

MEMORANDUM of UNDERSTANDING
between
DEPARTMENT OF JUSTICE
Bureau of Alcohol, Tobacco, Firearms and Explosives
and the
DEPARTMENT OF LABOR
Mine Safety and Health Administration

I. INTRODUCTION

The Mine Safety and Health Administration (MSHA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have signed a revised Memorandum of Understanding (MOU) to update their coordinated efforts in the enforcement of Federal explosives laws at mines under each agency's respective jurisdiction. The MOU sets forth the policy and procedures for cooperation and coordination between the two agencies to ensure effective compliance with Federal explosives laws.

II. PURPOSE

A. On April 9, 1980, the MSHA, Department of Labor, and the ATF, Department of the Treasury, entered into a MOU. This MOU replaced a June 1, 1971, MOU entered into by MSHA's predecessor, the Mining Enforcement and Safety Administration, Department of the Interior, and ATF, formerly the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service. The MOU provided for MSHA inspections of explosives storage facilities at mines under MSHA jurisdiction involving holders of licenses and permits under 18 U.S.C. Chapter 40, and implementing regulations issued in 27 CFR part 181 (which became part 55), and for MSHA to conduct compliance inspections in regard to ATF storage and recordkeeping requirements. Enforcement of MSHA and ATF explosives requirements ensures that miners and the general public are protected from explosives incidents and that the explosives are traceable and secured from unauthorized persons.

B. The Homeland Security Act of 2002, Pub. L. 107-296, transferred most of ATF from the Department of the Treasury to the Department of Justice (DOJ). As a result of this transfer, the regulations at 27 CFR part 55 were recodified at 27 CFR part 555. The purpose of the revised MOU is to acknowledge the transfer of ATF to DOJ, to update the existing policies and procedures, and to coordinate the regulation of explosives under the agencies' overlapping jurisdictions.

C. It is in the best interests of the Government and the public that inspections of mines to determine compliance with explosives laws be conducted in the most efficient and effective manner possible, with minimum duplication of effort and activities while maintaining high levels of worker and public safety.

III. GENERAL AUTHORITIES

A. Under Title XI (Regulation of Explosives) of the Organized Crime Control Act of 1970, Pub. L. 91-452, as amended, 18 U.S.C. Chapter 40, protecting explosives commerce by reducing hazards to the public and property from unsafe and insecure storage of explosives, ATF is responsible for:

- (1) Issuing Federal explosives licenses to persons engaged in the business of importing, manufacturing, and dealing in explosive materials;
- (2) Issuing Federal explosives permits to persons who transport, ship, cause to be transported, or receive explosive materials;
- (3) Conducting background checks of responsible persons and employee possessors of Federal explosives licensees and permittees;
- (4) Establishing standards for the storage of explosive materials; and
- (5) Inspecting storage facilities and required records of Federal explosives licensees and permittees.

B. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), Pub. L. 95-164, as amended, 30 U.S.C. § 801 et seq., MSHA is responsible for promulgating and enforcing safety and health standards for explosive materials storage, use, and transportation at mines to protect the health and safety of the miner.

C. MSHA and ATF have overlapping jurisdiction to inspect explosives storage facilities and magazines in mines. Each agency determines whether violations of its laws, standards or regulations have occurred and, if so, what corrections are required for compliance.

IV. STANDARDS

A. During its inspections of mines, MSHA determines a mine's compliance with the Mine Act and applicable MSHA standards and regulations.

B. MSHA standards at part 57, subpart E, and part 75, subpart N govern the transportation, storage, and use of explosive materials taken underground for mining and related activities. ATF requirements in 27 CFR part 555, subpart K, Storage, govern the storage of explosive materials and construction of storage facilities. In the event that ATF has concerns with the underground storage of explosives at a mine, the agencies will determine an appropriate course of action to resolve those concerns. These concerns should be initiated at the division or district level. Among the possible courses of action are reviews of the security concerns at issue or an evaluation for alternate procedures by ATF. In the event that ATF and MSHA underground storage standards differ and the agencies decide that MSHA's requirement sufficiently

addresses safety and security concerns, the mine operator should submit a request to ATF for alternate methods or procedures pursuant to 27 CFR 555.22. ATF may approve the use of an alternate method or procedure in lieu of a method or procedure specifically prescribed in Part 555 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 is consistent with the effect intended by, the specifically prescribed method or procedure, and the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and (3) The alternate method or procedure is not contrary to correct any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of Part 555.

V. INTERAGENCY COORDINATION

A. ATF Chief, Explosives Industry Programs Branch (ATF Coordinator) and the MSHA Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, and MSHA Chief, Division of Safety, Coal Mine Safety and Health (MSHA Coordinators) shall serve as liaison points to facilitate communication and cooperation between the two agencies. These individuals will communicate at determined intervals and at the request of either agency.

B. Through their respective Coordinators, each agency will:

- (1) Consult in any development of explosives storage standards for the purpose of promoting regulatory consistency where possible. Each agency will provide notice to the other of all rulemaking activities concerning explosives.
- (2) Assist the other as necessary, consistent with their respective authorities, with regard to other situations involving explosive materials. Each agency may request assistance from the other on an as-needed basis.
- (3) Provide training at the other agency's request. MSHA will provide training on MSHA jurisdiction, inspection authority, and an overview of mining operations and its explosives standards and regulations. ATF will provide training on ATF jurisdiction, inspection authority, and an overview of its explosives regulations to include explosives classification and storage requirements. ATF and MSHA field offices are encouraged to participate in local, joint training efforts organized by the respective agency Coordinators.

C. Upon an MSHA Coordinator's request, the ATF Coordinator will furnish to the MSHA Coordinators a list of ATF division offices, also available on the ATF public website, www.ATF.gov. When possible, the ATF Coordinator will furnish to the MSHA Coordinators, via e-mail, copies of rulings and variances issued to mines under MSHA jurisdiction. The MSHA Coordinators will provide the ATF Coordinator an annual updated list of District Office locations and telephone numbers.

D. The MSHA Coordinators will furnish the ATF Coordinator a copy of accident investigation reports (including reports furnished by mine operators) relating to accidental detonations of explosives. ATF will furnish to MSHA a copy of ATF accident investigation reports relating to accidental detonations at mining operations.

VI. WORKING AGREEMENTS

The ATF Coordinator, coordinating with the appropriate MSHA Coordinator, may prepare written working or implementing guidelines and procedures for ATF Industry Operations Investigators and MSHA inspectors, relating to inspections of Federal explosives licensees and permittees who are also subject to MSHA's jurisdiction.

VII. MSHA INSPECTIONS

Consistent with its authority under the Mine Act, MSHA will inspect or investigate underground explosives storage at mines. MSHA will inform the mine operator of violations observed of ATF regulations at 27 CFR part 555, subpart K, Storage. MSHA will document these violations on ATF Form 5030.5, Report of Violations, and, within 10 days of inspection completion, send the form to ATF by e-mail to MSHA@ATF.GOV and a copy of the form to the mine operator. Once received, the Explosives Industry Programs Branch will evaluate and forward the ATF Form 5030.5 to the appropriate ATF field office for further review. In the event that further action is necessary regarding the ATF violation, ATF will take such action with the assistance of MSHA, when requested or needed, consistent with their respective authorities.

VIII. ATF INSPECTIONS

ATF will conduct inspections of applicants for Federal explosives licenses and permits and of current Federal explosives licensees and permittees as authorized and required by 18 U.S.C. Chapter 40. ATF will use a referral of information to document any adverse results of inspections of sites subject to MSHA's jurisdiction and promptly transmit it through normal field office review procedures to the ATF Coordinator at MSHA@ATF.GOV. The ATF Coordinator will timely disseminate this information to the MSHA Coordinators or their assigned designees.

IX. ACCIDENT NOTIFICATION

The applicable MSHA District Office or ATF field office will promptly notify the other applicable MSHA or ATF office of any accident or incident relevant to a site in their respective jurisdictions involving theft, possible sabotage, terrorist activity, or suspicious or criminal activities involving explosive materials.

X. ADMINISTRATIVE

A. This agreement creates no private right of action against the Federal government. This agreement creates no rights in any third parties.

B. This agreement is subject to the availability of funds. This agreement will not be construed as obligating funds. Any work that requires the expending or obligating of funds will be accomplished through a separate agreement. Nothing in this agreement obligates MSHA or ATF to expend appropriations or enter into any contract or other obligations.

C. Nothing in this agreement shall be interpreted as limiting, superseding, or otherwise affecting MSHA's or ATF's normal operations or decisions in carrying out their statutory or regulatory duties. This agreement does not limit or restrict the agencies from participating in similar activities or arrangements with other entities. This agreement also does not limit or restrict the agencies from taking any other action necessary.

XI. PERIOD OF PERFORMANCE

This MOU will be fully executed upon the signature of both agencies and will supersede the MOU of April 9, 1980. This MOU shall continue in effect unless modified in writing by mutual consent of both parties. Any modification or amendments to this agreement must be signed by both parties. A party may terminate its participation under this agreement upon at least 30 days written notice to the other party.

XII. INFORMATION COORDINATION

Disclosure of information regarding activities conducted under this MOU will be subject to the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). Prior to disclosure of requested information involving the other party, the agencies will consult regarding any such proposed disclosure.

XIII. CRIMINAL INVESTIGATIONS

This MOU is not intended to, and does not affect or govern any federal criminal investigation. In the event that the potential exists for a criminal case related to an inspection, MSHA and ATF will coordinate with each other on a case-by-case basis.

XIV. POINTS OF CONTACT

Bureau of Alcohol, Tobacco, Firearms and Explosives; Chief, Explosives Industry Programs Branch, (202) 648-7120. Mine Safety and Health Administration; Chief, Metal and Nonmetal Safety Division, (202) 693-9600; or Chief, Coal Safety Division, (202) 693-9500.

XV. SIGNATURES

June 30, 2016
Date

Joseph A. Ma
Assistant Secretary
Mine Safety and Health Administration
Department of Labor

JUNE 27, 2016
Date

Thomas E. Brandor
Deputy Director
Bureau of Alcohol, Tobacco,
Firearms and Explosives,
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