low explosive pyrotechnic materials as low explosives that may be stored in a type 4 magazine. These devices typically expel smoke or an irritant such as CS gas and are commonly known as pyrotechnic smoke and gas grenades, aerosol blast grenades, and blast grenade irritants.

Under Title 18, United States Code (U.S.C.), section 842(j), all persons must store explosive materials in compliance with the regulations issued by the Attorney General. The Attorney General has delegated the authority to administer and enforce the Federal explosives laws to the Director, ATF. See 28 CFR 0.130. The regulations contained within Title 27, Code of Federal Regulations (CFR), Part 555 implement the provisions of the Federal explosives laws. Section 555.205 provides that all explosive materials must be kept in locked magazines meeting the standards in Part 555, Subpart K, unless they are in the process of manufacture; being physically handled in the operating process of a licensee or user; being used; or being transported to a place of storage or use by a licensee or permittee or by a person who has lawfully acquired explosive materials under section 555.106. The construction requirements for type 1, type 2, and type 3 magazines used for the storage of high explosives are found at 27 CFR 555.207, 555.208, and 555.209, respectively. The requirements for type 4 magazines used for the storage of low explosives are at 27 CFR 555.210. While State and local government agencies are exempt from the requirement to obtain an explosives license or permit for the transportation, shipment, receipt, or importation of explosive materials, they are not exempt from the requirement to store explosives in conformity with ATF regulations. See 18 U.S.C. 845(a)(3); 27 CFR 555.141(a)(3).

The regulations at 27 CFR 555.22 allow the Director, ATF, to approve the use of an alternate method or procedure in lieu of a method or procedure specifically prescribed in Part 555. ATF may approve an alternate method or procedure when: (1) good cause is shown for the use of the alternate method or procedure; (2) the alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and (3) the alternate method or procedure will not be contrary to any provision of law, or result in an increase in cost to the Government or hinder the effective administration of Part 555.

ATF finds that, provided certain conditions are met, there is good cause for authorizing storage of NFDDs and other EATDs in official response vehicles. For purposes of this ruling, the term "official response vehicle" is limited to State and local law enforcement department-issued vehicles designated for use by tactical response teams and officers. Allowing State and local tactical response personnel the flexibility to store these devices overnight in official response vehicles, whether or not attended, would increase public safety by facilitating quick and efficient incident responses for law enforcement operations. This decreases the risk to hostages, officers entering a building, and others in the area. ATF also finds that certain commercially manufactured magazines specifically designed for weapons/munitions storage by law enforcement personnel within duty vehicles substantially meet the level of security prescribed in the regulations for type 3 and type 4 magazines. The additional security protocols provided in this ruling, such as enhanced

LAW ENFORCEMENT SENSITIVE

## LAW ENFORCEMENT SENSITIVE

- 3 -

storage security features, limited overall explosive materials weight, magazine inspections, and increased inventory requirements are consistent with the effect intended by, and are substantially equivalent to, the specifically prescribed methods and procedures prescribed in Part 555, Subpart K. Finally, this alternate method is not contrary to any provision of law, will not increase costs to ATF, and will not hinder the effective administration of the regulations.

*Held*, State and local law enforcement agencies may store explosive actuated tactical devices (EATDs), including noise/flash diversionary devices (NFDDs), in official response vehicles, whether attended or unattended, *provided* the following conditions are met at all times:

1. The devices must be stored in one of the following:
  - a. a type 3 magazine;
  - b. a type 4 magazine; or
  - c. a locked, theft-resistant, commercially manufactured magazine specifically designed for weapons/munitions storage by law enforcement personnel in duty vehicles. These magazines must be constructed of 5/8-inch (nominal) or thicker APA (American Plywood Association) certified, engineered, laminated plywood to include medium density overlay (MDO) or high density overlay (HDO), or other materials that provide equivalent strength and theft-resistance. The magazines must be solidly joined and fastened at the edges with metal hardware and reinforced near the doors/drawers in such a fashion as to defeat attempts to pry or break the unit open (for example, with interlocking steel reinforcing bars). Further, the magazines must be stored in a weather-resistant, fire-resistant, and theft-resistant trunk or cargo area in the vehicle;
2. The magazine storing the EATDs must be secured with one of the following:
  - a. at least one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter; or
  - b. a five tumbler barrel lock or a push button (cypher) lock (which may have a five-tumbler key option) requiring at least a three-digit combination code. Barrel locks and push-button locks must be all-steel outer construction, and bolts/latches must be made of steel. The bolt or latch must engage a steel strike plate that is securely fastened to the magazine body;
3. Agencies must securely affix the magazines to the vehicle by means of bolts, rivets, welding, chains, or cables. Nuts and bolt heads must be located on the inside of the magazine or compartment where they cannot be removed from the outside, and must be covered with a non-sparking material, such as epoxy paint or plywood. If chains or cables are used, they must be resistant to bolt cutters and short enough to prevent the magazine from moving substantially within the vehicle;

LAW ENFORCEMENT SENSITIVE

## LAW ENFORCEMENT SENSITIVE

- 4 -

4. Agencies must not store any metal tools, metal implements, or other metal devices in the same magazine as the EATDs;
5. Agencies storing EATDs within official response vehicles must maintain a daily summary of magazine transactions (inventory storage record). The record must contain the name of the explosive material's manufacturer, the quantity on hand, and the dates that the materials are received, removed, and used. Officers must maintain a copy of this record within the vehicle and at an off-site location, such as with their supervisor;
6. Agencies must conduct an annual inventory of the EATDs stored in their official response vehicle and compare it to the inventory storage record. Agencies must note this inventory in their inventory storage record;
7. Agencies must inspect the magazine once every 7 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been any unauthorized entry or attempted entry into the magazine or unauthorized removal of the contents of the magazine;
8. Agencies must report the theft or loss of any explosive materials to ATF within 24 hours of discovery by calling 1-800-800-3855 and completing an ATF Form 5400.5, Report of Theft or Loss - Explosive Materials. Agencies may obtain this form from the ATF Distribution Center, or through the ATF website at <http://www.atf.gov>; and
9. Agencies must report expended NFDDs monthly, quarterly, annually, or upon the liquidation of an order to ATF's National Firearms Act (NFA) Branch on official letterhead. The notification must contain the name of the distraction device's manufacturer, the model number, and the serial number. The agency may fax or mail the notification to the NFA Branch.

*Provided further*, if the EATDs are stored in official response vehicles parked inside a secured building, the following additional conditions must be met at all times:

1. The building must be a secured department owned or leased facility not accessible by unauthorized personnel. A secured building has law enforcement or other government personnel present at all times, or the building has an additional security feature such as an alarm, camera, or card entry system;
2. Official response vehicles and buildings must be locked and secured at all times when not in use;
3. The combined net explosives weight stored in response vehicles and other magazines located in the same secured building must not exceed 50 pounds; and
4. The EATDs must not be stored in the same magazine as detonators (i.e., blasting caps).

LAW ENFORCEMENT SENSITIVE

## LAW ENFORCEMENT SENSITIVE

- 5 -

*Provided further*, if the EATDs are stored in official response vehicles parked at any outdoor location, the following additional conditions must be met at all times:

1. When unattended, official response vehicles must be locked and secured with at least one additional security feature such as a vehicle alarm, vehicle tracking device, vehicle immobilization mechanism, steering wheel lock, or other equivalent alternative; and
2. Official response vehicles located at an outdoor location are subject to the following explosives weight limitations:
  - a. Sedans and SUVs may not hold more than:
    - i. Two devices containing flash powder (e.g., NFDDs, stingers); and
    - ii. 2.5 pounds total net explosive weight.
  - b. Multi-personnel response vehicles (e.g., large personnel, cargo, or utility vehicles) may not hold more than:
    - i. Ten devices containing flash powder; and
    - ii. 2.5 pounds total net explosive weight.

Date Approved: July 29, 2012

  
Acting Director

LAW ENFORCEMENT SENSITIVE