

090470

090470

RESTRICTED --- Not to be released outside the General Accounting Office except on the basis of a written order from the Director of the Office of Legislative Liaison, a member of the Staff of the Budget Director, or the Director of the Budget Office.



RELEASED

74-0527

Explosives: Licensing And Enforcement Efforts In Chicago Region Of The Bureau Of Alcohol, Tobacco And Firearms

B-179095

Department of the Treasury

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

904664
 [090470]

APRIL 5, 1974



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179095

The Honorable John B. Anderson
House of Representatives

Dear Mr. Anderson:

We have completed a review of certain activities of the Chicago regional office of the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, pursuant to your letter of July 2, 1973, and subsequent discussions with your office. Your request--prompted by an explosion at the Worldwide Fireworks Corporation, McHenry, Illinois, on June 9--dealt with ATF's licensing and enforcement activities under title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841). Worldwide was an importer of fireworks and was not engaged in manufacturing.

We performed work at ATF headquarters office in Washington, D.C., and at ATF's Chicago office. Our review included discussions with ATF officials and an examination of the processing of applications filed with the Chicago office by 48 applicants. We also examined pertinent laws, regulations, and policies relating to ATF's licensing and enforcement of requirements for explosive materials.

A summary of our review follows and is described in greater detail in appendix I.

"GRANDFATHER" PROVISIONS OF THE STATUTE

The statute provides that manufacturers, importers, or dealers in explosives must have a Federal license to operate but that existing firms may operate while their applications are being processed if they (1) were in business before October 15, 1970, and (2) filed their application before February 12, 1971. This interim provision is referred to as the "grandfather" clause.

ATF permitted Worldwide to operate under the provisions of the grandfather clause even though it did not begin business until April 1971 and did not file an application for a license until November 1971. We noted that, of the 26 applicants we reviewed who operated under the provisions of the grandfather clause, 7 had not filed their applications before the due date. This handling of the applications seemed to come about because of ATF's late distribution of the application forms (three cases) and ATF's late decision that the new law applied to firms dealing in "special" fireworks (four cases).

WORLDWIDE'S APPLICATION

Worldwide submitted an application for a license in November 1971. An inspection in December showed safety violators at Worldwide's facilities. The application was not denied; rather, ATF gave the applicant 90 days to correct the violations and issued 30-day letters authorizing Worldwide to continue operating through March 1972. A reinspection in April 1972 showed that most of the previously noted safety violations continued to exist. The application for a license was then denied but, because of the appeal process available to denied applicants, ATF did not end Worldwide's operations.

A hearing was scheduled for September, was rescheduled for December, but was not held because Worldwide reapplied on December 1, 1972. Worldwide reapplied because it believed all of the safety violations had been corrected. Again, Worldwide was allowed to continue operations through the issuance of 30-day letters. In February 1973 an inspection was made and safety violations were again noted. The application was not denied. In April 1973 reinspections were made and violations were again noted. On June 9, 1973, a major explosion occurred at Worldwide. Seven persons were injured. On June 27, ATF denied Worldwide's second application for a license.

NEED TO ADHERE TO STATUTORY TIME
LIMITS IN PROCESSING APPLICATIONS

Under the statute, ATF is required to approve or deny an application within 45 days. The manner in which ATF has been interpreting the 45-day requirement has permitted applicants who are not in compliance with the regulations to continue operating pending corrective action and reinspection. The statute requires affirmative action on the part of ATF within the 45-day limit specified in the statute and, therefore, ATF should either deny or approve a fireworks application within that time. We are recommending that ATF's current procedures be revised to conform to the statutory requirements.

RECENT IMPROVEMENTS NOTED IN ENFORCEMENT
EFFORTS AT REGIONAL LEVEL

Once a license has been granted, ATF has no provisions for periodic inspections to insure continuing compliance during the license period, nor is a reinspection required on an application for renewal. In August 1973, the Chicago regional office adopted procedures to require annual inspections of licensees for explosives and semiannual inspections of licensees for fireworks. No such procedures exist on a national level. The recently adopted regional compliance inspection procedures should help to prevent future catastrophes if they are coupled with a willingness to take decisive action when potential dangers are found. Compliance inspections should also be made before granting fireworks license renewals. We are recommending that ATF evaluate the merits of Chicago's procedures with a view toward instituting such procedures on a national basis.

RECENT ACQUISITION OF STORAGE FACILITIES

In the Chicago regional office we noted a problem relating to storage of explosives which had been seized. That problem was solved for the Chicago district office through an agreement with the Joliet Army Ammunition Plant. Although

this agreement will eliminate the storage problem encountered locally, other ATF district offices outside the Chicago regional office territory may be encountering similar problems. We are recommending that ATF canvass its offices to determine whether adequate storage facilities are available to all districts and, if not, to take steps to eliminate this problem.

NEED FOR COORDINATING FEDERAL
AND STATE LICENSING AND ENFORCEMENT EFFORTS

ATF headquarters has not issued any instructions to its regional offices calling for coordination with State agencies. Since the State and Federal Governments are interested in protecting the public from the hazards of explosive materials, coordinated efforts in the area of licensing and enforcement would benefit everyone. Coordination could minimize duplication when it is found to exist through cooperative Federal and State agreements and could focus both Federal and State resources on problem areas or recalcitrant operators. Therefore we are recommending that ATF require its regional offices to develop and implement Federal and State coordination plans designed to minimize duplication and strengthen overall licensing and enforcement activities.

AGENCY COMMENTS

In commenting on our report (see app. II), ATF advised us that time constraints to implement the new law, coupled with manpower shortages, were the primary factors leading to the problems we noted. With regard to our specific recommendations, ATF has agreed to take corrective action, to seek legislative remedies where it is felt advisable to do so, or to consider making suggested changes after further study. ATF's response to each of our recommendations is commented upon further in appendix I.

- - - -

Section 236 of the Legislative Reorganization Act of 1970 requires agencies to submit, to the House and Senate Committees on Appropriations and Government Operations, written statements of the actions taken on any recommendations we make to the heads of agencies. As agreed to by your office, we are sending copies of this report to the Chairmen of each of these four Committees and to the Director, Office of Management and Budget. A copy of the response to the recommendations in this report will be sent to you.

We are also sending copies of the report to the Secretary of the Treasury and to the Director, ATF.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

EXPLOSIVES: LICENSING AND ENFORCEMENT
EFFORTS IN CHICAGO REGION OF THE
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

BACKGROUND

Title XI of the Organized Crime Control Act became law on October 15, 1970. The law placed Federal controls over the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes. The new law established licensing and enforcement responsibilities within the Department of the Treasury to take effect 120 days after enactment.

The licensing and enforcement functions were assigned to the Bureau of Alcohol, Tobacco and Firearms' (ATF) Criminal Enforcement Division. In June 1973 the Director, ATF, reassigned the licensing functions to the Regulatory Enforcement Division. The Chicago region reassigned these functions to its Regulatory Enforcement Division 2 months later.

In addition to the granting or denying of an initial license, the act permits ATF to (1) deny a renewal application or revoke an existing license, (2) seize any explosive material involved in violation of the statute, and (3) bring charges against violators of the statute, subjecting them to possible fines and imprisonment. ATF officials advised us that they could close down the operations of a company in the case of a completely hazardous situation involving a violation within the purview of ATF.

The following number of applications for explosive licenses were processed by ATF's Chicago regional office from February 1971 through June 30, 1973.

<u>Applications</u>	<u>Number of applications for licenses</u>	
	<u>Initial</u>	<u>Renewals (note a)</u>
Received	422	356
Issued	246	355
Denied or withdrawn	154	1
On hand	22	-

^aIncludes fiscal years 1972 and 1973 renewal applications.

APPENDIX I

"GRANDFATHER" PROVISIONS

The statute provides that manufacturers, importers, or dealers in explosives must have a Federal license to operate but that existing firms may operate while their applications are being processed if they (1) were in business before October 15, 1970, and (2) had filed their applications before February 12, 1971. This interim provision is referred to as the "grandfather" clause.

Of the 48 applicants whose files we reviewed, 26 were allowed to operate under the provisions of the grandfather clause. However, we found that 7 of the 26 applicants had not filed their applications before February 12, 1971. In fact, one of the seven--Worldwide--was not incorporated until March 1971 and, according to Worldwide's application, did not begin business until April 1971. In a meeting on February 11, 1974, ATF officials advised us that Worldwide's incorporation appeared to have been a "reorganization" of an existing company (to divest the manufacturing side of the business from the packaging side of the business) rather than a "new incorporation" to more easily comply with provisions of the new law. This reorganization would, in their opinion, clearly permit Worldwide to be covered by the grandfather provision of the law.

On February 11, 1971, the Acting Director, ATF, instructed the regions to be reasonable in accepting late applications because ATF had not distributed the application forms on time. Three of the seven applicants had filed their applications within 6 weeks of the February 12 deadline. Regional officials agreed that this was probably the reason these three applicants were treated under the grandfather clause.

Regional officials stated that the other four applicants who had filed after the deadline, including Worldwide, were either dealers or importers of "special fireworks"¹ and were allowed to operate under the provisions of the grandfather clause because ATF had delayed in determining that such companies were required to be licensed under the

¹Special fireworks are devices designed to produce visible or audible effects and are generally not suitable for use by the public but are usually displayed for a public group.

statute. Treasury Department regulations, published in the Federal Register on January 15, 1971, provided that importers and distributors of fireworks in a finished state, commonly sold at retail for personal use, were exempt from licensing. ATF headquarters officials told us that ATF did not determine until June 1971--5 months later--that special fireworks are subject to Federal control and only "common fireworks"¹ are exempt from control under title XI in their finished state. ATF notified the regional offices of this decision in November 1971 but did not formally notify the fireworks industry until January 1972. In a meeting on February 11, 1974, ATF officials advised us that a major fireworks association--of which Worldwide was a member--was advised in a July 1971 symposium that special fireworks were subject to Federal control.

It was during this period of indecision when the Worldwide application was being considered under the grandfather clause.

WORLDWIDE'S APPLICATION

Worldwide submitted its license application in November 1971. We were unable to interview the applicant to determine the reason for this late filing, but we presume it was attributable to ATF's late determination that special fireworks came within its jurisdiction.

ATF inspected Worldwide's storage facility in December 1971. The investigator reported that the storage facility was a large garage-type warehouse which was also used as a sales showroom and packing shed. The investigator reported the following safety violations:

--Floors were not lined with a nonsparking material.

--Doors were not constructed of steel and hardwood.

¹Common fireworks are devices suitable for use by the public and are designed to produce visible or audible effects; those designed to produce audible effects contain a very limited amount of combustible material.

APPENDIX I

- One of two security padlocks on each of the doors did not meet specifications.
- All nails in the walls were not blind-nailed or countersunk.
- Different classes, grades, and brands of fireworks were stored in the same container making it almost impossible to identify the type of fireworks being stored.
- Fireworks were being packaged within the storage facility.
- Safety lighting (battery powered) was not being used in the storage facility.
- A daily summary of inventory transactions was not being maintained.

The investigator advised us that ATF does not classify violations as to degree of seriousness. We believe that taken collectively the problems found at Worldwide were serious.

ATF did not deny Worldwide's application; rather, ATF gave the applicant 90 days to correct the violations and issued 30-day letters authorizing Worldwide to continue operating through March 1972. In April 1972, ATF re-inspected the applicant's storage facility and found only one of the violations (lighting) had been corrected.

On April 24, 1972, ATF formally denied a license to Worldwide but, because of the appeal process available to denied applicants, ATF did not end Worldwide's operations. Upon appeal, ATF scheduled a hearing for September 7, 1972. Because of an administrative oversight, the investigator, who had conducted the inspections at Worldwide, was not notified to appear at the hearing as the Government's witness. Consequently, the hearing was postponed until December 1972. Again, pending an appeal, ATF did not end the applicant's operations.

In November 1972 Worldwide notified the ATF regional counsel that it had corrected the deficiencies noted in the denial of its application. Regional officials directed the

investigator to visit Worldwide, furnish it a new application form, and advise it to withdraw the request for a hearing on the denial and submit a new license application. While at Worldwide, the investigator observed, but did not inspect, some semitrailers which the applicant had obtained for use as storage facilities. On December 1, 1972, Worldwide requested cancellation of the hearing and submitted a new license application to ATF; thereafter, ATF again issued 30-day letters authorizing the applicant to continue operations through May 2, 1973.

In February 1973 Worldwide's storage facilities were inspected in connection with the second application. The investigator, not the same one as before, reported several violations similar to those found in the initial inspection. Worldwide was still using the garage-type warehouse for storage. The company was given 60 days to correct the deficiencies. Two inspections were held in April 1973 and the same types of violations were found. During the last inspection, the investigator reported that the semitrailers, which the applicant had acquired as storage facilities, were parked too close to each other for safety if an explosion occurred as well as having several other safety violations.

After May 2, Worldwide was operating without a license and did not possess a 30-day authorization letter.

Between November 1971 and May 1973, ATF investigators inspected Worldwide five times. Because of continuing non-compliance with safety regulations, a license was never granted. Nevertheless, through the issuance of 30-day authorization letters, the appeal process, and reapplication, Worldwide operated for many months in an unsafe condition. On June 9, 1973, an explosion occurred at Worldwide which completely destroyed 13 semitrailers and the warehouse. Seven persons were injured. On June 27, ATF denied Worldwide's second application for a license.

ATF's investigation disclosed that the probable cause of the explosion was spontaneous detonation resulting from wet fireworks in the semitrailers. This information came to ATF's attention from a prospective fireworks purchaser who, in May 1973, had visited Worldwide and noted that some of the fireworks in the trailers were wet. Neither the February 1973 nor the April 1973 inspections noted a violation of the requirement that storage facilities be weather resistant.

APPENDIX I

NEED TO ADHERE TO STATUTORY TIME LIMITS IN PROCESSING APPLICATIONS

Under the statute, ATF is required to approve or deny an application within 45 days.

ATF interprets the 45 days for approval or denial as beginning after an Internal Revenue Service Center receives "a properly executed application." ATF officials told us that they do not consider an application to be properly executed unless the applicant's operations and storage facilities are inspected by ATF and judged in compliance with the regulations. We do not agree with this interpretation.

Applicants are required to send applications and fees to Internal Revenue Service Centers. The Service Centers remove the fee instruments and forward applications to the appropriate ATF regional office.

ATF establishes a target date--41 days after receipt by the Service Center--to complete inspections and determine whether the applications have been properly executed. Properly executed applications are to be approved and the licenses are to be issued within the remaining 4 days of the prescribed 45 days. However, according to ATF procedures, if inspections show the applicants do not comply with the regulations, the inspectors inform the applicants that the applications will be held in abeyance pending reinspection.

We reviewed the procedure followed in 48 cases. Only 14 licenses were granted within 45 days. ATF delayed processing 22 cases in which the applicants filed under the grandfather clause, primarily because additional inspections were needed to insure that deficiencies found during the initial inspections were corrected.

ATF did not process six cases (filed as new businesses) within the prescribed 45 days because the applicants were not in compliance with the regulations at the initial inspections and reinspections were required. ATF held these applications in abeyance pending correction of the violations. The applicants, however, were not authorized to start business before they obtained licenses. The remaining six cases (also filed as new businesses), although apparently in conformity, simply were not processed within the 45-day limit.

Our reasoning for disagreeing with ATF's interpretation of the 45-day period follows.

Title XI of the act provides:

"The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary." (Underscoring supplied.)

The provisions of title XI of the act were added by the House and were patterned after similar provisions in the Gun Control Act of 1968 (18 U.S.C. 923).

The Gun Control Act of 1968 provides that, when applications are made to engage in firearms or ammunitions traffic, the Secretary must:

"* * * approve or deny an application for a license within the forty-five day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act."

We reviewed the legislative history of title XI of the Organized Crime Control Act of 1970. This review showed that the 1970 act was patterned after similar provisions in the Gun Control Act of 1968. Therefore we studied the legislative history of the Gun Control Act to determine the congressional intentions underlying enactment of the 45-day provision.

The Senate Committee on the Judiciary, in explaining the proposed 45-day section of the Gun Control Act, stated:

"The standards for issuing a license would be modified by the provisions of this subsection. As amended by the committee, this subsection imposes an affirmative obligation on the Secretary of the Treasury to grant a license to a qualified applicant within 45 days of receipt of the application. * * * Failure by the Secretary to act on a license application within the specified 45-day period would enable the applicant

APPENDIX I

to sue to compel the Secretary to act under title 28, United States Code, section 1361." (Underscoring supplied.)

Implementing regulations for title XI were published in January 1971 and provide, in pertinent part:

"The Assistant Regional Commissioner shall approve or deny an application for license or permit within the 45-day period beginning on the date a properly executed application was received by the Service Center Director * * *" (Underscoring supplied.)

The application form for a license to deal in explosives states:

"Before applying * * * the applicant must read and be familiar with the requirements [relating to storage] * * *. An application * * * will be denied if upon investigation it is found that storage facilities are inadequate."

The form also requires the applicant to indicate whether his proposed storage facilities comply with the referenced regulations.

ATF headquarters and Chicago regional officials advised us that they interpret the 45-day requirement to mean that the period begins when the applicant's premises comply with the regulations or until the applicant has demonstrated he cannot or will not comply with those regulations. Thus, the applicant with inadequate storage facilities commonly does not have his application denied within 45 days but rather is advised that his application form is considered to be "improperly executed."

ATF's view, based on its desire to be "reasonable" in processing applications, permits applicants to correct deficiencies after applications have been filed. Although ATF representatives admitted that the language of the Organized Crime Control Act does not support this interpretation, they urge that the legislative history of that act, considered in the light of the legislative history of the Gun Control Act, allows such a position. As discussed above, neither the clear language of the statutes nor their legislative histories support the ATF position.

Thus, we believe ATF must take a position on an application (i.e., either approve or deny) within 45 days of receipt. This does not mean, however, that denial of the application forecloses further consideration of the matter. Under ATF regulations, proposed businesses whose applications have been denied and existing businesses whose renewal applications have been denied are afforded an opportunity to request an administrative hearing. The appeal procedure also requires the Assistant Regional Commissioner, ATF, to act on the recommendations of the Administrative Law Judge. Recourse is also available to the appropriate Federal court. In the case of a rejected renewal application, closing the business would not necessarily follow; an appeal procedure is available to seek reversal of the denial before the existing license or permit expires.

Therefore we believe that the current procedures should be revised to conform to the statutory requirements. If ATF believes otherwise it should seek legislative clarification to support its position.

In a meeting on February 11, 1974 ATF officials advised us that, upon reflection, we were probably correct in our analysis of the situation but that strict adherence to the 45-day limit might cause an undue hardship for some applicants. They stated, for example, that this would be the case when, with only 5 days remaining on an application deadline, a minor violation was found to exist which could be corrected within 10 days. Under our interpretation of the law, the application would not necessarily have to be denied. We believe that ATF could, without fear of criticism, administratively approve applications in such cases, conditioned upon correction of minor violations by a certain date. Should the corrections not be made within the specified time, ATF could exercise its revocation authority. Such a procedure would require close monitoring to avoid abuse.

RECENT IMPROVEMENTS NOTED IN ENFORCEMENT
EFFORTS AT REGIONAL LEVEL

Once a license has been granted, ATF has no provisions for periodic inspections to insure continuing compliance

APPENDIX I

during the license period,¹ nor is a reinspection required upon an application for renewal.

Inspections which are made are initiated by investigators who suspect noncompliance with the regulations by a particular licensee.

In August 1973 the Chicago regional office transferred licensing and enforcement functions from its Criminal Enforcement Division to its Regulatory Enforcement Division. Regional procedures were then adopted to require annual inspections of licensees for explosives and semiannual inspections of licensees for fireworks. No such procedures exist on a national level.

In the 48 cases reviewed, including 5 applications which were denied, the region had made compliance inspections at only 8 licensees. Five of the eight were inspected after the explosion at Worldwide in June 1973.

The recently adopted regional compliance inspection procedures should help to prevent future fireworks catastrophes if they are coupled with a willingness to take decisive action when potential dangers are found. ATF's adoption of such procedures on a national level may well be called for. Compliance inspections should also be made before granting fireworks license renewals when recent interim inspections have not been made.

¹Under the law, a license can be issued for no longer than 3 years, but under an administrative decision, ATF issues licenses for a 1-year period.

RECENT ACQUISITION OF STORAGE FACILITIES

Under the statute, explosive materials involved in violations of the law are subject to seizure by, and forfeiture to, ATF. The Chicago district office within Chicago regional office territory (there are three other districts within this territory) had been reluctant to make seizures because it did not have proper facilities for storing such materials which could later be used for evidence. The district office had seized some material in the past but had to destroy it because of a lack of facilities. Such destruction caused later problems in prosecuting the case because the judge indicated that the physical evidence should have been available for the proceedings.

In October 1973 the regional office executed an agreement with the Joliet Army Ammunition Plant which would provide the Chicago district office with secured space to store seized materials. Although this agreement will eliminate the storage problem met by the Chicago district office, other ATF district offices outside of the Chicago regional office territory may be meeting similar problems.

NEED FOR COORDINATING FEDERAL AND STATE
LICENSING AND ENFORCEMENT EFFORTS

The Illinois Department of Mines and Minerals is responsible for issuing State licenses for the manufacture, storage, transportation, sale, or other disposal of explosive materials. The Division of Fire Prevention, Illinois Department of Law Enforcement, is responsible for insuring that fireworks manufacturers' plants are constructed and maintained according to State fire safety regulations.

The Illinois Legislative Investigating Commission has recently conducted an investigation of the fireworks industry but has not yet issued its report. The Commission's investigation was prompted by the Worldwide explosion in June 1973 and explosions at two other fireworks companies--one in March 1972 and one in May 1970. The Commission has held a public hearing and will try to develop regulatory legislation.

BEST DOCUMENT AVAILABLE

APPENDIX I

According to ATF regional officials, ATF does not coordinate its licensing and enforcement activities with the States. ATF has discussed with the Commission the desirability of having State requirements similar to the Federal regulations.

ATF headquarters has not issued any instructions to its regional offices calling for coordination with State agencies. Since the State and the Federal Governments are interested in protecting the public from the hazards of explosive material, coordinated efforts in the area of licensing and enforcement would benefit everyone. Coordination could minimize duplication when it is found to exist through cooperative Federal and State agreements and could focus both Federal and State resources on problem areas or recalcitrant operators.

CONCLUSIONS

ATF encountered an initial period of confusion regarding the applicability of the new act to special fireworks. This confusion led to ATF's handling of a number of license applications, including Worldwide's, under the provisions of the grandfather clause even though the applicants did not conform to the time limits specified in the act. However, even after the decision regarding special fireworks was made, in June 1971, Worldwide continued to operate until it blew up in June 1973. An aggressive enforcement attitude by ATF might have avoided this.

When ATF found Worldwide out of compliance with safety standards, Worldwide's application should have been denied immediately rather than continuing to entertain the application awaiting corrective action on the applicant's part far beyond the 45-day limit set forth in the act. Also, when problems were noted as early as December 1971, Worldwide could have been told to shut down since it did not qualify under the grandfather clause of title XI.

Although, as agreed with your office, our examination was limited to circumstances surrounding the Worldwide explosion and the processing of applications in the Chicago regional office, it appears to us that some of the problems may be applicable to ATF's operations throughout the Nation. For example, the 45-day limitation for approving or denying

an application is probably not being adhered to at other regional offices. Also, once a license is granted, periodic compliance inspections are not required, nor are reinspections required at the time of an application for renewal. In addition, problems in storing seized explosives which were met by the Chicago district office might exist elsewhere. Finally, it seems that benefits to all parties could result from an effective coordination arrangement with State agencies which have similar licensing and enforcement responsibilities.

RECOMMENDATIONS TO THE
SECRETARY OF THE TREASURY

On the basis of the information we developed in just one of ATF's seven regions, we recommend that the Director, ATF, should:

- Revise existing procedures to require ATF regional offices to approve or deny a fireworks application within 45 days of receipt.
- Evaluate the merits of Chicago's newly adopted procedures calling for periodic interim inspections and reinspections at time of license renewal, with a view toward instituting such procedures for all regions.
- Canvass ATF offices to determine whether adequate storage facilities are available to all districts and, if not, to take steps to eliminate this problem.
- Require ATF regional offices to develop and implement Federal and State coordination plans designed to minimize duplication and strengthen overall licensing and enforcement activities.

AGENCY COMMENTS

In commenting upon our report (see app. II), ATF advised us that time constraints to implement the new law, coupled with manpower shortages, were the primary factors leading to the problems we noted. ATF pointed out that it felt it necessary to provide letters of authorization beyond the 45-day limit during the early days of implementation of the act in order to prevent chaos in the explosives industry. ATF felt

APPENDIX I

this was necessary because this was the Federal Government's first nonwartime regulation of the explosives industry.

Regarding our recommendation that ATF revise existing procedures to require its regional offices to approve or deny a fireworks application within 45 days of receipt, ATF stated that it would do this with certain exceptions. The exceptions are when an original applicant or a renewal applicant requests, in writing, that final action on its application be withheld for a short time so that it can comply with the regulations. These exceptions would apply only when there is no danger to the public safety and ATF is assured the applicant will make a concerted effort to comply. ATF stated that it is also considering seeking legislative action to remove or to clarify the 45-day limitation for ATF action on explosives applications.

ATF also noted that explosives applicants are often in remote or isolated areas, which causes additional inspection time and limits the time available for ATF to process the applications. Every effort is made to conduct the investigations expeditiously, but delays have been and will be met, which cause the processing time to rapidly approach the 45-day limit. ATF discussed with IRS officials the development of procedures to expedite the flow of explosives applications through the IRS Service Centers to the regional ATF offices. Each day saved in this process is another day available to ATF for considering and processing an application.

Regarding our recommendation that ATF evaluate the merits of Chicago's newly adopted procedures calling for periodic interim inspections and reinspections at time of license renewal, with a view toward instituting such procedures for all regions, ATF commented that studies have been made to standardize procedures required to fulfill the objectives of the law in a continuing way. ATF stated that regulatory enforcement procedures for investigations of explosives applications and compliance by explosive licensees and permittees are being studied for revision. These procedures include a maximum interval between compliance inspections for each of the various types of licensees and permittees. ATF stated that these procedures will be applicable to all regions but pointed out that the procedures can be complied with only to the extent of each region's limited manpower and resources.

In commenting upon our recommendation that ATF canvass its offices to determine whether adequate storage facilities are available to all districts and, if not, to take steps to eliminate this problem, ATF noted that the storage of explosive materials has been a problem for ATF since the Gun Control Act of 1968, which includes regulation of destructive devices. According to ATF, widely varying arrangements have been made as the need exists, but many problems still exist. ATF said that safety and transportation problems in many instances leave only the alternative of destruction. As a remedy for this matter, ATF is seeking legislation authorizing destruction of seized explosives.

To make seizure an effective enforcement tool, ATF should take whatever steps it believes necessary, including legislative remedy.

We also recommended that ATF require its regional offices to develop and implement Federal and State coordination plans designed to minimize duplications and strengthen overall licensing and enforcement activities. ATF believes that considerable cooperation has been achieved with other Federal agencies, such as the Department of Interior (Bureau of Mines) and the Department of Labor (Occupational Safety and Health Administration), whereby some uniformity of explosives regulation has taken place. ATF added that cooperative efforts have been made with New Jersey and the State of Washington, and it is in contact with other States concerning legislation and storage standards.

ATF stated that it will continue to explore the possibilities of working with all the States to regulate explosives in the most effective and efficient way.



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

FEB. 26, 1974

Dear Mr. Lowe:

This is a consolidated response for both the Department of the Treasury and its Bureau of Alcohol, Tobacco and Firearms to your draft report on the Bureau's licensing and enforcement efforts on explosives programs, with reference to the activities of the Bureau's Regional Office at Chicago, Illinois.

The regulatory responsibility of Title XI of the Organized Crime Control Act of 1970 was charged to the ATF Division of IRS in late 1970 with the enactment of the law, which became effective in February 1971. Regulations and the necessary procedures were developed and transmitted to the field organization, and personnel were trained, in less than 120 days. The ensuing press to license 7,000 manufacturers, importers, dealers, and users of explosives led to an all-out effort to implement the requirements of the statutes, insure the public safety, and accomplish it all with a minimum of dislocation to the legitimate industry.

Numerous manufacturers of specialty products, incidental users of explosives, and other segments of the industry, such as fireworks manufacturers, contended they did not come within the purview of the law or its regulations. Subsequent interpretations found that certain fireworks dealers and manufacturers were in fact subject to the licensing provisions of the explosives law.

In July 1972, as noted, the ATF function was established as a Bureau under the direct supervision of the Assistant Secretary for Enforcement, Tariff and Trade Affairs, and Operations. The functional responsibility of licensing was transferred from the Criminal Enforcement activity to the Regulatory Enforcement activity in August 1972, with the applicant and compliance investigative responsibilities being transferred a year later.

When the investigative functions were transferred to Regulatory Enforcement, this activity was short 147 inspectors of its authorized strength of 774. The authorized strength was based on Regulatory Enforcement's need to fulfill its basic programs to assure the collection of approximately \$7.5 billion in revenue from alcohol and tobacco industries. Regulatory Enforcement is also responsible to ensure industry compliance with laws and regulations designed to protect consumers and prevent unlawful trade practices by the alcohol beverage industries. No additional manpower was authorized to administer the Explosives and Firearms Programs and only by curtailment of existing programs and cooperation with Criminal Enforcement activities has the Bureau been able to accomplish this work. For Regulatory Enforcement to accomplish the program objectives it would need its authorized staff of 774 inspectors and an additional 145 inspectors to carryout the administration of the explosives and firearms laws.

At the outset the Bureau does not deny that it provided letters of authorization beyond the 45 day limit during the early days of implementation of the Act in order to prevent chaos in the explosives industry. We believe this to be necessary because this was the first non-wartime regulation of the explosives industry by the Federal Government.

Each of your recommendations to the Director, Bureau of Alcohol, Tobacco and Firearms are commented upon below.

"--revise existing regulations to require regional offices to approve or deny an application within 45 days of receipt"

It is our procedure, which needs to be revised, to conform to the present statutory and regulatory requirements for issuing or denying a license or permit within 45 days of its receipt in an Internal Revenue Service Center. This we plan to do with certain exceptions. The exceptions are when an original applicant or a renewal applicant requests, in writing, that final action on his application be withheld for a short time so he can comply with the regulations. These exceptions would apply only when there

APPENDIX II

is no danger to the public safety, and we are assured the applicant will make a concerted effort to comply. To institute denial proceedings in these instances would not be to the benefit of the applicant or to the Bureau. Denial proceedings on explosives applications are processed in accordance with the provisions of the Administrative Procedures Act, and often extend over many months if contested. We are considering seeking legislative action to remove or to clarify the 45 day limitation for ATF action on explosives applications.

Explosives applicants are often located in remote or isolated areas which causes additional inspection time and limits the time available for ATF to process the application. Every effort is made to conduct the investigations expeditiously, but delays have been and will be encountered which cause the processing time to rapidly approach the 45 day limit. In addition to delays caused by limited manpower, other delays are encountered because of the fuel shortages. Investigating officers plan their itineraries to accomplish as much as possible consistent with public safety and welfare, and yet do so with the minimum use of gasoline. Prior to receipt of the draft report we had discussed with IRS officials the development of procedures to expedite the flow of explosives applications through the IRS Service Centers to the regional ATF offices. Each day saved in this process is another day available to ATF for considering and processing an application.

"--evaluate the merits of Chicago's newly adopted procedures calling for periodic interim inspections and reinspections at each time of license renewal, with a view toward instituting such procedures for all regions"

Studies have been made to standardize procedures that are required to fulfill the objectives of the law in a continuing way. Regulatory Enforcement procedures for the conduct of investigations of explosives applications and compliance by explosive licensees and permittees are being studied for revision. These include a maximum interval between compliance inspections for each of the various types of licensees

BEST DOCUMENT AVAILABLE

and permittees. These procedures will be applicable to all regions, but can be complied with only to the extent of each region's limited manpower and resources.

"--canvas ATF offices to determine whether adequate storage facilities are available to all districts and, if not, to take steps to eliminate this problem..."

The storage of explosive materials has been a problem for ATF since the Gun Control Act of 1968, which includes regulation of destructive devices. Widely varying arrangements have been made as the need exists, but many problems still exist. To date no explosive materials have been allowed in court as evidence, with the controlling factor being consideration for the public safety. It is often more dangerous to move explosives than to leave them at the seizure premises, and if moved, there is the problem of complying with transportation laws. These problems in many instances leave only the alternative of destruction. As a remedy of this matter, ATF is seeking legislation authorizing destruction of seized explosives.

"--require regional offices to develop and implement Federal-State coordination plans designed to minimize duplications and strengthen overall licensing and enforcement activities."

We believe considerable cooperation has been achieved with other Federal agencies, such as the Department of Interior (Bureau of Mines) and the Department of Labor (OSHA), whereby some uniformity of explosives regulation has taken place. Cooperative efforts have been made with the States of New Jersey and Washington, and we are in contact with others, concerning legislation and storage standards.

BEST DOCUMENT AVAILABLE

APPENDIX II

We will continue to explore the possibilities of working with all the States to accomplish the regulation of explosives in the most effective and efficient way.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Brent F. Moody". The signature is written in dark ink and is positioned above the typed name.

Brent F. Moody
Deputy Assistant Secretary

Mr. Victor L. Lowe
Director
General Government Division
U. S. General Accounting Office
Washington, D. C. 20548