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# HOMELAND SECURITY: SURVEILLANCE AND MONITORING OF EXPLOSIVE STORAGE FACILITIES

## HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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# HOMELAND SECURITY: SURVEILLANCE AND MONITORING OF EXPLOSIVE STORAGE FACILITIES

**MONDAY, AUGUST 2, 2004**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
*San Mateo, CA.*

The subcommittee met, pursuant to notice, at 11:30 a.m., in San Mateo Council Chambers, San Mateo, CA, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays and Lantos.

Also present: Representative Eshoo.

Staff present: Vincent Chase, chief investigator; and Robert Briggs, clerk.

Mr. SHAYS. In the spirit of the person who trained me to be a chairman, Tom Lantos, we start on time. A quorum being present, the Subcommittee on National Security, Emerging Threats and International Relations hearing entitled, "Homeland Security: Surveillance and Monitoring of Explosives Storage Facilities," is called to order.

Let me thank Congressman Tom Lantos for inviting this subcommittee here today. In 1987, when I first arrived in Congress, Chairman Lantos taught me a great deal about leadership and determination. Tom is one of the most articulate, passionate and persuasive members of the House of Representatives. He is also known on both sides of the aisle for his principled and courageous approach to international and domestic issues.

Congressman Lantos, ranking member of the International Relations and a senior of the Government Reform Committees, is a thoughtful, energetic participant in our oversight, and we are grateful for the opportunity to examine the adequacy of security safeguards at explosive material storage facilities from his perspective. Tom and I are joined today by Anna Eshoo, a member of the very powerful Energy and Commerce Committee as well as the Intelligence Committee. Ms. Eshoo is a very good friend and a highly respected Member of Congress. She truly is an exceptional Member of Congress, and we are delighted to have her join this subcommittee, and we will have the appropriate unanimous consent to make her a full participant in this subcommittee.

During the weekend of July 4, 2004, almost 200 pounds of explosive material were stolen from the San Mateo County Crystal

Springs Reservoir Storage Facility. Military binary explosives, plastic C4, detonation cords and blasting caps were reported taken from the magazine used to store explosives for training drills and confiscated weapons and ammunition. Fortunately, the robbery does not appear terror related and the suspects were apprehended within days of the crime. Law enforcement authorities believe they have recovered all of the explosives. This apparent local event should serve as a national wake-up call and may be considered a blessing in disguise, but we do need to wake up.

Many think that storage facilities operated by State and local agencies may be more vulnerable to theft, sabotage or terrorist attack than those operated by businesses. Ultimately, we will look at both. Securing explosives storage facilities present difficult challenges, demands and tough choices. The need for increased physical security against heightened threats is obvious.

While it is not possible to eliminate the vulnerability of all attractive terrorist targets throughout the country, strategic improvements in security can make it more difficult to acquire explosive material and can lessen the impact of attacks that do occur. The Bureau of Alcohol, Tobacco, Firearms and Explosives, still called ATF, is responsible for enforcement of Federal laws relating to storage of explosives in private facilities, but States have primary authority and force protection standards at public sites. It is estimated there are hundreds of these bunkers throughout the United States. Adherence to Federal security standards by public storage facilities is voluntary.

As a result, it is unclear whether local law enforcement meet minimal ATF guidelines or whether varying State and local security requirements provide adequate protection. Given the undeniable allure of explosives to terrorists, the subcommittee asked the Government Accountability Office [GAO], to undertake a study to examine the vulnerability of public and private explosive storage facilities, and recommend actions needed to correct facility security deficiencies. Such a risk management approach is essential to realign enhanced security measures with new, more dynamic threats.

Therefore, we meet this morning to ask if the public and private sectors are pursuing a viable security strategy to protect the Nation's explosive storage facilities. Federal witnesses will speak to the adequacy of laws and existing enforcement programs to ensure the security of high explosives stored by local law enforcement agencies. State and local witnesses will testify about storage regulations and the need for uniform security standards. Witnesses from business and industry will describe best practices for the storage of high explosives and industry recommendations for security improvements. We appreciate the time, dedication and expertise of all our witnesses. We are all members of one family, the United States of America, and that is how I approach these hearings. We look forward to their testimony.

At this time, the Chair would recognize the distinguished Member, Mr. Lantos.

[The prepared statement of Hon. Christopher Shays follows:]

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# Statement of Rep. Christopher Shays

August 2, 2004

Let me first thank Congressman Tom Lantos for inviting the Subcommittee here today. In 1987, when I first arrived in Congress, Chairman Lantos taught me a great deal about leadership and determination. Tom is one of the most articulate, passionate and persuasive Members of the House of Representatives. He is known on both sides of the aisle for his principled and courageous approach to international and domestic issues. He is a thoughtful, energetic participant in our oversight, and we are grateful for the opportunity to examine the adequacy of security safeguards at explosive material storage facilities from his perspective.

During the weekend of July 4, 2004, almost two hundred pounds of explosive material were stolen from the San Mateo County, Crystal Springs Reservoir storage facility. Military binary explosives, plastic C4, detonation cords and blasting caps were reported taken from the magazine used to store explosives for training drills and confiscated weapons and ammunition. Fortunately, the robbery does not appear terror-related, and suspects were apprehended within days of the crime. Law enforcement authorities believe they have recovered all the explosives.

This apparently local event should serve as a national wake-up call. Many think storage facilities operated by state and local agencies may be more vulnerable to theft, sabotage or terrorist attack than those operated by

businesses. Securing explosives storage facilities poses difficult challenges and demands tough choices. The need for increased physical security against heightened threats is obvious. While it is not possible to eliminate the vulnerability of all attractive terrorist targets throughout the country, strategic improvements in security can make it more difficult to acquire explosive material and can lessen the impact of attacks that do occur.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for enforcement of federal laws related to storage of explosives in private facilities, but states have primary authority to enforce protection standards at public sites. It is estimated there are hundreds of these bunkers throughout the United States. Adherence to federal security standards by public storage facilities is voluntary. As a result, it is unclear whether local law enforcement agencies meet minimal ATF guidelines, or whether varying state and local security requirements provide adequate protection.

Given the undeniable allure of explosives to terrorists, the Subcommittee asked the Government Accountability Office (GAO) to undertake a study to examine the vulnerability of public and private explosive storage facilities and recommend actions needed to correct facility security deficiencies. Such a risk management approach is essential to realign enhanced security measures with new, more dynamic threats.

So we meet this morning to ask if the public and private sectors are pursuing a viable security strategy to protect the nation's explosives storage facilities. Federal witnesses will be questioned about the adequacy of laws and existing enforcement programs to assure the security of high explosives stored by local law enforcement agencies. State and local witnesses will testify about storage regulations and the need for uniform security standards. Witnesses from business and industry will describe best practices for the storage of high explosives and industry recommendations for security improvements.

We appreciate the time, dedication and expertise of all our witnesses and we look forward to their testimony.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first say there is no Member of Congress for whom I have higher regard or greater appreciation than you.

Mr. SHAYS. Thank you.

Mr. LANTOS. You have conducted a whole series of singularly significant hearings on homeland security ever since September 11, and you have made an enormous contribution to enhancing our position as a Nation in the face of terrorist threats. I also want to thank my good friend and neighbor, Congresswoman Anna Eshoo, for joining our subcommittee. She and I share San Mateo County in terms of Federal representation. She is an outstanding Member of Congress, an important member of the Intelligence Committee, and her contributions to enhancing domestic security have been significant and will continue to be. I also want to thank both the subcommittee staff, my personal staff and all of our witnesses for their invaluable work.

I also want to congratulate law enforcement for apprehending the criminals involved in this very serious theft of explosives. The criminals have been apprehended, and the explosives have been recovered. This is one potential tragedy of significant proportions which has been diffused.

I need not point out to anybody the unique and extraordinary timing of this hearing. If you read this morning's local papers or The New York Times, if you listen to radio or watch television, the topic is basically the topic of this hearing on a broader and more expanded level.

I also would like to say a word about the committee on which Chairman Shays and I have the privilege of serving. The Government Reform Committee is the oversight committee of the Congress of the United States. Whatever the issue, inappropriate behavior by cabinet members, as was the case of the Department of Housing and Urban Development when I Chaired the subcommittee and Chris was my invaluable Republican colleague, to now homeland security, this committee looks to it that, a, laws are carried out as they are supposed to be carried out, or, as is likely to be the case with respect to today's hearing, new legislation is introduced and passed where gaps appear in the panoply of legislation that deals with our national security.

Field hearings by this committee are fairly unusual. Field hearings demand that Members and staff go out to various parts of the country, the infrastructure of Washington, DC, is not there, but occasionally field hearings are justified. This particular field hearing, and I want to thank my friend Chris Shays for holding it, is in line with other important field hearings this committee had here in San Mateo County in earlier periods. During a particularly severe storm over 20 years ago when Devil's Slide was washed away, at my request the then chairman of the committee brought out this bipartisan committee to hold field hearings on Devil's Slide with laudable results. Over 20 years ago, I held the first field hearing on the subject of the Strategic Petroleum Reserve here in San Mateo County.

This time, a gap in our security, as it relates to the storage of explosives by public agencies, not only will result in dealing with this specific instance, which is really not our main concern—we are

not a law enforcement agency, and this is not a court of law. Our main purpose will be to see what additional legislation is called for to plug the loophole in this most important arena.

The explosives industry is big business. We are about 2½ million metric tons of explosives every year. It is over $1 billion in sales. As we dig into this particular episode, we discover that there are scores of thefts of high explosives across the country. At a time when explosives are the preferred method of operation of terrorists, the importance of safeguarding explosives should be obvious to all of us.

Federal security standards by public storage facilities at the moment are voluntary. This is a pre-September 11 standard which simply does not hold up in a post-September 11 world. In my judgment, we will need uniform Federal standards, uniformly enforced across this country, and once we make that legislation, and it is properly implemented, this particular gaping hole in our domestic security structure will have been eliminated.

Let me say just one final word about funding. We must not allow funding for homeland security to become pork barrel legislation. It is, to quite an extent, as we meet here this morning. The State of Wyoming receives about $38 per person for homeland security purposes; California receives about $5. At a time when some areas are uniquely exposed to the dangers of terrorist attacks—and this morning, Secretary Ridge has designated New York City, part of New Jersey and our Nation's capital as high-risk areas—the notion that Wyoming should be getting many times as much per capita as California, with all of its vulnerable facilities, is simply unacceptable. Pork-barrel funding of homeland security is simply not something that the American people will tolerate.

I suspect in many ways since September 11 we have been confronted with what I call the "guns of Singapore" phenomenon. As some of you may know, the guns of Singapore in the Second World War were fixed in place aiming at the sea. But the danger, the invasion and finally the occupation of Singapore came from the land behind, and the guns of Singapore were never fired in that battle. They couldn't be—they were aimed at the wrong enemy. Now it is self-evident that when, on September 11, the terrorist gangsters, mass-murderers captured our civilian airliners, we had a phenomenon similar to the guns of Singapore. Our Air Force was more than ready to deal with alien and hostile air forces which simply did not materialize, but we were unprepared to deal with terrorism capturing domestic airliners.

At a time when explosives are so critical in the struggle against terrorism, to see a facility just a few miles from here be as undefended, unprotected as in fact they were during the 4th of July weekend is something we cannot tolerate. As Chairman Shays so properly indicated, we are dealing with a national wake-up call which could be a blessing in disguise. If Congress acts and the administration follows, we will be able to plug this enormous loophole in our national security apparatus. I look forward to hearing from our witnesses, and I again want to thank you, Chairman Shays.

[The prepared statement of Hon. Tom Lantos follows:]

*Verbatim, as delivered*

# Opening Statement
# Congressman Tom Lantos (D-San Mateo, San Francisco)
# Hearing of the U.S. House of Representatives
# Committee on Government Reform
# Subcommittee on National Security, Emerging Threats and International Relations
# August 2, 2004 – San Mateo City Hall, San Mateo, California

Thank you very much, Mr. Chairman *[Christopher Shays, R-CT]*. Let me just first say there is no member of Congress for whom I have higher regard or greater appreciation than you. You have conducted a whole series of singular and significant hearings on homeland security ever since 9-11, and you have made an enormous contribution to enhancing our access to information in the face of terrorist threats.

I also want to thank my good friend and neighbor, Congresswoman Anna Eshoo, for joining our subcommittee. She and I share San Mateo County in terms of federal representation, she is an outstanding member of Congress, an important member of the Intelligence Committee, and her contributions to enhancing domestic security have been significant and will continue to be.

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invasion and finally the occupation of Singapore came from the land behind, and the guns of Singapore were never fired in that battle. They couldn't be – they were aimed at the wrong enemy. Now it's self-evident that when on 9/11 the terrorist gangsters and mass-murderers captured our civilian airliners, we had a phenomenon similar to the guns of Singapore. Our Air Force was more than ready to deal with alien and hostile air forces which simply did not materialize, but we were unprepared to deal with terrorism capturing domestic airliners.

At a time when explosives are so critical in the struggle against terrorism, to see a facility just a few miles from here be as undefended, unprotected as in fact they were during the Fourth of July weekend is something we cannot tolerate. And as Chairman Shays so properly indicated, we are dealing with a national wake-up call which could be a blessing in disguise. And if Congress acts and the Administration follows, we will be able to plug this enormous loophole in our national security apparatus.

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Mr. SHAYS. Thank you. At this time, let us just take care of some business and ask unanimous consent to have Ms. Anna Eshoo participate in today's hearing. Without objection, so ordered. I also would extend an invitation when we have more hearings back in Washington, we would love your same participation. This is a facility, actually, in your district. Ms. Eshoo, wonderful to have you.

Mr. LANTOS. It is in my district, but who cares. [Laughter.]

This place is in my district; the facility is in hers.

Mr. SHAYS. Oh, no. I understand that. You are the reason why we are here, Mr. Lantos, and we are in your district, but, Ms. Eshoo, you have the floor.

Ms. ESHOO. Thank you, Mr. Chairman. And, first of all, welcome to San Mateo County——

Mr. SHAYS. Thank you.

Ms. ESHOO [continuing]. And to California. We are very, very pleased that you are here, and indeed it is an honor to have you as chairman of this very important committee to be here.

Mr. SHAYS. Let me interrupt the gentle lady to say that my oldest brother lives in this district and is a constituent of Mr. Lantos.

Ms. ESHOO. Yes.

Mr. LANTOS. We are still checking on whether he votes for me, Mr. Chairman. [Laughter.]

Ms. ESHOO. And, of course, to my colleague, Tom Lantos and his outstanding work in the Congress, thank you for inviting me to this hearing, allowing me to participate in it and to participate with the subcommittee. And to everyone that is here sitting in council chambers reminds me of the 10 years that I spent in local government. And so wherever I am in San Mateo County, it makes no difference to me, because San Mateo County is my home. So to all of my colleagues and the board of the supervisors that are here, to Sheriff Horsley, to all of the law enforcement people that are here and the rest of the broader community, it is an honor.

The theft of the high explosives from a multistorage unit at Crystal Springs Reservoir on the 4th of July weekend was, I think, a frightening incident for all of us who live in the area. It is also, I believe, a warning about the broader weaknesses in the Federal regulation of dangerous materials, and that is what this hearing is about—how we can do better. And I think that given the lineup of the witnesses and the information that will be drawn from them, that we can learn more and really hit the bulls eye here and close the loophole, as Congressman Lantos says, about these dangerous materials.

I do want to recognize the good work of our law enforcement officials, because were it not for them there would be an added piece to this hearing, and that is that what was stolen would still be out there, which would add to and heighten the anxiety and the fear of our people. So I salute you for that.

I also want to point out that there have been consistent efforts in San Mateo County, and I am a real cheerleader for them, because, as our law enforcement officials and our elected officials have had to transform themselves with the whole issue of homeland security, they have to translate it into hometown security. That is really what it is. In Washington, we talk about homeland

security, but it all comes back to our local community. So to members of the board and to our law enforcement people, thank you.

The broader questions raised by this incident obviously cannot be ignored. We need, in my view, stricter mandatory Federal requirements for safeguarding the facilities where high explosives are stored. The current regulations, as I read them, don't do what they need to in order to keep our citizens safe. For almost all facilities, current Federal guidelines only require a weekly inspection to check for missing inventory and an ATF inspection once every 3 years. Not good enough anymore.

The ATF doesn't require alarm systems, cameras, surveillance equipment or security personnel to guard these sites. I can't help but think that when I am in a grocery store that they have more security to protect the frozen food section, so we have a ways to go on this. And we can do it. We know how. That is the best part of it.

There are many more explosive storage sites throughout the United States, and they are protected by a wide array of Federal, State and local agencies, but how many munitions storage sites are there in our country? Who controls them? How secure are these sites under the ATF existing regulations, and how often are they secured or inspected by the ATF to ensure compliance? Finally, how much of this material is stolen or, "lost," each year? My own cursory review of the ATF Web site uncovered the sobering fact that in a 5-year period between 1992 and 1996 more than 27,000 pounds of high explosives were stolen. So I think that we need to have an inventory. We need to know who is checking the inventory. We need a set of regulations that are very clear and will apply across the board and then the implementation, carrying out of what we need to do.

Since the attack on our country, I have heard countless first responders and public officials say that we have to be right 100 percent of the time where our enemies only need to be right once. I think that we have been fortunate in this case. It could have been many other things. It is not. But what we are here for today is to draw a lesson from it, to probe the weaknesses and then build a very strong safety net, a legal safety net, not only for San Mateo County but for communities across our country.

And for that, Mr. Chairman, I thank you again for including me in this hearing and of course to my friend and colleague, Congressman Tom Lantos, not only for his superb representation in the Congress but also for his friendship that has stretched over so many years. Thank you.

Mr. SHAYS. I thank the gentle lady very much and appreciate the patience of our guests as well as our witnesses. We think it is important for our witnesses to know our general attitude about how we are approaching this hearing, and would also like to do something I don't usually do but recognize my staff member, Vince Chase, who actually served in the Connecticut State Legislature for 16 years as a member of the legislature. I had already committed to my staff all the activities and hearings they would have to the rest of the year, and that was about a 60 hour a week job to finish up, and then I came in and said, "Tom Lantos pointed out that we have a very serious problem about how we store our explosive de-

vices and we are going to have a hearing in a few weeks." Vince dropped everything else and he has, I think, helped to present a very nice hearing, and, Vince, we appreciate that very much.

I would ask unanimous consent to place in the record a letter from the National Bomb Squad Commanders Advisory Board. Without objection, so ordered.

[The information referred to follows:]

**BOARD MEMBERS**

Stanley Mathiasen
Chairman
Santa Barbara Co. Sheriff's Dept.

Jeff Fuller
Vice-Chairman
South Carolina Law Enforcement Division

Martin Hutchings
Secretary
Sacramento Co. Sheriff's Dept.

Dennis Chaney
Dayton Police Dept.

Rodney Gerling
Nebraska State Patrol

Jim Hansen
Seattle Police Dept.

W. Kent Harris
Olathe Fire Department

Joe Hooper
Metropolitan Nashville Police Dept.

V.S. Hylton
Greensboro Police Dept.

Richard Puschel
Union County Police Dept.

David Thompson
Massachusetts State Police Dept.

Daniel Treidl
Vermont State Police

**LIAISON MEMBERS**

Richard Campbell
Bureau of Alcohol, Tobacco, Firearms and Explosives

[illegible] Eaton
The [illegible] Association of Bomb Techs and Investigators

David Heaven
Technical Support Working Group

Jonathan Hunter
National Institute of Justice

David Jernigan
Federal Bureau of Investigation Hazardous Devices School

Mr. Christopher Shays, Chairman
House Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
Room B372 Rayburn Building
Washington, D.C. 20514

Chairman Shays,

As Chairman of the National Bomb Squad Commanders Advisory Board, (NBSCAB) I am aware of the recent burglary of a law enforcement explosives magazine in San Mateo County California.

As the board that represents all accredited state and local bomb squads, we share the same concerns for safely storing explosives, and also recognize the need of state and local public safety agencies to possess this material in the performance of our duties.

We strongly encourage state and local public safety agencies that have explosives storage magazines to follow all current industry standards, and use current federal laws as a guideline for safety and security of the sites. We do not feel that any additional federal or state over site is required.

We also encourage that agencies enhance security above current federal guidelines by adding alarm systems, installing security fencing, and by providing security lighting at the site.

The safety and security of these sites is a priority. In order to facilitate additional security measures, funding for them should be specifically addressed in the Homeland Security Grant process.

Should you or your staff require any additional information, please contact me at any time.

Stanley Mathiasen
Chairman National Bomb Squad Commanders Advisory Board
805-681-4158

Mr. SHAYS. I would ask unanimous consent that all members of the subcommittee, and that includes Ms. Eshoo, be permitted to place an opening statement in the record and that the record remain open for 3 days for that purpose. Without objection, so ordered. I would ask further unanimous consent that all witnesses be permitted to include their written statements, and without objection, so ordered.

We have three panels. Our general practice is 5 minutes, and then we go to questions. We are going to do the 10-minute rule. I will have Mr. Lantos ask questions for 10 minutes, Ms. Eshoo and then I will as well. If you go over 5 minutes just a bit, that is OK. I don't want you to rush through it, but we don't want it to be too long because we do have three panels. And given that you have listened to all of us speak, I feel a little reluctant to be too strict on the time here.

Our first panel is Mr. Walfred A. Nelson, Deputy Assistant Director of Enforcement Programs and Services Division, The Bureau of Alcohol, Tobacco and Firearms, Department of Justice, and our next witness on the same panel is Mr. Michael Gulledge, Director, Office of Evaluation and Inspections Division, Office of the Inspector General, Department of Justice. We welcome both of you here. We are going to have some interesting dialog.

We are all learning a lot about a new area for some, and I just would point out that this is a subcommittee that has had over 50 hearings on this issue, and we had 20 hearings before September 11. One of the points that was made clear, 3 commissions before September 11 all said, "We have a terrorist threat out there, we need to have an assessment of that threat, we need a new strategy to deal with it, and we need to reorganize our government to respond." And one of the things that we clearly are doing, this is a work in process, this is a hugely important issue that we are dealing with today. It has national significance to our homeland security and this is the beginning of what I expect will be a number of hearings on this issue.

So you two gentlemen start this process off, and we thank you very much. We will start with you, Mr. Nelson.

**STATEMENTS OF WALFRED A. NELSON, DEPUTY ASSISTANT DIRECTOR, ENFORCEMENT PROGRAMS AND SERVICES DIVISION, THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF JUSTICE; AND MICHAEL GULLEDGE, DIRECTOR, OFFICE OF EVALUATION AND INSPECTIONS DIVISION, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. NELSON. Thank you, Mr. Chairman, Mr. Lantos and Ms. Eshoo. I appreciate the opportunity——

Mr. SHAYS. Excuse me, I need to be reminded. I did not swear you in. No wonder you looked a little surprised at me. I said they would be sworn in. We swear in all our witnesses. If you would both stand and raise your right hands. I will just say, parenthetically, the only person I never swore in in my 8 years as chairman was Senator Byrd—I chickened out. But everyone else has been.

[Witnesses sworn.]

Mr. SHAYS. Both witnesses have responded in the affirmative, and I am sorry, we will start the clock over again.

Mr. NELSON. Thank you, Mr. Chairman, Mr. Lantos and Ms. Eshoo. I appreciate the opportunity to appear before you today to discuss ATF's role in explosives enforcement in the United States. ATF enforces Federal explosives laws and regulates commerce in explosives. I would like to provide you with a general overview of ATF explosives expertise and assets and then explain in more detail ATF's role in ensuring the safe storage of explosives.

A primary ATF strategic goal is the investigation of explosives and arson-related crimes, such as bombings and explosives thefts. ATF aggressively investigates bombings, fires and explosives thefts to protect the public from the criminal or unsafe use of explosives. ATF's vigorous enforcement efforts include keeping explosives out of the hands who would use explosives for criminal or terrorist purposes. One of the ways ATF accomplishes this is by investigating all applicants for explosives licenses and permits and by inspecting those entities. And if I could add, since the passage of the Safe Explosives Act in 2002, all persons desiring to obtain or receive commercial explosives are required to get a permit from ATF and are subject to a fingerprint and background check.

On July 6, 2004, a break-in at the San Mateo County explosives storage facility was discovered. The San Mateo County Sheriff's Office, San Francisco PD and the FBI advised ATF that they used explosives magazines housed in San Mateo County on property owned by the City and County of San Francisco. ATF immediately responded to the crime scene and began an investigation. From the onset, ATF's efforts to recover the explosives and bring those responsible to justice have been supported by many law enforcement agencies, including the U.S. Attorney's Office, the California Highway Patrol, Alameda County Sheriff's Office, Hayward Police Department, Union City Police Department, Oakland Police Department and the Walnut Creek Bomb Squad.

As part of the response, information received by Alameda County Sheriff's Office led law enforcement to possible suspects and suspect vehicles. As a result of the intensive investigation, we believe ATF has recovered all the stolen explosives and arrested 4 individuals who were later indicted by Federal grand jury charging 21 counts relating to the theft, possession and distribution of the explosives.

ATF maintains a variety of licensing, regulatory and criminal enforcement initiatives that comprise a comprehensive strategy to help ensure that explosives are not available for use by terrorists or those who would commit violent crime. The ATF work force includes approximately 420 field inspectors who are responsible for inspection of all 120,000 firearms and explosives licensees nationwide. Approximately 12,000 of that total are explosives licensees and permittees, and, again, just to add, since the passage of the Safe Explosives Act, over 3,600 additional companies have received permits from ATF.

Since September 11, inspection of explosives storage facilities has been ATF's highest regulatory priority. The length of time it requires to conduct an inspection of any explosives facilities can vary dramatically, from as little as several hours to as much as several

weeks. And, of course, our prime focus is the safe storage and security of the explosives.

All persons storing explosives, including State and local government agencies, must meet certain storage requirements. Now, these storage requirements are contained in a booklet that we provide to the public, and they are on our Web site as well. Only Federal Government agencies are exempt from storage requirements, and that is as authorized by law at 18 USC Section 845(a)(6).

What types of things would an ATF inspector do when they went out to check an explosives storage facility? Well, first of all, we would look at all magazines to make sure that they continue to meet construction, lighting and housekeeping requirements. We are going to verify the types and locations of all magazines and inspect all structures onsite. We are going to verify that the storage descriptions are accurate and that there have not been any unreported changes or additions to storage. We are going to verify all outdoor magazines meet the table of distance requirements; that is the distance that the magazines must be set off from public highways, residential communities and the like. We will determine the class of explosives and appropriate type of magazine for each class, and we will conduct an inventory to compare to transactions records.

At the end of fiscal year 2003, there were 11,770 explosives licensees and permittees in the United States, and today we are over 12,000, so it is going up. ATF conducted 7,883 inspections of those licensees and uncovered 1,165 public safety violations. Additionally, last year, ATF opened in excess of 4,000 explosives and arson criminal investigations and received reports of 79 thefts of explosives. By law, any person who has knowledge of the theft or loss of explosive material from his or her stock must report that theft or loss to ATF within 24 hours of discovery.

Now, in the past 10 years, ATF has received theft reports from State, local and military entities 8 times. In a concerted effort to keep all explosives out of the hands of those who would use them for criminal or terrorist purposes, ATF investigates 100 percent of all reported thefts or losses of explosives. And, if I can add, we do more than that. We have a secure email net and we provide information on all thefts and losses to over 600 State, local and other Federal agencies, to include details of the theft and pictures of the explosives that have been stolen. After all, they are the individuals who may come across them in their work.

Recently, ATF developed an Explosives Threat Assessment and Prevention Strategy at the request of the Attorney General. Part of this strategy involves Threat Assessment Guidelines that we have issued to explosives industry groups. It covers security and other areas that industry members would voluntarily strengthen that are not covered by ATF regulations, such as employee security awareness training. Our ATF inspectors will be using this guideline on current inspections for the rest of the year.

Although we cannot conduct mandatory inspections of State and local storage facilities, we do often provide inspections for public storage facilities on request. In 2003 and 2004, to date, ATF has conducted 39 voluntarily requested inspections for explosives storage facilities owned by government entities.

Our increased inspection efforts post September 11 have included a number of initiatives. On September 11, 2001, ATF sent out a letters to all Federal explosives licensees and permittees requesting them to conduct a full inventory of all explosive items in their possession. And we asked that if there were any thefts or losses disclosed from this, that they report that to ATF immediately.

In October 2001, ATF initiated a program to inspect as many explosives industry members as possible, as quickly as possible, to gather intelligence on possible criminal activities and to assess and correct security and storage vulnerabilities. We conducted a total of 7,459 inspections in the ensuing 3 months. The results of this program included 198 referrals of potential suspicious activities to ATF's law enforcement arm and the issuance of 372 violations. This increased inspection effort lead to the discovery and immediate seizure of over 4 million pounds of improperly stored explosive materials at one particular site, the largest seizure of explosives in ATF's history. That explosives licensee had its Federal license revoked.

In May 2002, June 2003 and July 2004, ATF sent out additional special notices to all Federal explosives licensees and permittees, again stressing the need for continued vigilance and security assessments as a result of the events of September 11, 2001.

ATF believes in partnering with industry to promote public safety. Two examples of these partnerships are the "Be Aware for America" and "America's Security Begins With You" Program. In response to the World Trade Center bombing in 1993 and the Oklahoma City Murrah Federal Building bombing in 1995, ATF and The Fertilizer Institute began coordinating an awareness program to prevent ammonium nitrate from being obtained by those with criminal intent. The "Be Aware for America" campaign was officially launched in 1997. The campaign was designed to help the fertilizer industry be alert to suspicious purchasers, to heighten security, to increase vigilance over storage and distribution and to ensure that persons are able to recognize the theft from, or the misreporting of, fertilizer product shipments.

ATF continues to work with explosives industry members such as the Institute of Makers of Explosives, International Society of Explosives Engineers, the American Pyrotechnics Association and the National Mining Association. ATF personnel attend numerous seminars and events sponsored by these organizations, and we work with these groups to quickly and accurately distribute new information.

Again, Mr. Chairman, Mr. Lantos and Ms. Eshoo, I appreciate the opportunity to testify today and share with you information on ATF's explosives enforcement efforts. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Nelson follows:]

TESTIMONY OF
WALFRED A. NELSON
DEPUTY ASSISTANT DIRECTOR
ENFORCEMENT PROGRAMS AND SERVICES
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FIELD HEARING
AUGUST 2, 2004
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS
HOUSE GOVERNMENT REFORM COMMITTEE
SAN MATEO, CALIFORNIA

Thank you, Mr. Chairman, Mr. Lantos, and members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss ATF's role in explosives enforcement in the United States.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) enforces Federal explosives laws and regulates commerce in explosives. I would like to provide you with a general overview of ATF explosives expertise and assets, and then explain in more detail ATF's role in ensuring the safe storage of explosives.

A primary ATF strategic goal is the investigation of explosives and arson related crimes such as bombings and explosives thefts. ATF aggressively investigates bombings, fires, and explosives thefts to protect the public from the criminal or unsafe use of explosives. ATF's vigorous enforcement efforts include keeping explosives out of the hands of those who would use explosives for criminal or terrorist purposes. One of the ways ATF accomplishes this is by investigating all applicants for explosives licenses and permits and by inspecting those entities.

On July 6, 2004, a break-in at the San Mateo County explosives storage facility was discovered. The San Mateo County Sheriff's Office, San Francisco Police Department and FBI advise ATF that they use five explosives magazines housed in San Mateo County on property owned by the City/County of San Francisco. ATF immediately responded to the crime scene and began an investigation. From the onset, ATF's efforts to recover the explosives and bring those responsible to justice have been supported by many law enforcement agencies, including the United States Attorney's Office, California Highway Patrol, Alameda County Sheriff's Office, Hayward Police Department, Union City Police Department, Oakland Police Department and the Walnut Creek Bomb Squad.

As part of the response, information received by Alameda County Sheriff's Office led law enforcement to possible suspects and suspect vehicle. As a result of the intensive investigation, we believe ATF has recovered all the stolen explosives and arrested four individuals who were later indicted by Federal Grand Jury charging 21 counts relating to the theft, possession and distribution of the explosives.

STATUTES ATF ENFORCES

ATF's criminal and regulatory authority over explosives extends back to the Organized Crime Control Act of 1970, enacted in part in response to the political violence of the late 1960's. This statute imposed controls over the manufacture, distribution, importation and storage of explosives, and gave ATF enforcement responsibility for these controls. This statute was recently amended by the Safe Explosive Act of 2002 in response to the September 11, 2001 terrorist attacks. The Safe Explosive Act, among other things, restricted the availability of explosives to felons and other prohibited persons, strengthened licensing and permitting requirements and imposed new controls over explosives. These laws set forth a comprehensive framework of licensing, permitting, and record-keeping controls designed to protect interstate, intrastate and foreign commerce against interference and disruption from the misuse and unsafe or insecure storage of explosive material.

RESOURCES ATF BRINGS TO BEAR

ATF maintains a variety of licensing, regulation and criminal enforcement initiatives that comprise a comprehensive strategy to help ensure that explosives are not available for use by terrorists or those who would commit violent crimes.

The ATF workforce includes approximately 420 field inspectors who are responsible for inspection of all 120,000 firearms and explosives licensees nationwide. Approximately 12,000 of that total are explosives licensees and permittees. Since 9/11, inspection of explosives storage facilities has been ATF's highest priority. The length of time it requires to conduct an inspection of any explosives facilities can vary dramatically, from as little as several hours to as much as several weeks.

A key asset in the tracking of bombing and explosives theft incidents is ATF's National Explosives and Arson Repository. The National Repository was established by Congressional mandate in the 1996 Anti-Terrorism Act as a national collection center for information on arson and explosives related incidents throughout the United States. The National Repository databases incorporate information from various sources such as ATF investigations and theft reports, the Federal Bureau of Investigation and the United States Fire Administration, as well as state and local agencies. The Repository can be queried with data from Federal and state/local law enforcement and fire service agencies. The Repository also provides resource material to assist investigators with the identification and tracing of explosive material and techniques used to commit arsons and explosives related crimes.

ATF maintains three National Laboratories that provide forensic expertise in explosives and arson investigations. In addition, the ATF National Explosives and Arson Detection Canine Training Center has trained and deployed 35 ATF special agent canine handler and dog teams and 58 teams for state and local law enforcement.

ATF also maintains the Bomb and Arson Tracking System (BATS), which is a joint partnership effort between ATF and members of the nation's fire and critical incident response communities to develop a comprehensive incident based information sharing system. Deployed in 2003, this web-based system allows law enforcement agencies and their investigators responsible for investigation of these violent crimes to share information real-time in a national secure system solely dedicated to fire and post-blast incidents. The BATS program also offers members of the Bomb Squad/EOD community the ability to see real-time data on improvised explosive and incendiary devices being used throughout the country.

One of the strengths of the ATF explosives program is our Special Agent Certified Explosives Specialist (CES) program. The primary missions of the ATF 325 CES are explosives investigations and the destruction of seized, purchased, recovered, and abandoned explosives. The CES strive to maximize public safety as it relates to explosives by providing expert explosives crime scene examination, support at special events, and assistance throughout the United States to other Federal, state and local agencies. They are also tasked with enhancing the overall quality of scene examinations by educating law enforcement personnel in various explosives matters. CES perform their mission while remaining active, case producing ATF special agents.

Additional assets ATF brings to explosives enforcement include four National Response Teams (NRTs) which can be deployed on 24 hours' notice anywhere in the United States to respond to major bombing or fire investigations. These teams consist of highly trained Special Agent Certified Explosives Specialists, Explosives Enforcement Officers, Special Agent Certified Fire Investigators, forensic chemists, laboratory specialists, explosive or arson detection canine teams, and financial auditors. Since the inception in 1978, the NRTs have responded to 581 crime scenes and critical incidents; there have been 25 call-outs in 2004.

A key asset ATF provides for state and local law enforcement officers is a variety of explosives related training including post blast investigative techniques, improvised explosive device training, and advanced access and disablement training.

EXPLOSIVES STORAGE REGULATIONS ENFORCED BY ATF

All persons storing explosives, including state and local government agencies, must meet certain storage requirements. Only Federal government agencies are exempt from storage requirements, as described in 18 USC Sec. 845(a)(6).

A checklist of items ATF would inspect when visiting an explosives storage facility would include:

--verifying all magazines meet the construction, lighting and housekeeping requirements
--verifying the types and locations of all magazines and inspecting all structures onsite
--verifying storage descriptions and any unreported changes or additions
--verifying all outdoor magazines meet table of distance requirements

--determining the class of explosives and appropriate type of magazine for each class
--conducting an inventory to compare to the transactions records

EXPLOSIVES INCIDENTS, THEFTS, AND STATISTICS

In 2003, there were 11,770 explosives licensees and permittees in the United States. ATF conducted 7,883 inspections of those licensees and uncovered 1,165 public safety violations.

Additionally, last year ATF opened in excess of 4,000 explosives and arson criminal investigations, and received reports of 79 thefts of explosives. By law, any person who has knowledge of the theft or loss of explosive material from his or her stock must report that theft or loss to ATF within 24 hours of discovery. Of the 79 thefts report in 2003, 73 were from private or commercial licensees and six were from public sector facilities. Of those, three were from law enforcement facilities, two were from military facilities, and one was a local government facility. In a concerted effort to keep explosives out of the hands of those who would use them for criminal or terrorist purposes, ATF investigates 100 percent of all reported thefts and losses of explosives.

Recently, ATF developed an Explosives Threat Assessment and Prevention Strategy (ETAPS) at the request of the Attorney General. Part of this strategy involves Threat Assessment Guidelines that we have issued to explosives industry groups. It covers security and other areas that industry members would voluntarily strengthen that are not covered by ATF regulations, such as employee security awareness training. ATF inspectors will be using this guideline on current inspections. A copy of this threat assessment guideline is attached to my testimony.

Although we cannot conduct mandatory inspections of state and local storage facilities, we do often provide inspections for public storage facilities if requested. In fact, in 2003 and 2004, ATF has conducted 39 voluntarily requested inspections for explosives storage facilities owned by government entities.

ADDITIONAL ATF REGULATORY ENFORCEMENT EFFORTS

Our increased inspection efforts post 9/11 have included a number of initiatives:

- On September 17, 2001, ATF sent out a letter to all Federal Explosives Licensees and Permittees, requesting them to conduct a full inventory of all explosive items in their possession. ATF requested industry members to report any thefts, losses or suspicious activities immediately to ATF using ATF's hotline number (1-888-ATF-BOMB).

- In October 2001, ATF initiated a program (B6H) to inspect as many explosives industry members as possible to gather intelligence on possible criminal activities and to access and correct security and storage vulnerabilities. A total of 7,459 Federal explosives licensees and permittees were contacted in the ensuing three

months. The results of this program included 198 referrals of suspicious activities to ATF's Law Enforcement and the issuance of 372 violations. This increased inspection effort lead to the discovery and immediate seizure of **4,461,166** pounds of improperly stored explosive materials, the largest seizure of explosives in ATF's history. That explosives licensee had its Federal explosives license revoked.

- In May 2002, June 2003, and July 2004, ATF sent out additional special notices to all Federal Explosives Licensees and Permittees, again stressing the need for continued vigilance and security assessment as a result of the events of September 11, 2001.

ATF believes in partnering with industry to promote public safety. Two examples of those partnerships include "Be Aware for America/Be Secure for America" and "America's Security Begins With You."

- In response to the World Trade Center bombing in 1993 and the Oklahoma City Murrah Building bombing in 1995, ATF and The Fertilizer Institute began coordinating an awareness program to prevent ammonium nitrate from being obtained by those with criminal intent.

- The "Be Aware for America" campaign was officially launched in 1997.

- The campaign was designed to help the fertilizer industry be alert to suspicious purchasers, to heighten security, to increase vigilance over storage and distribution, and to ensure that persons are able to recognize the theft from, or the misreporting of, fertilizer product shipments.

ATF continues to work with explosives industry members such as the Institute of Makers of Explosives (IME), International Society of Explosives Engineers (IME), and the American Pyrotechnics Association (APA), and the National Mining Association. ATF personnel attend numerous seminars and events sponsored by these organizations and work with these groups to quickly and accurately distribute new information.

Again, Mr. Chairman and Mr. Lantos, I appreciate the opportunity to testify today and share with you information on ATF's explosives enforcement efforts. I would be happy to answer any questions you may have.

Final draft – 7/28/04 – 11:20 a.m.

**Attachment 1**

## SECURITY CHECKLIST

VOLUNTARY ACTIONS EXPLOSIVES INDUSTRY MEMBERS CAN UTILIZE TO MAKE THEIR BUSINESSES MORE SECURE
**(NOTE: Provided to Industry Members and ATF Inspectors)**

### I. SECURING YOUR MAGAZINE(S)/JOB SITE(S)/TRUCK(S)

**1. Key(s) Access**

a. Access to the keys to the magazine(s) has been restricted to essential personnel only. The keys are located in a secure, unmarked area, preferably not in a central location at the premises.
b. Keys to trucks loaded with explosives are secure and under the control of essential personnel.
c. Individuals using the keys are signing them in and out of a logbook.
d. If keys are not being shared, an inventory of keys has been conducted and all keys have been accounted for. New keys are numbered and assigned to individuals.
e. Magazine locks have been changed if keys are missing or were in the possession of terminated employees, or if adequate controls over whom has access to the keys are lacking.

**2. Magazine Security**

a. Magazines are being kept in a secure location.
b. Magazines are being visually inspected on a daily basis.
c. Weaknesses or vulnerabilities in the magazine's construction that may reduce its theft-resistant capabilities have been identified and corrected. (NOTE: Newly acquired magazines and changes in magazine construction must be promptly reported to the local ATF office in accordance with 27 CFR 555.63).
d. Local fire safety officials have been notified of all explosives storage locations within 48 hours of the commencement of storage activities (as required by 27 CFR 555.201).
e. Regular inventories are taken to ensure there have been no thefts/losses of explosive materials.
f. A clearly defined plan-of-action has been established for the recording and reporting of lost/stolen explosive materials. All applicable Federal, State, and local telephone numbers have been obtained in order to make a report.

**3. Job Site Security**

a. Access to job sites where explosives materials are stored and used has been limited to essential personnel only. Procedures are in place to restrict unauthorized personnel from the area.
b. Fences and locked gates have been installed. Security personnel have been properly trained for emergency situations and are available for securing the job site and magazines.

c. Floodlights, alarms, security cameras, or other security devices have been installed at storage locations making monitoring the job site easier.
d. Contact your local law enforcement agency and establish a rapport with the officers who routinely patrol your area. Familiarize them with your business hours so they will alert when people are present during off hours.
e. Know your neighbors and encourage them to be on alert for suspicious activity. Advise them that if they encounter a suspicious person or activity to call the police.
f. The open areas around the facility are not obstructed by shrubs, trees, large signs, or other barriers.

4. **Knowing Who You Hire**
   a. Authorized personnel are trained and available to receive and promptly store explosives when delivered. Personnel have been adequately informed about emergency procedures.
   b. A list of those responsible for the explosive materials has been recorded or updated. Those not on the list have been restricted from accessing the explosive materials.
   c. Ensure that all responsible persons and employee possessors have current checks on file. Establish a program to review these checks and update them as required. Ensure that any prohibited persons are identified and removed from access to the explosive materials.

**II. ADDITIONAL MEASURES TO SECURE YOUR FACILITY**

1. **Signage**
   a. Alarm monitoring service signs are posted in highly visible locations. The signage includes:
      i. No Trespassing
      ii. Private property
      iii. Closed Circuit TV
      iv. Patrolled
      v. No vehicles beyond this point
      vi. All visitors must check-in at front office
      vii. All visitors must be escorted

2. **Surveillance**
   a. Closed Circuit TV surveillance cameras have been installed to monitor less visible or high risk areas.
   b. Surveillance tapes are reviewed on a regular basis.
   c. Additional security for pre-loaded trucks should be taken to include parking them in gated, well-lit areas.

3. **Training**
   a. Employees involved with securing the explosives are utilized in security planning.
   b. All employees are trained to spot suspicious individuals and behaviors. Employees have been trained to recognize what constitutes a suspicious customer or an unusual sales transaction.

## III. SECURING THE DELIVERY/SALE OF EXPLOSIVE MATERIALS

1. **Vendors**
   a. Ensure that vendors that service your facility are well known. The telephone numbers of the vendors are readily available to call in case an unknown employee of the vendor comes to the facility.
   b. The vendors are required to check in and are issued an identification badge.
   c. The vendors are escorted throughout the facility.

2. **Things to Address When Making a Transfer**
   a. Know your customer.
   b. Make follow-up calls to verify receipt of materials by customer in quantity ordered.
   c. Be alert to those who:
      i. Pay in cash
      ii. Would not take delivery
      iii. Behave in an unusual manner
      iv. Do not know the product
      v. Ask questions about product manufacturing

3. **Receiving Deliveries**
   a. Procedures have been established to verify if the carrier's delivery is expected.
   b. The carrier's identification is being matched to shipping records for each transaction.

4. **Unloading and Securing Shipments**
   a. Procedures have been established to verify that explosives received are securely unloaded and stored.
   b. Procedures have been established for notifying the shipper of damaged or missing items immediately upon discovery.

5. **Inventories**
   a. Inventories of all explosives are validated and spot checked by a second party not affiliated with the taking of the original inventory to ensure the inventory is accurate.
   b. Date/shift codes have been recorded in the summary records for tracking purposes in case explosives are stolen.

Mr. SHAYS. Thank you, Mr. Nelson. Mr. Gulledge.

Mr. GULLEDGE. Mr. Chairman, Mr. Lantos, Ms. Eshoo, members of the subcommittee, on behalf of Inspector General Glenn Fine, we appreciate your invitation to testify. We were invited today because we recently reviewed how the ATF inspects firearms dealers. And that same body of inspectors also do the inspections of explosives licensees. The issues we raised and the recommendations we made to improve that program could be helpful as the subcommittee examines the safeguarding of explosives. I would also point out that our audit section is in the final stages of review of the intelligence related to explosives, and we will be coming out with that audit in the next few months.

Mr. SHAYS. Could you please put the mic a little closer, and when you are trying to look at us, it takes away from the mic a little bit, so——

Mr. GULLEDGE. Yes, sir.

Mr. SHAYS [continuing]. Just slide it down in the middle more.

Mr. GULLEDGE. The Evaluation and Inspections section is also reviewing the ATF's implementation of the Safe Explosives Act. Because we have not finished that review, I don't have final data, but I can discuss the issues that we intend to examine.

Let me start by talking about our report on inspections of firearms dealers. First, we found that the ATF is not able to inspect all gun dealers in person. Application inspections are crucial for ensuring that new dealers understand firearms laws, but the ATF told us that because of staff shortages, many inspections had to be done over the telephone. Now, that is not the case with inspections of explosives applicants, as those inspections must be done in person. The impact of the resource shortages was evident in our analysis of ATF staffing. When we examined the field divisions, we saw that some had far fewer inspectors relative to their workload than others.

We also found that the average length of application inspections varied widely. The divisions with the fewest resources spent the least time on each application inspection, as little as 6 hours. Divisions that had more resources took longer, as long as 25 hours, on average. According to ATF data, the distribution of explosives licensees is also imbalanced among the field divisions. It ranges from about seven explosives licensees per inspector to over 70.

In response to our recommendations, the ATF is developing a new staffing model to align its inspectors with its workload, and it is also seeking to increase the number of application inspections done in person.

Another of our findings was that compliance inspections of firearms dealers were infrequent and inconsistent. The ATF's goal is to inspect gun dealers every 3 years, but it inspected less than 5 percent in fiscal year 2002. At that rate, it would take over 20 years to inspect all 104,000 firearms dealers. Unfortunately, recent data indicates that the number of firearms inspections has fallen as ATF redirected resources to accomplish the inspections mandated under the Safe Explosives Act.

We also found that there were significant differences in productivity across divisions. The variations we found showed that different divisions do not conduct compliance inspections in the same

way. More importantly, there was little correlation between the average time that a division took and how many adverse actions it initiated and how many times it identified and referred suspected gun trafficking to investigators. We recommended that the ATF streamline and standardize its inspection process, and once that is done revise its staffing requirements to reflect the number of inspectors that it actually needs to inspect gun dealers every 3 years. The ATF has identified a number of steps that it has taken to implement those recommendations.

One initiative has already improved the ATF's consistency in taking adverse actions. In the past the ATF acted infrequently to revoke licenses of dealers that had violated firearms laws. In fiscal years 2002 and 2003, combined, the ATF issued only 84 notices of revocation. In May 2003, ATF headquarters issued guidance to ensure that field divisions act when they find serious violations. Under the new guidelines, the number of revocations has increased substantially. During the first quarter of fiscal year 2004, the ATF issued 59 notices of revocation, which is a better than 5fold increase over the rate of the prior 2 years.

One caution about that: We found that the adjudication process for those revocations was lengthy. It averaged about 379 days from the time an inspector recommended it until the time the case was closed. And that was due, in part, to the heavy workload that is put on the ATF's legal staff. As firearms and explosives cases rise, the competition for those legal resources will also increase.

Let me now turn to our review of the ATF's implementation of the Safe Explosives Act. After September 11, the Congress passed this act to reduce the chance that would-be terrorists could easily obtain explosives with which to carry out attacks in this country. We are examining how effectively the ATF has implemented the licensing and inspection programs required by the act.

Our review will examine the trends in revocations and denials before and after implementation of the act, as well as the efficiency and effectiveness with which the ATF is carrying out its inspection program. We expect that many of the actions that the ATF has already agreed to implement will extend to its explosives inspections.

Regarding the actions that the ATF is taking, on behalf of the Inspector General, I would like to say that we appreciate the responsiveness and the willingness that the ATF has shown to address the problems we reported. ATF managers have taken the matters seriously and we believe they are taking positive actions that will improve the ATF's operations.

That concludes my statement, and I will be pleased to answer any questions.

[The prepared statement of Mr. Gulledge follows:]

*Statement of*

Michael D. Gulledge
Director, Evaluation and Inspections Division

U.S. Department of Justice Office of the Inspector General

*Before the*

House Committee on Government Reform
Subcommittee on National Security,
Emerging Threats and International Relations

*concerning*

"Homeland Security: Surveillance and
Monitoring of Explosive Storage Facilities"

**August 2, 2004**

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Mr. Chairman, Congressman Lantos, and Members of the Subcommittee on National Security, Emerging Threats and International Relations:

## I. INTRODUCTION

On behalf of the Inspector General, Glenn A. Fine, we appreciate the opportunity to testify before the Subcommittee as it examines issues related to safeguarding of stored explosives. We were invited today because we recently completed a review of the ATF's Federal Firearms Licensees inspection program. Our testimony today is based on that report. The inspectors that are responsible for the ATF's inspections of firearms dealers also conduct the ATF's inspections of explosives licensees. We believe that a number of the issues we raised, as well as recommendations we made for improving the ATF's inspections of firearms dealers, could be helpful to the Subcommittee as it considers ways to improve the safeguards over stored explosives.

In addition, we are presently reviewing the ATF's implementation of the Safe Explosives Act. As that review is on-going, we do not have final data on the ATF's inspections of explosives licensees, but I can discuss some issues regarding explosives licensing we intend to examine in that project.

## II. ATF INSPECTIONS OF FIREARMS DEALERS

On July 16, we issued our report on the ATF's program for inspecting Federal Firearms Licensees (FFLs). These inspections are conducted to ensure that the firearms dealers are complying with the requirements of the Gun Control Act of 1968 and other federal firearms laws.[1] We found that the ATF's inspection program is not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic. The ATF concurred with most of our recommendations and has begun to implement changes to improve the consistency with which it conducts follow-up inspections and takes adverse actions. The following summarizes the significant findings and recommendations in our report that are most pertinent to the topic being examined by the Subcommittee today, as well as the ATF's response:

The ATF did not conduct in-person application inspections on all new firearms dealers. Application inspections are conducted to ensure that applicants are familiar with the Gun Control Act and other federal firearms laws, and also provide the new dealers an opportunity to discuss issues related to firearms laws with ATF Inspectors. Further, if an FFL violates federal firearms laws after having received an application inspection, it is easier for the ATF to meet the legal standard of demonstrating that the violation was "willful."[2] Although the ATF inspection database did not identify how each inspection was conducted, our interviews and survey of ATF Headquarters and Field Division personnel found that many of the 8,123 application inspections that the ATF conducted in fiscal year (FY) 2002 consisted only of a telephone call. ATF Headquarters and Field Division staff told us that telephonic application inspections were not as comprehensive as in-person inspections, but said that they did not have enough resources to conduct all inspections in person.

The impact of the staffing shortages on application inspections was evident in our review of inspector staffing data. The number of Inspectors in each of the ATF's 23 Field Division ranged from 9 to 35,

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[1] The Gun Control Act of 1968, Public Law 90-618. Title 18 U.S.C. Chapter 44; The National Firearms Act, Title 26 U.S.C. Chapter 53; The Arms Export Control Act of 1976, Title 22 U.S.C. § 2778.

[2] In the context of the Gun Control Act, willfulness is the intentional disregard of, or indifference to, legal obligations. Repeat violations (especially where there was notification of prior violations) or large numbers of violations can demonstrate willfulness. Sometimes one egregious violation, such as selling a firearm to a non-prohibited person when the FFL knows that it is actually for a prohibited person ("straw purchase"), can demonstrate willfulness.

and the number of firearms dealers ranged from 1,172 to 8,194. However, the ATF had not distributed its Inspectors among the Field Divisions to match the distribution of dealers, resulting in significant workload imbalances. The imbalance in staff was clearly correlated to the time that each Field Division spent conducting application inspections. The Field Divisions ranged from 25.5 hours per inspection to as little as 6.2 hours per inspection in FY 2002, with those Field Divisions that had fewer Inspectors relative to the number of dealers spending less time on each application inspection.

In response to our recommendation that the ATF inspection process include in-person inspections of all applicants, the ATF agreed that in-person application inspections are critical for ensuring that licensees understand and obey federal firearms laws. The ATF stated that in-person application inspections are now required in 14 metropolitan areas, and that the ATF also is working to increase the number of in-person application inspections conducted nationwide. Under a new (June 2004) policy, all applicants who do not receive an in-person application inspection must be scheduled for an in-person compliance inspection during the first year after they are issued a federal firearms license.

In response to our recommendation that it develop alternatives for better aligning Inspector resources, the ATF stated that it recently began consolidating its field manager positions so that it is better able to address its firearms dealer and explosives licensee workload. Also, the ATF is developing a new workload model for Inspector staffing, and will evaluate the need to reassign Inspectors to better align resources with the distribution of FFLs and explosives licensees once that is complete. We believe that the ATF is taking steps in the right direction, but it still cannot comprehensively inspect all new applicants in person.

The ATF did not regularly inspect firearms dealers and the ATF Field Divisions implemented inspections inconsistently. We found that most firearms dealers are inspected infrequently or not at all. According to the former ATF Director, the agency's goal is to inspect each dealer at least once every three years to ensure that they are complying with federal firearms laws. However, due in part to resource shortfalls, the ATF is currently unable to achieve that goal. ATF workload data showed that the ATF conducted 4,581 compliance inspections in FY 2002, or about 4.5 percent of the approximately 104,000 federal firearms licensees. Our review of inspection records on 100 randomly selected dealers found that 23 had never been inspected; 22 had received only an application inspection; 29 had received at least one compliance inspection; and 26 FFLs had received only a license renewal inspection. Many of the inspections that were conducted occurred years ago. For

example, we found one FFL cited in 1985 for selling a rifle to a minor and for numerous record-keeping violations had never been re-inspected.

Recent data indicates that inspections of firearms dealers have decreased further as the ATF has worked to conduct the required inspections of explosives licensees. In November 2002, the Safe Explosives Act imposed new licensing requirements that increased the number of explosives licensees and mandated that the ATF conduct on-site inspections of explosives licensees and permit holders at least once every three years. To meet that requirement, the ATF diverted Inspector resources to explosives work. Preliminary data indicates that through the first five months of FY 2004, the ATF completed 1,113 compliance inspections on firearms dealers. At that pace, the agency will complete less than 2,700 compliance inspections of firearms dealers during FY 2004, less than half the number that it completed in FY 2003.

We also found that the inspections varied greatly among the ATF Field Divisions. The average time spent to conduct each compliance inspection ranged from 24.5 hours to as much as 90 hours per inspection. ATF Headquarters officials stated that the variance in average inspection times occurred because of the discretion that Inspectors have in conducting compliance inspections. For example, to determine whether a firearms dealer's record-keeping system is accurate, ATF Inspectors may conduct a full inventory or examine a sample of the dealer's stock.

Our interviews with Inspectors in different Field Divisions confirmed that they used different approaches to conducting their inspections. We examined several performance indicators to see if the inspection variations had an impact on outcomes, but we found little correlation between the amount of time that Field Divisions spent inspecting and the number of adverse actions that the Field Divisions took (such as holding a warning conference or revoking a dealer's license) or the number of times the Field Divisions identified and referred suspected criminal activity for investigation. We also found significant variances in productivity among the ATF Field Divisions' inspections. For example, our analysis of the ATF's FY 2002 workload and performance data for each Field Division found that:

- The number of inspections conducted per Inspector ranged from under 13 to almost 47.
- The percentage of the inspections that identified violations varied from under 5 percent to over 40 percent.

- On inspections in which violations were discovered, the average number of violations ranged from 16 to 178.

- The average time taken to find each violation ranged from 47 minutes to over 7 hours per violation.

We identified that the ATF could benefit from improving the firearms dealer inspection process, including standardizing procedures for reviews of firearms inventories and sales records; better automation of the inspection process; directing limited resources toward noncompliant dealers; and establishing guidance to ensure that Inspectors consistently identify and report indications of firearms trafficking for investigation. In addition, in an April 2003 report and in testimony before the House Committee on Appropriations on March 24, 2004, the ATF stated that to fully implement its mission to enforce federal firearms and explosives laws, it would need 1,775 Inspectors, 1,235 to inspect firearms dealers and 540 to inspect explosives licensees. Improving the efficiency of the inspection process also could reduce the ATF's need for additional staff.

We directed several of our recommendations at achieving the needed improvements in the inspection process. We recommended that the ATF:

- Develop a standard, streamlined inspection process that includes more efficient inventory and records reviews; automated inspection reporting; and consistent examination of indicators of firearms trafficking.

- Conduct a pilot project to test the streamlined inspection procedures and establish appropriate time standards for conducting these inspections.

- Revise its staffing requirements using the time standards to reflect the number of Inspectors needed to conduct compliance inspections on a triennial basis.

The ATF substantially concurred with our recommendations and stated that it is taking a series of steps to implement them, including:

- Developing streamlined, standardized inspection procedures, which it plans to test in several divisions in a pilot project during FY 2005.

- The ATF issued a memorandum titled "Guidelines for Conducting Federal Firearms Licensee Compliance Inspections"

in June 2004 to clarify a number of inspection process issues, such as the methods for verifying inventories and reviewing sales records.

- The ATF is reevaluating all work plans and workpapers to eliminate tasks that are not critical to a final inspection report, and is also updating the Inspector Handbook to provide better guidance to Inspectors on conducting inspections.

- The ATF stated that it created a working group to develop a workload model. A completion date for the effort has not yet been established, but a status report from the working group was due by late June 2004.

- The ATF created the position of Assistant Director (Field Operations) to better manage the ATF's efforts in the field, including implementing a quarterly reporting system on inspection productivity and results by each Field Division.

The ATF acted infrequently to revoke Federal Firearms Licenses, and the process was not timely. The ATF discovered violations on 1,934 of the inspections it conducted in FY 2002, and on 1,812 of its FY 2003 inspections. The ATF issued only 30 Notices of Revocation in FY 2002 and 54 Notices of Revocation in FY 2003.[3] In May 2003, the ATF issued new guidance to ensure that Field Divisions follow up and take action when violations are found. The guidance directed the Field Divisions to conduct follow-up inspections on firearms dealers that were issued warning letters or that were directed to attend warning conferences, and to escalate adverse actions for repeat offenses. Under the May 2003 Guidelines, the number of adverse actions has increased. The ATF denied FFL requests to renew their licenses or issued Notices of Revocation 59 times during just the first quarter of FY 2004. The ATF also stated that its June 2004 policy reminds Inspectors to initiate referrals to ATF Special Agents when inspections reveal potential trafficking indicators.

We also found that the process for adjudicating proposed revocations was lengthy. The ATF provided us with data for 50 closed denial and revocation cases completed in FY 2001 and FY 2002. That data showed those 50 cases averaged 379 days from the date that the Inspector recommended revocation to the date that the case was closed. According to ATF officials, the lengthy duration of revocation proceedings

[3] Notices of Revocation are not final. Of the 30 Notices in FY 2002, 25 of the subjects requested a hearing and 3 of those avoided revocation. (FY 2003 data was unavailable.) The ATF also can effectively revoke a license by denying a request for license renewal, and in FY 2001, the ATF denied 28 requests for renewal.

was due to the number of ATF officials involved in the eight-step process (e.g., Area Supervisors, Directors of Industry Operations, Division Counsels, and Hearing Officers) and delayed support from ATF lawyers. The ATF's case tracking data did not include internal tracking dates, but Assistant Chief Counsels and Division Counsels we interviewed acknowledged delays in denial and revocation proceedings. They stated that the delays were due, in part, to their heavy caseloads and a need for better documentation of violations from ATF Inspectors. In some cases, delays occurred due to a lack of legal staff within the Field Division. In those cases, the Field Division had to obtain legal support from their regional Assistant Chief Counsel's Office.[4] It is likely that any legal action related to explosives licensees would face the same competition for resources.

In response to our recommendation that the ATF National Licensing Center develop a tracking system to monitor the progress and timeliness of adverse actions, the ATF tasked the Division Chief, Firearms and Explosives Services, with developing and monitoring an improved adverse action tracking system for denials and revocations of licenses. The ATF intends to route an electronic version of monthly tracking reports to all Division Counsels and Directors of Industry Operations to better advise them of how many adverse actions are pending in their divisions and how long each case is taking to resolve.

The ATF did not consistently report inspection performance. During our examination of the performance and productivity of the ATF's inspections program, we identified significant discrepancies in the data contained in the electronic databases. For example, while preparing responses to our data requests, several hundred inspections entered as compliance inspections were found by ATF officials to actually be application inspections. Moreover, the productivity data we were provided differed from published reports. ATF officials cited the complexity of the tracking system and inconsistently written queries as reasons for the inconsistent data.

To improve the tracking of inspection data, in October 2003 the ATF implemented a new version of its system that requires Field Division staff to use pull-down menus that are inspection-specific (e.g., "Application Inspection"). Implementing an accurate and robust workload tracking system is essential to enable the ATF to account for the variability among its divisions, ensure that that all its activities are conducted efficiently, develop an accurate workload model for aligning

[4] The ATF has five Assistant Chief Counsel Offices, located in San Francisco, Chicago, Dallas, Atlanta, and New York/Philadelphia. The northeast regional office is currently operating in Philadelphia due to the September 11, 2001, destruction of the ATF's New York offices, which were located at the World Trade Center.

Inspector resources, and to establish appropriate performance goals and accurately report its productivity. The ATF must also adopt a standard approach for querying the electronic database to ensure that it consistently reports accurate performance data.

## III. ATF'S IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT

The Office of the Inspector General is currently conducting a review of the ATF's implementation of the Safe Explosives Act (SEA). Specifically, we are focusing on whether the ATF has timely and effectively implemented (1) a licensing and permitting procedure, and (2) an inspections process in keeping with the provisions of the Act.

Provisions of the SEA. The SEA was enacted in November 2002 as part of the Homeland Security Act and its provisions became effective in two phases. The first phase became effective January 24, 2003, and added three new prohibited persons categories: Aliens (with limited exceptions); those dishonorably discharged from the military; and U.S. citizens who renounce their citizenship. The second phase became effective May 23, 2003, and required all persons who receive explosives to hold a Federal explosives license or permit. Licenses and permits were previously required only for those who engaged in interstate use of explosives; intrastate purchase and use of explosives were regulated by the individual states

The SEA established two new categories of individuals who have access to or control over explosive materials:

- Responsible person – an individual who has the power to direct the management and policies of the applicant pertaining to explosives materials; and

- Employee possessor – an employee who is authorized by the employer to possess explosive materials in the course of employment.

The permittee category continued unchanged except for the addition of a new limited permit.[5] A permittee is defined in the SEA as any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of the SEA.

[5] The new limited permit is designed for individuals who have a legitimate, but infrequent, need to use explosives. A limited permit is issued to a person authorizing him to receive for his use explosive materials from a licensee or permittee in his state of residence no more than 6 occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce.

The licensing process under the SEA. To receive a license or permit, a completed application including photos and fingerprints are required from responsible persons and permittees. The ATF conducts background checks via the NICS and submits fingerprints to the FBI for comparison with prints in their Integrated Automated Fingerprint Identification System (IAFIS) database. For companies applying for a license, all employee possessors must complete background questionnaires asking for personal information and certification that they are not a prohibited person. The questionnaires are submitted as part of the license application package and the ATF conducts background checks via the NICS on employee possessors to determine if they are in one of the prohibited person categories. As new employees possessors are hired, licensees must see that they complete and submit a questionnaire within 30 days.

As a result of the SEA, the application process became more paper and process intensive. Some licensees have hundreds of employee possessors, as many as 600 in the case of one famous theme park operator. Each employee possessor is required to have a NICS check. Individuals who have "hits" as a result of the NICS check are notified that they are immediately prohibited from handling explosives. However, they are allowed to present exculpatory or explanatory information to show they are not a prohibited person or to seek relief of disability. In addition, every application requires an on-site inspection.

New and renewal explosives license applications. After the new application requirements went into effect in May 2003, the ATF received 6,045 new explosives applications in FY 2003. That was a 400 percent increase from the previous fiscal year. The data we have reviewed indicates that the applications that the ATF will receive in FY 2004 will be closer to the historic levels. The ATF also received a total of 2,082 explosives renewal applications in FY 2003, a 15 percent increase over the previous fiscal year. Our review is examining the ATF's timeliness and effectiveness in processing the new and renewal applications.

Denied applications and revoked licenses. The ATF can take adverse actions against those who violate federal explosives laws or regulations or are unable to comply. They may revoke a license or permit or deny a renewal application if one is in process. Unlike violations of firearms laws, the ATF does not have to show that violations of the SEA were "willful." The ATF does not have the authority to impose fines or to suspend explosives licenses. As a part of our review, we are examining the trends in revocations and denials before and after the implementation of the SEA.

National Explosives Licensing Center (NELC). The SEA called for the NELC to be established in West Virginia. The Chief was hired in November 2003. The applications from several states with small licensee populations have recently begun to be transferred to the NELC from the National Licensing Center in Atlanta, Georgia. The ATF's original staffing plan for the NELC called for eight Legal Instrument Examiners. The staff currently consists of the Chief and two legal instrument examiners. As a part of our review, we will examine the implementation and planned staffing of the NELC.

The ATF's inspections of explosives licensees. We expect that many of the actions that the ATF proposed to implement in response to our review of the Federal Firearms Licensee inspection program – such as its plan for reallocating Inspector resources among Field Divisions – will extend to its explosives licensee inspection program. We are considering the actions that the ATF has already committed to as we examine the ATF's management of explosives inspections.

Other aspects of the ATF's oversight of explosives. Finally, in our review we are examining several other areas of the ATF's oversight of explosives. For example, the SEA gave authority to the ATF's National Laboratory to collect and analyze samples of explosives. We are examining the ATF's planning for and implementation of this provision of the SEA. We are also examining the ATF's working relationship with the Mine Safety and Health Administration, which is responsible for overseeing the storage of explosives underground.

## IV. CONCLUSION

Although we recognize that the ATF's resources are limited, we concluded that the ATF's lack of standardized inspection procedures resulted in inconsistent inspections of Federal Firearms Licensees and significant variation in the implementation of the inspection program by Field Divisions. Moreover, the lack of consistency prevented the ATF from ensuring that its current resources are being used as efficiently as possible, and reduced the accuracy and reliability of the ATF's projections of its staffing needs.

Because the ATF does not conduct regular inspections of all firearms dealers, it cannot effectively monitor the overall level of compliance with federal firearms laws. In December 2003, the ATF directed Field Divisions to conduct Random Sample Compliance Inspections. Using data from those inspections, the ATF planned to "be able to project the overall level of compliance by" firearms dealers, pawnbrokers, and collectors. The project to estimate the overall level of compliance with laws is needed to assess the challenge facing the ATF,

but it cannot take the place of regular compliance inspections for deterring and identifying noncompliance with firearms laws. The mandating of triennial inspections for explosives licensees in the SEA will better ensure that the ATF can closely monitor and promote a high level of industry compliance with the SEA.

We made several recommendations, which the ATF is implementing, to improve the efficiency and consistency of inspections and to ensure that violations are processed in a uniform and appropriate manner. Establishing a consistent process is essential to accurately measure productivity and project the staffing that the agency needs in order to conduct inspections on a regular basis. Achieving its goal of regular compliance inspections is essential for the ATF to identify and address scofflaw dealers and reduce the availability of illegal firearms to criminals.

This concludes my prepared statement. I would be pleased to answer any questions.

Mr. SHAYS. Thank you very much. We have the clock right over there. We do 10-minute questioning. I will turn to Mr. Lantos and then Ms. Eshoo.

Mr. LANTOS. Thank you very much, Mr. Chairman. I want to thank our two witnesses for their very informative testimony.

Let me say at the outset that whatever term of criticism my colleagues or I may have with regard to some of these issues, it is not aimed at the very hard working and honest and public spirited individuals who work at these organizations. But since the issues are literally issues of life and death, we have to see to it that episodes such as the one we had here in San Mateo County don't occur.

Let me turn to Mr. Nelson first. In your testimony, on page 4, you state that of the—you are talking about the year 2003, which is the last year for which you have statistics. You say that there were 79 thefts reported in 2003. Seventy-three were from private and commercial licensees, and 6 were from public sector facilities. Can you give us an idea of how the six thefts from public sector facilities are similar to, dissimilar from the one we had here in San Mateo County? In how many of these instances were arrests made, and in how many of these instances were the explosives recovered?

Mr. NELSON. I think in most of the cases the thefts were accomplished by breaking the lock, torching the lock, getting in through that way. That is one of the most common ways of entry. As far as recoveries from public sector thefts, I would have to develop that information and provide it to you.

Mr. LANTOS. Well, what is your impression? Were all of the criminals who committed these acts apprehended?

Mr. NELSON. I don't know. I would have to find out. I suspect in some cases probably not. I don't have that information with me.

Mr. LANTOS. The choice, sir, would imply that the explosives were not recovered.

Mr. NELSON. That could be.

Mr. LANTOS. That could be.

Mr. NELSON. I could get data on explosive recoveries as well.

Mr. LANTOS. Well, let me ask you to comment specifically on the San Mateo case. You have now studied it. It is receiving national attention. What is your ex-post analysis of what happened and why it happened?

Mr. NELSON. Well, since that case is an active criminal investigation, I won't provide a comment on it. It is under criminal investigation right now, sir.

Mr. SHAYS. Can the gentleman just give us the details without having to mention names and so on of what happened? I mean I would think you have some capability to do that.

Mr. NELSON. Well, we believe we have recovered all the explosives, and we have made the four arrests, and it is still an active investigation.

Mr. SHAYS. Can you talk about the facility, how it is set up, whether it met standards and so on? I mean aren't these questions that you want to go through? We aren't here to—we are here because—it would be kind of absurd not to be able to have something to talk about.

Mr. NELSON. It was a blow torch entry and there were about 200 pounds of explosives that were taken, that was emptied out, 30 to

35 pounds of plastic explosives, 114 pounds of binaries, 800 to 900 blasting caps, some data sheet and some dat cord and other items.

Mr. LANTOS. Well, who or what was taken, that is really not Chairman Shays' question and not my question. We visited the site. There are four sheds. Three of them, as far as we could determine, had no alarm mechanism whatsoever. One had a non-functioning alarm mechanism. How typical is this at public facilities where explosives are stored?

Mr. NELSON. Well, the only requirement that the public facilities have is to comply with our regulations, and we do not require alarm systems. Now, many industry members do have them.

Mr. LANTOS. Why don't you require alarm systems?

Mr. NELSON. Well, it is not currently in the regulations.

Mr. LANTOS. Well, I understand, but why are they not? That is the question.

Mr. NELSON. Well, in my statement, I mentioned the explosives threat assessment and prevention strategy that we are working on, and one of the things we have done is distribute to the industry groups a number of voluntary items they can take to strengthen the security——

Mr. LANTOS. You say voluntary items.

Mr. NELSON. Yes, sir.

Mr. LANTOS. Now, what do you do when they choose not to do so? I mean this is an arena where to have voluntary suggestions is lunatic. These have to be mandatory, mandatory provisions. Does ATF have a view today, 3 years after September 11, whether the suggestions should be voluntary or whether these are mandatory requirements, and if they are not followed, there will be a revocation of license?

Mr. NELSON. One of the requirements under the explosives statute, at 18 USC 942(j), is that our regulations must comply with the general standards of safety and security of the industry. Now, we can propose regulations, and of course we would have to do a cross-benefit assessment as part of that process. We currently have regulations——

Mr. LANTOS. Have you proposed changes? Have you proposed that these regulations be mandatory?

Mr. NELSON. We have not. The current regulation that we are considering will require a strengthening of the magazines' construction themselves to provide better bullet resistance, and that is currently being worked on.

Mr. LANTOS. But it is still voluntary. It is not mandatory.

Mr. NELSON. Well, if this reg gets finalized, additional security in the form of the construction would be required.

Mr. LANTOS. Mandatory?

Mr. NELSON. Mandatory. But with the explosives threat assessment, while we consider whatever other regulations we might want to propose in a Notice of Proposed Rulemaking, we have gone to the industry and we have asked them, "Here are some additional steps we would like you to take on a voluntary basis." Now, all of the industry groups have indicated to me that they wish to cooperate and to do these things, and many of them are already accomplishing this. One of them is alarm systems, cable TV cameras, training for employees, better screening of visitors and repairmen

and other people who might come to the site. Those type of things, we cannot impose them without going through a rather lengthy regulatory process. In advance of considering additional regulations, we have gone out with this voluntary concept.

Mr. LANTOS. Well, let me say to you, Mr. Nelson, speaking just for myself, that this voluntary concept 3 years after September 11 just doesn't wash, and the leisurely approach which your testimony reflects I find appalling. We are 3 years into a declared war on global terrorism, and we are still making voluntary suggestions, which obviously are not doing the job, and based on your own testimony, we are talking about 79 thefts of explosives last year. But that indicates to me that something better has to be put in place than what it is in place.

Let me turn to Mr. Gulledge. Your testimony, sir, is a devastating indictment of ATF. Let me quote from your testimony: "Although we recognize that the ATF's resources are limited, we concluded that the ATF's lack of standardized inspection procedures resulted in inconsistent inspections of Federal firearm licensees and significant variation in the implementation of the inspection program by the field divisions. Moreover, the lack of consistency prevented the ATF from ensuring that its current resources are being used as efficiently as possible."

Now, this is a very heavy indictment. You are saying that they are not doing the job right at a time when the country is engaged in a global war on terrorism. What are your specific comments about the San Mateo episode?

Mr. GULLEDGE. Well, the San Mateo episode really—it depends on what the Congress decides to do regarding——

Mr. LANTOS. We can't hear you.

Mr. GULLEDGE. I am sorry.

Mr. SHAYS. I suggest that since you want to be courteous and look at us, you move away from the mic. Let's see how that works.

Mr. GULLEDGE. Can you hear me now?

Mr. SHAYS. Yes, we hear you pretty well.

Mr. GULLEDGE. OK.

Mr. LANTOS. You have to speak up a bit too.

Mr. GULLEDGE. OK. Thank you. It would depend on what the Congress decides to do regarding whether or not the ATF is required to visit those sites. The workload right now is unknown, to my understanding. That is, we don't know where all of these sites may be across the United States.

Mr. LANTOS. Is it your testimony that as we sit here this morning we do not know how many such sites there are?

Mr. GULLEDGE. To my knowledge, we do not.

Mr. LANTOS. Mr. Nelson, is that accurate?

Mr. NELSON. Are you referring to explosives sites, generally, sir?

Mr. LANTOS. Public sites.

Mr. NELSON. I have not a total count. I know there are approximately 400 plus bomb squads, all of whom would probably have some sort of facility, but I do not know. There is no requirement for them to report it to us.

Mr. LANTOS. Well, how difficult would it be for a large agency to at least have an accounting of how many sites, such as the one

here in San Mateo County, exist in the United States? How huge a task is that?

Mr. NELSON. We could attempt it on a voluntary basis, reach out to all——

Mr. LANTOS. Why on a voluntary basis?

Mr. NELSON. There is no requirement for them to report this to us.

Mr. LANTOS. Are you recommending that there be a requirement?

Mr. NELSON. Well, that would take an act of Congress.

Mr. LANTOS. No. I am asking whether your agency is recommending that Congress act?

Mr. NELSON. We would be happy to make technical comments and discuss any proposals——

Mr. LANTOS. I am not asking you whether you want to make technical comments. I am asking you, representing an agency, whether you are prepared at this stage to recommend a complete accounting for all such facilities, which it seems to me is step one in regulating them. If you don't know how many there are, how can you regulate them?

Mr. SHAYS. I am going to just ask the audience to refrain from the laughter, in general, just simply because this is a hugely important issue, and it would help us to just continue without the laughter. Thank you.

Mr. NELSON. We do not—anything we attempt, and it is probably a good idea to get this count, would have to be voluntary. We do not have the authority to require agencies——

Mr. LANTOS. Are you asking for the authority?

Mr. NELSON. We have not asked for it.

Mr. LANTOS. Why not?

Mr. NELSON. Again, when it comes to State and local agencies, we partner with them in many things, but we are not their regulatory agency.

Mr. LANTOS. But don't you minimally need to know how many such facilities there are in the United States?

Mr. NELSON. Could you repeat the question, sir?

Mr. LANTOS. Yes. Wouldn't step No. 1 in dealing with thefts, such as the one we have here in San Mateo, be to know how many such facilities there are and where they are located?

Mr. NELSON. One thing that we did in 2001 is we put out a letter to all State and local law enforcement agencies about their requirements for storage and the fact that we would do a voluntary inspection. Some weeks ago, we started developing another letter to go out and as part of that we are again offering to do these inspections. We can certainly develop a list from this effort, I would think.

Mr. LANTOS. Well, you have 39 responses; isn't that right?

Mr. NELSON. We had 39 requests for inspections.

Mr. LANTOS. Thirty-nine places requested that you inspect. What percentage is that of the total facilities? What would be your guess?

Mr. NELSON. Well, I have already said that we don't have an accurate number of those facilities, but if there were 400 bomb squads, it would be about 10 percent.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. SHAYS. Thank the gentleman. And we thank our witnesses as well. We are going to get to the bottom of these issues, and it is just real important for us to understand the mind-set, and what I am hearing is that somehow, on the public side of the equation, we just have had a hands off, and I think your questions, Mr. Lantos, are going to lead to some very interesting changes. Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to the witnesses for your testimony. How many law enforcement munitions storage facilities are there in the United States?

Mr. NELSON. We don't have a list of such facilities.

Ms. ESHOO. You referred to private over and over again in your testimony. When you say private, what are you referring to? Do you have any numbers for private? You don't have any for public, but you mentioned private.

Mr. NELSON. Well, for the last year, we've been entering data into our inspection data base on the number of magazines. Now, this is done by licensee and permittee basis as we inspect them, and we've developed a list of over 8,000——

Ms. ESHOO. Is the inspection still once every 3 years?

Mr. NELSON. We are required to inspect licensees every application. So the license is good for 3 years, so when it comes up for renewal we will do an inspection. We also inspect more frequently those licensees who have thefts, who have had public safety violations or other compliance problems.

Ms. ESHOO. I can't help but think so far of the analogy of the term, "safety net," that is used in the health care arena and what kind of shape our health care safety net is. I have a sinking feeling that the safety net when it comes to this area is pretty tattered as well. Is there any centralized list maintained by the ATF, either on the public or the private side?

Mr. NELSON. On the licensed industry, we are developing such a list.

Ms. ESHOO. You don't have one yet.

Mr. NELSON. We are about one-third of the way through.

Ms. ESHOO. So nothing on the public side and one-third of the way on the private side.

Mr. NELSON. As far as developing a list of magazines, that is correct.

Ms. ESHOO. Why wouldn't you have this inventory?

Mr. NELSON. Now, I have to say that——

Ms. ESHOO. How do you measure how you are serving and inspecting if you don't even have an inventory of who is there, either public or private?

Mr. NELSON. Well, we have the information in files for each licensee, but we haven't put it into a data base starting a year ago, so when we do an inspection the first thing the inspector looks at is the magazine list, to go out to inspect all those magazines to make sure they are still there and they are still in compliance with all the requirements.

Ms. ESHOO. Is it true that prior to September 11, 2001 the ATF policy was not to investigate every theft or loss of explosive materials?

Mr. NELSON. Our policy——

Ms. ESHOO. It can be yes or no.

Mr. NELSON. Well, it was not our policy to investigate 100 percent.

Ms. ESHOO. What percentage?

Mr. NELSON. I don't have that information.

Ms. ESHOO. And have your policies changed since then?

Mr. NELSON. Yes. Starting in 2002, we have a policy to inspect or investigate every reported theft of explosives, and we just entered into an agreement with The Fertilizer Institute to get reports of stolen ammonium nitrate and we investigate all such thefts.

Ms. ESHOO. Is the facility that is in question, the facility here in San Mateo County, is that a facility that is exempt from your guidelines or is it included in it?

Mr. NELSON. The agencies are required to store in accordance with our guidelines, by law.

Ms. ESHOO. Are they ever inspected by your professionals?

Mr. NELSON. They would only inspected if it is requested.

Ms. ESHOO. Was it requested?

Mr. NELSON. Not to my knowledge.

Ms. ESHOO. Ever?

Mr. NELSON. I don't have any knowledge that is was.

Ms. ESHOO. To what extent do ATF officials enforce any kind of needed improvements? I mean if you haven't been out to inspect, you are not going to see whether something is working efficiently or effectively.

Mr. NELSON. We put out periodic newsletters to the industry giving them some advice, but, basically, it is the inspection when we are onsite to see the condition of the magazines.

Ms. ESHOO. But the inspection is really based on something that is somewhat voluntary or a request from another agency, correct?

Mr. NELSON. The inspection of public facilities is voluntary. The inspection of private facilities is mandatory.

Ms. ESHOO. Now, I think, Mr. Chairman, we have something right on its head right there, I mean that private facilities are mandatory and public facilities are not. I think in a post-September 11 era that it is either the Congress instructs this agency to protect the public or I mean we have to do that ourselves. This is a gaping hole in this. So I think that is something that we are going to have to pay attention to.

Would an ATF inspector have necessarily cited a malfunctioning alarm in proximity to a nature trail in an inspection report? Or do they just not—I have a sense that you are putting out newsletters and memos. I don't have a sense that there are human beings there that have seen the place and know the condition, understand the proximity and understand what the situation actually holds relative to the public.

Mr. NELSON. When we do our compliance inspections, we do have a work plan that the inspectors go through, and we look for changes in construction to see if there is any kind of a problem. We look at the——

Ms. ESHOO. Do you have a copy of such a report relative to this?

Mr. NELSON. The work plan?
Ms. ESHOO. Yes.
Mr. NELSON. I can provide it. I don't have it with me.
Ms. ESHOO. I think that it should be provided to the committee.
[The information referred to follows:]

**EXPLOSIVES PERMITTEE COMPLIANCE INSPECTION WORKPLAN**
(Do not use for Limited Permit (Type 60) compliance inspections)

**UI #:**

**PERMITTEE NAME:**

**TRADE NAME:**

**ADDRESS:**

**TELEPHONE (Business):** **(Residence):**

**PERMIT #:** **EIN/SSN:**

**PERMIT TYPE(S):**

**CONTACT PERSON:** **TITLE:**

**INSPECTOR(S):**

**INSPECTION START DATE:** **END DATE:**

**OBJECTIVE:** To determine if permittee is operating in compliance with explosives laws and regulations.

**REFERENCES:** ATF H 5030.2B, ATF P 5400.7, applicable policy memoranda

**PREPARATION:**

1. Review the assignment and file.

2. Query the explosives FLS database to verify that permittee is currently active. Query N-Force for an open CE investigation. Discuss with CE office if appropriate.

3. Review the Arson and Explosives National Repository Branch's (AENRB) monthly report to determine whether permittee reported any thefts or losses.

4. If permittee or location is a known security risk, contact your supervisor to determine appropriate course of action.

5. Generate the current clearance status of all responsible persons and possessors by printing the screens from the responsible persons and employee possessors tabs within the FLS database.

6. If notice of inspection is to be given, contact permittee.

**UI #:**

**CONDUCT OF BUSINESS:**

7. Make positive identification of the permittee/responsible person and record the identifying information.

8. Verify that the permit is posted and of proper type for operations conducted.

9. Determine if there have been any unreported changes in ownership, control, name, trade name, address, or responsible persons.

10. If any additional responsible persons are identified during the compliance inspection, have them added to the application and include the appropriate identifying information. Advise the permittee that fingerprint cards and photographs must be submitted upon their next renewal. Conduct criminal history checks on additional responsible persons. If checks disclose any prohibitive information, pursue appropriate follow-up action.

11. If the permit was issued or renewed after May 24, 2003, obtain a list from the permittee of employees that they authorize to possess explosive materials. Compare this list with all persons cleared by ATF to possess explosives.

12. For permits issued or renewed after May 24, 2003, briefly interview one or more persons that you observe handling or possessing explosives. Verify that each of them is a responsible person or is on the current list of employee possessors. List persons interviewed.

13. For permits issued or renewed after May 24, 2003, have any additional employee possessors identified during the compliance inspection complete an ATF Form 5400.28, Employee Possessor Questionnaire. Conduct criminal history checks on additional employee possessors. If checks disclose any prohibitive information, pursue appropriate follow-up action.

14. If you encounter a responsible person (or employee possessor if the permit was issued /renewed after May 24, 2003) who may be a prohibited alien, institute an INS query through NLETS (IAQ query) to determine the person's immigration status. If it is unclear whether a person's status makes him a prohibited person, contact your Division's coordinator, who will follow-up with the Public Safety Branch.

**UI #:**

15. Conduct random TECS/NCIC queries on responsible persons (and employee possessors if the license was issued/renewed after May 24, 2003) to determine if any individuals have become prohibited since the last background check was completed by ATF.

16. Ask the permittee if there have been any suspicious job applicants or employees leaving employment under possible criminal circumstances. Obtain identifying information about these individuals, if possible. Make referral to CE.

17. Note any other ATF licenses or permits. Be alert for operations at other locations that require an ATF license or permit.

18. Note if permittee is complying with other Federal, State, or local laws such as permits or zoning. List any State or local permits and numbers if applicable. Note name and phone number of State or local official contacted. Refer any violations.

19. Verify compliance with any approved variances.

20. Verify that permittee is not distributing or selling explosives, other than surplus stocks.

**RECORDS AND INVENTORY:**

21. Verify that required records are maintained on the business premises for a period of at least 5 years from the date of the transaction. Encourage permittee to turn over to ATF any records over five years old. If he/she agrees, obtain records and forward to OOB Records Center.

22. Determine whether permittee has disposed of surplus stocks of explosives. List persons/companies surplus stock sold/returned to. Select a sample and conduct a forward trace inspection to ensure the disposition was made in compliance with the laws and regulations.

23. Verify that records of acquisition and disposition contain all required information (27 CFR 555.122-555.125).

**UI #:**

24. Verify that acquisition and disposition records agree with daily summary of magazine transactions and have proprietor resolve any discrepancies. Document the results of this workstep.

25. Verify that permittee is maintaining a daily summary of magazine transactions at each magazine. If magazine records are kept at a central location, verify that separate records are maintained for each magazine.

26. Verify that permittee is taking an annual inventory and entering results in the daily summary of magazine transactions. Note date of last full inventory.

27. Select a sample of commercial records, if available, to verify receipt entries in required records. Document the results of this workstep.

28. Verify that any thefts or losses were correctly reported to ATF hotline and properly recorded in required records. Compare the permittee's records with the year-to-date report generated by the Arson and Explosives National Repository Branch (AENRB). Advise the permittee that thefts not reported within 24 hours is a felony. If a theft or loss was not reported, make a referral to CE and have proprietor prepare a theft or loss report.

29. If practical, conduct full inventory of explosive materials on hand. Have the permittee reconcile all discrepancies against any available records. For high volume permittees, select specific explosives or magazines for a complete count and reconciliation if no other recordkeeping problems are evident. Document the results of this workstep.

30. Select a sample of explosives on hand and verify that they have proper manufacturer's markings. Document the results of this workstep.

31. Evaluate permittee's procedures for ordering, receiving, and accounting for explosives to determine whether the permittee's internal controls assure that transactions are properly reflected in required records.

**UI #:**

**STORAGE:**

32. List the class(es) of explosives the permittee uses.

33. Verify the type and location of all magazines or ensure file contains written verification of contingency storage. Contact the person providing the contingency storage and verify the arrangements. List the company, name, and phone number of person contacted and that their storage is in compliance with the laws and regulations.

34. Inspect all onsite structures. Be alert for storage in adjoining structures and in processing areas. Document any storage that's not in an appropriate magazine.

35. Examine the current certified storage description and plat to determine if there have been any unreported changes in magazines. Update the storage description if necessary.

36. Verify that all magazines meet construction, lighting, and housekeeping requirements. Prepare a magazine description worksheet per ATF H 5030.2B for each magazine, or update the existing one.

37. If deteriorated explosives or other unsafe conditions are identified, leave the immediate area, notify the proprietor, and contact your Supervisor to determine appropriate course of action. Dynamite containing nitroglycerin may deteriorate with age. If dynamite sticks show obvious beading or are "sweating", leave the area immediately, and notify the proprietor. Advise the proprietor to consult the manufacturer for advice on proper and safe disposal procedures.

38. Verify that magazine photos in file are current. Update photographs as necessary and maintain in the area office file.

39. Verify that GPS coordinates in file for each magazine or building containing a magazine are accurate. Update GPS coordinates as necessary.

40. Verify that permittee inspects each magazine at least once every seven days. Note date of last magazine inspection by permittee.

**UI #:**

41. Verify that permittee can account for all magazine keys. Discuss any other security measures as appropriate.

42. Verify that all outdoor magazines meet table of distance requirements.

43. Provide a description of all public facilities in the general area, even if outside the table of distance requirements or if all storage is indoor.

44. Examine magazine transaction records and explosives on hand to determine if magazine quantity and storage restrictions are being complied with.

45. Determine what inventory controls are in place to ensure that quantity and table of distance restrictions are not exceeded.

46. Record the type and location of all offsite storage locations, including shot site services or construction sites. Inspect offsite locations or make referrals as appropriate.

47. Take two photographs, digital if possible, of any explosives product new to the market since the last inspection. One photograph should be of the product and its packaging and the second should be of any markings on the product. Forward, via e-mail or mail, to the Chief, Arson and Explosives National Repository Branch.

**FIREWORKS PERMITTEE:**

48. Verify that quantity limitations on explosives in fireworks process buildings are not being exceeded.

49. Verify that all fireworks process buildings meet fireworks table of distance requirements.

50. Ensure fireworks are stored with marks visible for inspection.

**UI #:**

**DISCONTINUED BUSINESS:**

51. Obtain voluntary surrender of permit if possible. Obtain a letter of discontinuance that includes the disposition of the explosives.

52. Obtain a closing inventory from permittee, if possible. If explosives are still on hand, notify the permittee of restrictions on their disposition following surrender of the permit.

53. Verify that the explosives records have been forwarded to the ATF OOB Records Center or are being maintained by the succeeding permittee, if any. If not, obtain records and forward to OOB Records Center.

**CLOSING ACTIONS:**

54. Hold a closing conference with the permittee. If violations were found, issue ATF F 5030.5 and discuss the violations, as well as any other problems disclosed during the inspection. Note name(s) of person(s) at closing conference and date.

55. Review all pertinent items on the Explosive Regulations Worksheet & Certification with the permittee. Have the permittee sign and date the certification.

56. Provide the permittee with the address and telephone number of local ATF IO and CE offices. Advise permittee to gather as much information about the suspicious activity as possible and to report suspicious activity to the local ATF Office or to 1-888-ATF-BOMB or 1-800-461-8841.

57. Forward any referrals generated during the inspection through your supervisor to the appropriate agency.

58. Verify the permittee notified the authority having jurisdiction for fire safety of any storage facilities by per 555.201(f). Note name and phone number of person contacted.

59. Complete, or update, Business Profile.

**UI #:**

60. Prepare or update an Inspection Safety Profile for the office file.

**RECOMMENDATION(S):**

**REMARKS:**

**PREPARED BY** (Name and Title): **DATE:**

**EXPLOSIVES LICENSEE COMPLIANCE INSPECTION WORKPLAN**

**UI #:**

**LICENSEE NAME:**

**TRADE NAME:**

**ADDRESS:**

**TELEPHONE (Business):** **(Residence):**

**LICENSE #:** **EIN/SSN:**

**LICENSE TYPE(S):**

**CONTACT PERSON:** **TITLE:**

**INSPECTOR(S):**

**INSPECTION START DATE:** **END DATE:**

**OBJECTIVE:** To determine if licensee is operating in compliance with the explosives laws and regulations.

**REFERENCES:** ATF H 5030.2B, ATF P 5400.7, applicable policy memoranda

**PREPARATION:**

1. Review the assignment and file.

2. Query the explosives FLS database to verify the licensee is currently active. Query N-Force for open CE investigations. Discuss with CE if appropriate.

3. If an importer, contact Firearms and Explosives Imports Branch to conduct an Automated Customs System (ACS) query, or division's ACS contact.

4. Review the Arson and Explosives National Repository Branch's (AENRB) monthly report to determine whether licensee reported any thefts or losses.

5. If licensee or location is a known security risk, contact your supervisor to determine appropriate course of action.

6. Generate the current clearance status of all responsible persons and employee possessors, by printing the screens from the responsible persons and employee possessors tabs within the FLS database.

**UI #:**

7. If notice of inspection is to be given, contact licensee.

**CONDUCT OF BUSINESS:**

8. Make positive identification of the licensee/responsible person and record the identifying information.

9. Verify that the license is posted and of proper type for operations conducted.

10. Determine if there have been any unreported changes in ownership, control, name, trade name, address, or responsible persons.

11. If any additional responsible persons are identified during the compliance inspection, have them added to the application and include the appropriate identifying information. Advise the licensee that fingerprint cards and photographs must be submitted upon their next renewal. Conduct criminal history checks on additional responsible persons. If checks disclose any prohibitive information, pursue appropriate follow-up action.

12. If the license was issued or renewed after May 24, 2003, obtain a list from the licensee of employees that they authorize to possess explosive materials. Compare this list with all persons cleared by ATF to possess explosives.

13. For licenses issued or renewed after May 24, 2003, briefly interview one or more persons that you observe handling or possessing explosives. Verify that each of them is a responsible person or is on the current list of employee possessors. List persons interviewed.

14. For licenses issued or renewed after May 24, 2003, have any additional employee possessors identified during the compliance inspection complete an ATF Form 5400.28, Employee Possessor Questionnaire. Conduct criminal history checks on additional employee possessors. If checks disclose any prohibitive information, pursue appropriate follow-up action.

**UI #:**

15. If you encounter a responsible person (or employee possessor if the license was issued /renewed after May 24, 2003) who may be a prohibited alien, institute an INS query through NLETS (IAQ query) to determine the person's immigration status. If it is unclear whether a person's status makes him a prohibited person, contact your Division's coordinator, who will follow-up with the Public Safety Branch.

16. Conduct random TECS/NCIC queries on responsible persons (and employee possessors if the license was issued/renewed after May 24, 2003) to determine if any individuals have become prohibited since the last background check was completed by ATF.

17. Ask the licensee if there have been any suspicious job applicants or employees leaving employment under possible criminal circumstances. Obtain identifying information about these individuals, if possible. Make referral to CE.

18. Note any other ATF licenses or permits. Be alert for operations at other locations that require an ATF license or permit.

19. Note if licensee is complying with other Federal, State, or local laws such as permits or zoning. List any State or local permits and numbers if applicable. Note name and phone number of State or local official contacted. Refer any violations to the proper authorities.

20. Verify compliance with any approved variances.

21. Verify that licensee is obtaining certified copies of licenses or permits prior to distributing explosives to licensees/permittees.

22. Verify that licensee is properly identifying individuals prior to distributing explosives to them. For business purchasers, verify that licensee is obtaining a certified list of employees authorized to receive explosive materials. Verify that the licensee is retaining this list as required by regulations.

23. Verify that licensee is obtaining a certified statement of intended use from purchasers prior to distributing explosives to licensees or permittees.

**UI #:**

24. Verify that distributor is obtaining ATF F 5400.8, Explosives Delivery Record (7/98), when a common carrier takes possession of explosives at the distributor's premises.

25. Verify that licensee is obtaining, completing and submitting to ATF, ATF F 5400.4, Limited Permittee Transaction Report, for all distributions of explosives to limited permittees. Verify that transfers of explosives to limited permittees have been made only to permittees located in the same State.

26. Select a sample of explosives purchasers who had explosives delivered to them by common or contract carrier. Conduct a forward trace inspection on these purchasers to ensure the transactions were made in compliance with the laws and regulations. Remember that on-site inspections for Limited Permittees are limited to once every three years. Therefore, inform any Limited Permittee that any response to a forward trace is voluntary and not part of mandatory inspection program.

**RECORDS and INVENTORY:**

27. Verify that required records are maintained on the business premises for a period of at least 5 years from the date of the transaction. Encourage licensee to turn over to ATF any records over five years old. If he agrees, obtain records and forward to OOB Records Center.

28. Verify that records of acquisition and disposition contain all required information (27 CFR 555.122-555.125).

29. Verify that acquisition and disposition records agree with daily summary of magazine transactions and have proprietor resolve any discrepancies. Document the results of this workstep.

30. Verify that licensee is maintaining a daily summary of magazine transactions at each magazine. If magazine records are kept at a central location, verify that separate records are maintained for each magazine.

31. Verify that licensee is taking an annual inventory and entering results in the daily summary of magazine transactions. Note date of last full inventory.

**UI #:**

32. Verify that ATF F 5400.4, Limited Permittee Transaction Reports, are being retained in chronological order, or in alphabetical order by name of the limited permittee.

33. Select a sample of ATF F 5400.4, Limited Permittee Transaction Report, and verify proper execution. Be alert for indications of prohibited transactions such as out of state distributions, more than 6 receipts, altered coupons, etc.

34. Select a sample of ATF F 5400.8, Explosives Delivery Record (7/98), and verify proper execution. Document the results of this workstep.

35. Select a sample of commercial records, if available, to verify proper receipt and disposition entries in required records. Document results of this workstep.

36. Verify that any thefts or losses were correctly reported to the ATF hotline and properly recorded in required records. Advise licensee that any thefts not reported within 24 hours is a felony. If a theft or loss was not reported, make a referral to CE and have proprietor prepare a theft or loss report.

37. If practical, conduct full inventory of explosive materials on hand. Have licensee reconcile all discrepancies against any available records. For high volume licensees, select specific explosives or magazines for a complete count and reconciliation if no other recordkeeping problems are evident. Document the results of this workstep.

38. Select a sample of explosives on hand and verify that they have proper manufacturer's markings. Document the results of this workstep.

39. Determine if licensee exports explosives, and verify that exports were properly recorded and in compliance with the Arms Export Control Act. List products exported, amounts exported in the last year and countries they exported to.

40. Evaluate licensee's procedures for ordering, receiving, and selling explosives to determine whether licensee's internal controls ensure that transactions are properly reflected in required records.

**UI #:**

**STORAGE:**

41. List the class(es) of explosives the licensee manufactures, imports, distributes, and/or uses.

42. Verify the type and location of all magazines or ensure file contains written verification of contingency storage. Contact the person providing the contingency storage and verify the arrangements. List the company, name, and phone number of person contacted and that their storage is in compliance with the laws and regulations.

43. Inspect all onsite structures. Be alert for storage in adjoining structures and processing areas. Cite any improper storage and take appropriate action.

44. Examine the current certified storage description and plat to determine if there have been any unreported changes in magazines. Update the storage description if necessary.

45. Verify that all magazines meet construction, lighting, and housekeeping requirements. Prepare a magazine description worksheet per ATF H 5030.2B for each magazine, or update the existing one.

46. If deteriorated explosives or other unsafe conditions are identified, leave the immediate area, notify the proprietor, and contact your Supervisor to determine appropriate course of action. Dynamite containing nitroglycerin may deteriorate with age. If dynamite sticks show obvious beading or are "sweating", leave the area immediately, and notify the proprietor. Advise the proprietor to consult the manufacturer for advice on proper and safe disposal procedures.

47. Verify that magazine photos in office file are current. Update photographs as necessary and maintain in the area office file.

48. Verify that GPS coordinates in file for each magazine or building containing a magazine are accurate. Update GPS coordinates as necessary.

**UI #:**

49. Verify that licensee inspects each magazine at least once every seven days. Note date of last magazine inspection by licensee.

50. Verify that licensee can account for all magazine keys. Discuss any other security measures as appropriate.

51. Verify that all outdoor magazines meet table of distance requirements.

52. Provide a description of all public facilities in the general area, even if outside the table of distance requirements or if all storage is indoor.

53. Examine magazine transaction records and explosives on hand to determine if magazine quantity and storage restrictions are being complied with.

54. Determine what inventory controls are in place to ensure that quantity and table of distance restrictions are not exceeded.

55. Record the type and location of all offsite storage locations, including shot site services or construction sites. Inspect offsite locations or make referrals as appropriate.

56. Take two photographs, digital if possible, of any explosives product new to the market since the last inspection. One photograph should be of the product and its packaging and the second should be of any markings on the product. Forward, via e-mail or mail, to the Chief, Arson and Explosives National Repository Branch.

**IMPORTERS:**

57. Determine if articles on the U.S. Munitions Import List are imported and verify that the importer is registered on an approved ATF F 4587. Note that records of Munitions List articles other than firearms and ammunition must be maintained for six years.

**UI #:**

58. Determine if smokeless powder is imported and, if so, forward a copy of the inspection report to Firearms and Explosives Imports Branch.

59. Crosscheck acquisition records with Customs documents. Document results of this workstep.

**MANUFACTURERS:**

60. Verify that manufactured explosives are marked with the name and location of the manufacturer, as well as the date and shift of manufacture. Be aware that explosives manufactured for the licensee's own use and used within 24 hours at the same site are exempt from this requirement.

61. Determine manufacturer's method of accounting for explosives manufactured on site if those explosives are not used within 24 hours.

**FIREWORKS:**

62. Verify that quantity limitations on explosives in fireworks process buildings are not being exceeded.

63. Verify that all fireworks process buildings meet fireworks table of distance requirements.

64. Ensure that fireworks are stored with marks visible for inspection.

**DISCONTINUED BUSINESS:**

65. Obtain voluntary surrender of license if possible. Obtain a letter of discontinuance that includes the disposition of the explosives.

66. Obtain a closing inventory from licensee, if possible. If explosives are still on hand, notify the licensee of restrictions on their disposition following surrender of the license.

**UI #:**

67. Verify that the explosives records have been forwarded to the ATF OOB Records Center or are being maintained by the succeeding licensee, if any. If not, obtain records and forward to OOB Records Center.

**CLOSING ACTIONS:**

68. Hold a closing conference with the licensee. If violations were found, issue ATF F 5030.5 and discuss the violations, as well as any other problems disclosed during the inspection. Note name(s) of person(s) at closing conference and date.

69. Review all pertinent items on the Explosive Regulations Worksheet & Certification with the licensee. Have the licensee sign and date the certification.

70. Provide the licensee with the address and telephone number of local ATF IO and CE offices. Advise licensee to gather as much information about the suspicious activity as possible and to report suspicious activity to the local ATF Office or to 1-888-ATF-BOMB or 1-800-461-8841.

71. Forward any referrals generated during the inspection through your supervisor to the appropriate agency.

72. Verify the licensee notified the authority having jurisdiction for fire safety of any storage facilities by per 555.201(f). Note name and phone number of person contacted.

73. Complete, or update, Business Profile.

74. Prepare or update a Security Profile Sheet for the office file.

**RECOMMENDATION(S):**

**UI #:**

**REMARKS:**

**PREPARED BY** (Name and Title): **DATE:**

Ms. ESHOO. There is something else, Mr. Chairman, that I think that we should take a look at in the broader examination of this, and that is the chemical security. We mentioned the Murrah Building in 1995 and even without access to explosives, a person with proper knowledge can make a highly destructive bomb. And I think that is an area that we are going to have to pay close attention to in this. It is not simply the materials that these units held but also as is the case on the world stage, what can be done with these explosives in the wrong hands, what the chairman of the 9/11 Commission referred to as imagination. We have to have our own imagination about where these things can lead, and we are in charge of really reshaping these things given what we have already been made to imagine and understand.

So I think, Mr. Chairman, that there are already some key areas that need to be plugged up. This whole notion of private and public having different standards I don't really think is acceptable. Thank you.

Mr. SHAYS. All set?

Ms. ESHOO. Yes.

Mr. SHAYS. Thank you, and I agree with the lady. When I was preparing for this hearing, I read an introduction to just the explosive industry. I want to read—believe it or not, this is just a short part of it. I thought it was one sentence, I think it is two. It says, "The use of explosives in the United States as made possible a standard of living that is widely recognized as the finest in the world." When I read that, I thought that was bizarre until I read on. "Virtually all the progress in the American standard of living has in some measure been impacted by the use of explosives, whether for building and development of infrastructure, creating one of the greatest transportation systems in the world, while also extracting valuable minerals from the Earth or in 100 other ways." And it was an important statement for me to read.

This is a hugely important industry, it impacts all of our lives, and we are not trying to shut it down or to put it out of operation. We want to know, though, how this system works. So we accept that it is an important element to a modern society. And in my backward way of thinking, I think of explosives more in a negative way rather than a positive.

Having said that, listening to the statements and listening to my two colleagues, it is astounding to me what we don't know. And I wonder if, in the back of my mind thinking, are we so loose about this because somehow this gets into the issue, in a certain kind of way, of gun control or in other words, "Don't tread on me. It is in the Constitution and so on." And I just want to have a sense, we aren't suggesting in any way that regulating the use of explosives somehow is related to the issue of gun control. Is it directly or indirectly related to that issue? Is that why—does this make it a sensitive issue?

Mr. NELSON. Of course, the ammunition is fired by an explosive, but I don't see the link.

Mr. SHAYS. Well, that would be the only link, basically.

Mr. NELSON. I mean we work very closely with the explosives industry. These are professional people that want us to be safe with explosives.

Mr. SHAYS. Well, I understand that. And I understand we want to be safe. What I don't understand is how we don't have basic things like how many private facilities there are to be inspected and how many public facilities there are to be inspected and to be made safe. And that I find bizarre.

And I will tell you—and I am smiling and I understand the laughter in the audience as well-but it needs to be silent smiles, I guess. I smile because when I went to see this facility, I was really surprised. I mean I had been led to believe that there was this mechanism alarm system and given that there is not electricity to it, solar panels makes sense, that is one way, and then I realized it is sitting on the top of one shed, and there are three other—four or three other sheds?

Mr. LANTOS. Three others.

Mr. SHAYS. Three other sheds without an alarm system. And I expected to see a fenced in area, not at the gate when you drove in but around the facility, much like you have in a transmissionsite along electric generation with barbed wire. So I expected, one, to see the alarm system posted to every one of the sheds and a fenced in area, and I thought that rather than being able to drive our car casually up, there would be some difficulty in basically even bringing a van up to it unless you had special kind of keys. So I am not surprised that someone could come and try once and maybe fail and come back the next day.

And so what I am interested in first knowing from you, Mr. Nelson, is when you would look at that as a private facility versus a public facility, what was lacking that you would expect in a private facility?

Mr. NELSON. I personally haven't been to that site, so I don't know exactly. I have been told that it would largely be in compliance with our requirements.

Mr. SHAYS. Is there somebody on your staff who has been to the site that could give testimony? Is there someone else who could speak to that issue?

Mr. NELSON. No.

Mr. SHAYS. No. It is really too bad you didn't go to that site. That would have been helpful to us, and I guess we should have—I just had an assumption you would.

Well, I will just tell you, I just saw sheds with some very small panels, and if you sometimes, as you do here, get overcast skies, I would think the panels would be bigger and storage would be bigger to do it. We will be asking someone about that facility, and we can do that then.

So we need to be clear about this. How many private facilities exist? Do we know that?

Mr. NELSON. We don't have an exact count. It would be very difficult to develop an exact count.

Mr. SHAYS. Well, it will happen, I can assure you. That is something that is going to happen from this hearing. Whether you recommend it, if you choose not to or your agency chooses not to, we certainly will.

Mr. LANTOS. Mr. Chairman.

Mr. SHAYS. Yes.

Mr. LANTOS. May I break in?

Mr. SHAYS. Absolutely.

Mr. LANTOS. I find your answer very puzzling, Mr. Nelson, because the private facilities need to be licensed for 3 years. So all you have to do is get an abacus and add up the number of licenses that were requested. How on earth is it possible for you under oath to tell us that ATF doesn't know how many private facilities there are if you have to license them?

Mr. NELSON. Sir, we know how many licenses and permits we have issued. We know what the population of that is. But some licensees have one magazine, like a 50-pound box inside a black power shop, other companies might have hundreds of magazines.

Mr. SHAYS. See, what is troubling, though, is it is might, and——

Mr. NELSON. Some do.

Mr. SHAYS. No, I understand, but in other words, that doesn't impact me the way it seems to impact you. It seems to me, we would want to know how many are smaller, how many are larger. We would want to—that is like basic information it would seem we would want, and that was the reason why I was asking about is this somehow related to some other issue that I am not aware, because it would seem to me that you would want to be responding to Mr. Lantos by saying, "Mr. Lantos, we should get this information and since September 11 we have recommended that we do," and then if you recommend it, then we go up the chain and sometimes it is Congress.

Sometimes people will actually testify in Congress and say, "Well, do have it, we just didn't spend the money." But, ultimately, Congress needs to be told, and then we are the ones who have to be held accountable. But if the people, the administrators are not recommending it, it puts the focus a little differently.

So at any rate, there are a number of private facilities that range in sizes, and we don't really know, but you have the data somewhere in the permits and you—yes.

Mr. NELSON. Yes, sir. We have all the data on all the magazines in permit files. We haven't added it up, and we are doing that.

Mr. SHAYS. And we need to. And we need to add them up. One of the things I am struck with—and in the public sector, we don't even request that, is that correct, because you don't oversee it?

Mr. NELSON. We do not oversee it.

Mr. SHAYS. So one of the things I think our committee would want to recommend is, one, that you seek to do that quickly and we still have an appropriations process in play, and we should be checking that out.

Ms. ESHOO. Would the chairman yield for just a moment?

Mr. SHAYS. Sure, absolutely.

Ms. ESHOO. Does the ATF permit States and local governments to develop regulations on this, create their own regulations regarding explosives?

Mr. NELSON. Absolutely. States have the right to develop their own explosives regulations and licensing regimes. And we would be happy to work with any State and provide technical advice.

Mr. SHAYS. Yes, I know that, but we would be happy if you were more happy to do more than that. In other words, given September 11—I mean we don't think it is a question of if but when, where and of what magnitude you are going to deal with some very hor-

rific attacks on the United States. I mean that is something I certainly believe and I think other Members do as well. One obviously is the convention weapon or a conventional weapon with radioactive material. Plastic explosives are obviously a concern because of their challenge in sometimes being detected and so on. And they are all in these facilities.

What is troubling to me is once we get to the point of not knowing how many facilities we have, publicly or privately, it is the concept of voluntary participation. I want to be clear, does the requirements overseeing the private sector, are these regulations designed by the industry or by the government?

Mr. NELSON. We are required by statute to consider the standards of the industry as we develop our regulatory scheme.

Mr. SHAYS. But your regulatory scheme trumps whatever the industry does, correct?

Mr. NELSON. That is correct.

Mr. SHAYS. So they have to live up to your requirements.

Mr. NELSON. That is right.

Mr. SHAYS. Now, when you went through what the requirements state, the next thing that begs the question is if actually you all are living up to that requirement. Are inspections happening every 3 years, without question? Are you on top of that or are you lack of manpower, meaning that you are not able to live up to even your requirements?

Mr. NELSON. We have testified—previous directors have testified and we have reported to Congress of the need for additional inspector resources. We are getting——

Mr. SHAYS. Because you are not able to live up to the standards.

Mr. NELSON. We are getting the job done on the Safe Explosives Act mandatory inspections, but it is difficult to do a lot of other things because of it.

Mr. SHAYS. So the inspections of firearms facilities and so on are being pushed aside.

Mr. NELSON. Well, we have to do what is mandatory first and use our resources as best we can——

Mr. SHAYS. Let me just back up. The bottom line is for budgetary reasons, from your standpoint, we aren't meeting the requirements that you are required to do. This is not a trick question.

Mr. NELSON. Well, we——

Mr. SHAYS. Let me just explain something to you, Mr. Nelson. If you don't answer candidly, then you give us a pass. If you answer—besides the fact you are required to, but when you answer candidly, then we understand the problem. Don't disguise the problem from us because we are in a capacity to be helpful.

Mr. NELSON. Right. We have previously testified and we have reported that we need significant additional resources.

Mr. SHAYS. In order to do that job.

Mr. NELSON. In order to get the job done.

Mr. SHAYS. OK. So we don't know the number of sites, either private or public. We have certain requirements, and so walk me through what the requirements would be on a site. And I will tell you, I have gone through my second pass. I am going to take another 5 minutes, and I will give other Members a chance here. And then what I want to do is understand—well, tell me what a site

should look like, first off. If this was a private site, what would the site look like? What would it be required to have?

Mr. NELSON. OK. First of all, we look at the magazines that are there to make sure that they have proper locks, proper doors, proper linings.

Mr. SHAYS. So what we referred to as sheds, you refer to as magazines.

Mr. NELSON. Right, that is correct. And there are——

Mr. SHAYS. So what do they need?

Mr. NELSON. They need to have proper construction——

Mr. SHAYS. Right.

Mr. NELSON [continuing]. Proper locks, proper doors, proper housekeeping——

Mr. SHAYS. That is recordkeeping?

Mr. NELSON. No. Housekeeping would be trash, dried grass. Anything that would be flammable has to be kept away from it.

Mr. SHAYS. It needs lights?

Mr. NELSON. If it has lights, they have to comply with the regulations. Many do not have lights. It is has to have proper roof. Of particular importance is its location. It has to be located a certain distance from residential inhabited buildings, from public highways, from passenger railroads. We do take measurements of these facilities to the nearest public road or to a house if it looks to be a concern. One of the concerns we have is encroachment of civilization on these items.

Mr. SHAYS. Does it have to have an alarm system?

Mr. NELSON. They are not required to have an alarm system.

Mr. SHAYS. Do they need to have video cameras?

Mr. NELSON. That is not required.

Mr. SHAYS. If a site is broken into, what is the penalty if someone doesn't report a theft?

Mr. NELSON. If a store doesn't report it, it is a felony.

Mr. SHAYS. OK. So they are clearly breaking the law. If they report it, do they have to give you a clear inventory of what is missing?

Mr. NELSON. Yes. They have to give us a complete inventory.

Mr. SHAYS. If something is not reported, do they have to count account for every explosive device that is used, so if you went in, you would be able to ask them how many explosives devices were used at each particular place?

Mr. NELSON. They have to keep a daily summary of magazine transactions for each storage facility that shows what went in and what went out every day.

Mr. SHAYS. OK. And that is not voluntary; they have to do that.

Mr. NELSON. That is correct.

Mr. SHAYS. If they don't do it, they lose their license.

Mr. NELSON. They could lose their license if it is a willful act.

Mr. SHAYS. OK. The interesting thing is if someone wanted to cover up an event, they would simply claim that an error was detonated at a certain site, and since you don't really have something recoverable, they can just——

Mr. NELSON. Since it is consumed, that is correct.

Mr. SHAYS. OK. All righty. I have asked the questions I wanted. Is there any questions any of you want—is there any question, Vince, that we needed to ask? OK.

Mr. LANTOS. I would like to go through one item. I am profoundly puzzled by this repeated distinction between private and public facilities. Let me take you to another arena. Let me take you, for instance, to the hospital arena or the university arena where, clearly, for certain purposes, there is no distinction. Publicly owned hospitals must live up to the same requirements that privately owned hospitals have to live up to. They have to have the same standards of sanitation, they have to have equally qualified people, whether they are physicians or nurses or what have you, they must live up to the same requirements with respect to dangerous waste disposal, because these are functional concepts and they have nothing to do with ownership, whether these are privately owned or publicly owned. The University of California Medical School, which is in my district, has exactly the same requirements along a myriad of items that Stanford University Hospital in my good friend's district has to live up to.

Explain to us, both of you gentlemen, if you would, a logical rationale for establishing what to me are nonsensical differentials between what you require of private facilities and public facilities? Because what we are dealing with is explosives. The explosive doesn't know whether it is located in a privately owned facility or in a publicly owned facility. It is just an explosive, a very dangerous thing. Why wouldn't a rational approach by an agency, which is responsible for the safety thing of this, have the same regulations whether the entity is privately owned or publicly owned?

Mr. NELSON. We do have the same regulations, and the public facilities, by law, must comply with our standards. However, Congress exempted the State and local agencies from all other explosives controls when the law was passed in 1970. We have no inspection authority.

Mr. LANTOS. I will be the first one to stipulate Congress passes very stupid laws with great frequency. [Laughter.]

Since this was done in 1970——

Mr. SHAYS. You are definitely allowed to laugh at that one. [Laughter.]

Mr. LANTOS. Since this was done in 1970, Mr. Nelson, has your agency requested, before or after September 11, that the same provisions apply to both public and private facilities? And if not, why not?

Mr. NELSON. I don't believe we have.

Mr. LANTOS. And why not?

Mr. NELSON. We have not, and I can't answer that.

Mr. LANTOS. Well, now that you have had the pleasure of our questioning, will you go back to your head office and recommend that the same safety provisions apply to both publicly and privately held facilities?

Mr. NELSON. I will certainly be discussing it.

Mr. LANTOS. What is your own view?

Mr. NELSON. My view is that those facilities should comply with all the standards that private facilities should comply with.

Mr. LANTOS. On a mandatory basis or on a voluntary basis?

Mr. NELSON. Well——

Mr. LANTOS. I mean that is the crux of the issue.

Mr. NELSON [continuing]. It would certainly be helpful if the States would require this compliance.

Mr. LANTOS. Well, let's assume—this is not a State issue, this is a country, and whether the explosive is stolen from San Mateo, it can be transported to Nevada and be used there. This is not a States' rights issue, so don't divert us in that direction, because we just won't follow. Do you recommend on the basis of this hearing that the same safety provisions be applied to private and public facilities on a mandatory basis?

Mr. NELSON. Yes.

Mr. LANTOS. Thank you. How about you, sir?

Mr. GULLEDGE. The application of the inspection requirements is really Congress' decision to make.

Mr. LANTOS. We understand that. What is the recommendation of the Department of Justice?

Mr. GULLEDGE. Certainly, on behalf of the Inspector General, I think that we would want to look at this a little closer before we make a specific recommendation for legislation. I would point out to you at this time, though, that it would be a little more encompassing than just State-owned. There are other facilities out there that are not subject to ATF regulation, for example, those that are overseen by the Mine Safety and Health Administration. ATF doesn't oversee those, so if you want to come up with an all-encompassing regulation, we need to identify all of those.

Mr. SHAYS. You are talking about the Federal Government.

Mr. GULLEDGE. Yes. Yes. And the military. Certainly, they are going to be exempted from certain parts of this because of the volume that they deal with. And we really want before we get back with you to sit down and think about what we would recommend that you do.

Mr. LANTOS. Well, no one is recommending that the military be subjected to ATF rules and regulations. What we are talking about civilian agencies.

Mr. GULLEDGE. Clearly, expanding inspection oversight to those areas for which the regulations already apply would be a logical extension.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. SHAYS. Ms. Eshoo.

Ms. ESHOO. Just a few quick questions. Mr. Nelson, you went through a list of areas that raise the introspect of your agency. Not having gone out to see this site, which is unfortunate, I think that the whole issue of the public's drinking water supply should be taken into consideration where explosives are stored, because, surely, this site fits into that category, and we can't afford to have the better part of a region without a protected water supply.

Which leads me to my next question, which I would like to ask Mr. Gulledge. At what point, in your opinion, do cases like this one transcend a law enforcement issue and become a question of homeland security?

Mr. GULLEDGE. Certainly, any time you see a vulnerability, at the Inspector General's Office we would want to point that out so that the agency or the Congress can act on it. Any time you iden-

tify a gap in our coverage of protections. I don't think there is a bright line, but, clearly, this case has exposed a vulnerability.

Ms. ESHOO. I think in working with the committee that you consider any standards or guidelines being put into place to alert the Department of Homeland Security officials of the security threat such as this one. Life is not tidy anymore, for sure, and I think that what we are suffering from in our many agencies, certainly, we are—I am meeting tomorrow to be going back to D.C. for the hearings that are commencing on the recommendations of the 9/11 Commission relative to our intelligence community, and we know that there are, have been, so many smokestacks, so to speak. And I think that we have a smokestack quality here to this issue as well. We can't have Federal agencies pointing fingers, doing this, going in different directions on this and the gaps between public and private, the overlap of Department of Homeland Security relative to the guidelines on these explosives, etc. So I just wanted to point that out.

I also want to know-and I am not so sure that this has been set down and whether it is absolutely clear—where does the ATF jurisdiction begin and end relative to the issue that this hearing is about?

Mr. NELSON. With regard to explosives, it begins when the explosives are created and enters storage, and——

Ms. ESHOO. For both public and private or not?

Mr. NELSON. Well, for the storage, it is public and private; yes, ma'am. We do not regulate the transportation of explosives, so explosives get produced and they might be stored for a few days, then they are loaded onto trucks or——

Ms. ESHOO. So your jurisdiction is both public and private for the storage and for maintenance of the explosives. And then you have inspections or those are voluntary?

Mr. NELSON. The inspections of licensed entities are mandatory. They are involuntary.

Ms. ESHOO. That is where there is a separation between public and private.

Mr. NELSON. They are warrantless inspections as well.

Ms. ESHOO. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS. We are going to close up real quick, but just to clarify the record, Mr. Nelson, the issue of oversight of private facilities you have law and regulation that basically requires them to move up to the Federal standard and you inspect them, correct?

Mr. NELSON. That is correct.

Mr. SHAYS. And they can't trump what the Federal Government requires. I mean they can do better, but they can't do worse.

Mr. NELSON. That is correct.

Mr. SHAYS. When it comes to local facilities, I thought you were basically saying public facilities have to conform to the Federal standards but you don't inspect them. I don't think that is accurate, so I must have misunderstood.

Mr. NELSON. That is correct. They have to conform to our storage requirements, magazine construction, etc., but we do not have inspection authority.

Mr. SHAYS. OK. But they don't necessarily have to conform to your recordkeeping. They have to conform to everything——

Mr. NELSON. That is correct.

Mr. SHAYS. So they have to conform to some but not everything.

Mr. NELSON. That is right.

Mr. SHAYS. The bottom line is if they don't, you can't hold them accountable. One, you can't inspect them, and, two, you can't hold them accountable, correct?

Mr. NELSON. I think our only alternative if we had a serious enough matter would be to go to the U.S. Attorney for prosecution.

Mr. SHAYS. Well, it is interesting that to think, and I am trying—there is a reason why everything tends to happen, whether it is a good reason or a bad reason. The fact that you didn't go to the facility tells me in spite of the fact that we were having this hearing on that facility, I would have though your curiosity would have gotten to you—it kinds of suggests to me that, one, you have more than enough work to do and you are not looking for more, but it also says to me that there may be a whole standard of failure to provide proper conformity to the Federal statute, but we don't know because we are not looking, because you could have gone. I think you would have been pretty surprised by that facility. I have to think you would have been. Maybe you wouldn't have been.

And it just speaks—it says something to me about the fact that we require some things to be done on the public side, but we don't inspect them and there is no enforcement of it, so it is kind of pointless, but we may not know how bad the facilities are, and we certainly don't know if there is uniformity. At least on the private side we know there is some uniformity. On the public side, there may be no uniformity. Heck, there could be even some sites worse than this one. I would like to just ask if, Mr. Nelson, do you have anything that you would like to just put on the record that you just want to say that maybe you thought should have been asked that we didn't ask? Anything that you would like to put on the record? Well, just think about it for a second.

Let me just conclude by asking the IG, is there anything we need to be putting on the record? We didn't ask you as many questions, but anything you would like to put on the record that wasn't?

Mr. GULLEDGE. Yes, sir, very briefly. Based on our look at the inspections of gun dealers, there are three things that we think you should consider while you are looking at the explosives protection. First is identifying where all of those explosives are located. Once you identify all of those locations, compare those to where the explosives licensees who are now licensed are and where the gun dealers are, because you need to see where that distribution of workload is so that you can properly staff the agency——

Mr. SHAYS. Right.

Mr. GULLEDGE [continuing]. That is the second thing, put the people, the inspectors who are on staff where they are needed.

Mr. SHAYS. It is very clear you have pointed out a tremendous disparity in workload.

Mr. GULLEDGE. Yes.

Mr. SHAYS. And what is the other issue?

Mr. GULLEDGE. The last issue is that right now the staffing request that I believe you discussed earlier only addresses inspectors. As you have more inspectors and you do more inspections, you are going to have followup actions to take, and part of the delays that

we saw were due to a lack of legal staff. So the consideration of how you are going to have to address this is more than just inspectors.

Mr. SHAYS. Got you. Mr. Nelson, any other point you would like to make?

Mr. NELSON. I just want to say again that the regulation of explosives is a partnership with industry. We must rely on them to get the job done, to know what the rules are, and, by and large, they do.

Mr. SHAYS. Well, that raises other questions. The "by and large" scares the hell out of me. But, clearly, there has to be that partnership. Is there any other question? We are all set. Thank you both very much. We appreciate your service to your government. I think we have some work to do. All of us can chip in to do that.

We will start with our next panel. Our next panel is comprised of five members. Mr. Donald Horsley, county sheriff, San Mateo County Sheriff's Office; Ms. Heather Fong, chief of police, San Francisco Police Department; Mr. Scott MacGregor, assistant chief, California Highway Patrol, California Department of Justice, State of California; the Honorable Mark Church, president, San Mateo County Board of Supervisors; and the Honorable Michael Nevin, supervisor San Mateo County Board of Supervisors. I invite all of our five witnesses to come. Do we have enough space for five?

We are waiting for two witnesses. Bob, can you please get Mr. Nevin and Mr. Church?

If the witnesses could stand, I need to swear our witnesses in and anyone who may be making a comment as well accompanying them.

[Witnesses sworn.]

Mr. SHAYS. For the record, our witnesses and potential witnesses have all responded in the affirmative. We are pressing the time period a little bit, and I am going to ask, except I am going to give special dispensation to the chief from San Francisco to go over the 5 minutes, but I am going to ask everyone else to be within the 5 minutes. And just to say to all of you it is wonderful to have your participation and say particularly to Chief Fong, your reputation around the country is a very good one, and we congratulate you for the fine work you are doing in this work that you do. All of you are very accomplished, and we thank all of you for that. Sheriff, we appreciate your participation as well, and all of you. But a special note to someone taking on a major assignment in a city like that, that is quite something. Actually, the sheriff has a pretty big territory too, correct?

Mr. HORSLEY. I do. I do, indeed.

Mr. SHAYS. Yes. I was having you look at me thinking I went down the wrong trail here. [Laughter.]

So I thank all of our witnesses, and you have all been sworn in, and we will start with you, Sheriff.

**STATEMENTS OF DON HORSLEY, COUNTY SHERIFF, SAN MATEO COUNTY SHERIFF'S OFFICE, STATE OF CALIFORNIA; HEATHER FONG, CHIEF OF POLICE, SAN FRANCISCO POLICE DEPARTMENT, CITY OF SAN FRANCISCO, CA; SCOTT MACGREGOR, ASSISTANT CHIEF, CALIFORNIA HIGHWAY PATROL, CALIFORNIA DEPARTMENT OF JUSTICE, SACRAMENTO, CA; MARK CHURCH, PRESIDENT, SAN MATEO COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA; AND MICHAEL NEVIN, SUPERVISOR, SAN MATEO COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA**

Mr. HORSLEY. Well, thank you members of the Subcommittee on National Security for your leadership on this issue and for your willingness to work with law enforcement on developing national standards for explosives storage facilities. I would like to begin by giving a brief synopsis of the events that highlighted the need for this hearing.

The San Mateo County Sheriff's Office, along with San Francisco Police Department and the FBI have maintained a munitions storage site on the city of San Francisco Watershed property for nearly 20 years. Over the July 4th weekend, the storage facility was burglarized and approximately 200 pounds of explosives were taken. We promptly notified the media and all State and local law enforcement agencies of the theft, and thanks to the combined efforts of local law enforcement and the investigative work of ATF, the culprits were quickly apprehended and all of the stolen material, including the 10 pounds of C4 explosives belonging to the San Mateo County Bomb Squad, was recovered.

Since the buck stops at the top of an organization, I take full responsibility for the breach in security of our munitions bunker. While the bomb squad stored the explosives in an approved and theft resistant munitions storage container and sited the secure container in a remote location away from buildings and population centers, we mistakenly relied on the remoteness and secrecy of the location and the physical security of the ATF-approved munitions storage sheds for security. It was also thought that the random patrols by watershed rangers who are responsible for keeping out trespassers, but were not specifically responsible for the munitions storage site, was additional security for the site. Unfortunately, I was not made aware that the alarm on the storage containers was inoperable.

In hindsight, the Sheriff's Office Administration should have established a regularly scheduled inspection of the site by our Office of Professional Standards. Clearly, fencing of the site, a functioning alarm and remote surveillance by camera could have prevented this incident from occurring.

Some may ask why these materials are stored at all? All law enforcement agencies that maintain bomb disposal squads need to have both explosive material and a safe and secure storage facility. Explosive materials are used for training purposes. Specifically, we must have explosive materials if we are to train canines to locate explosive devices. Additionally, bomb disposal units are called upon to dismantle explosive devices and store the material for either evidence and/or destruction. And, last, there are occasions when un-

stable and explosive materials are recovered by a bomb disposal squad that must be destroyed by the use of explosives.

Subsequent to the incident in San Mateo County, I have found that there have been similar losses of explosive materials nationwide. I think that it is timely that this review of national and State regulations and standards takes place. At the request of this committee, I have been asked to make recommendations regarding Federal and State guidelines for the storage, monitoring and protection of publicly owned explosives material storage sites.

The current regulations are found in title 27, Code of Federal Regulations. In summary, ATF requires that explosive materials be stored certain distances from populated buildings and that the munitions storage facility be constructed of quarter-inch steel and lined with two-inch plywood and that it be theft and bullet resistant. Our storage container met these minimum requirements. The FBI further requires that bomb technicians must have successfully completed the Redstone Arsenal training curriculum.

From our review of this event, the Sheriff's Office will be taking the following steps, and I would suggest that these local requirements might be a good starting point for future legislative action. First, we obviously need to find a secure location in which to store explosives and other volatile substances that meets ATF guidelines. The location must be fenced, the site will have a working alarm system, cameras should monitor the location, bomb squad members will monitor the cameras. There will be physical checks which include an entry log, inventory log update when items are being utilized or stored. The log will include an employee signature and date. The inventory entries must be specific regarding item, amount, weight or volume of content. A regular rotation of on-call bomb techs will check and double check log entries and inventory. The bomb squad manager will receive a monthly copy of the storage facility's current contents and inventory. The bomb squad manager will make random, periodic inspections of the site to verify accuracy of the inventory reports and the working conditions of all security devices, and these reports will be directly sent to the sheriff. ATF will be requested to inspect the storage site yearly with the results, again, reported directly to my office.

Regarding national standards, I would also recommend the following: Give ATF authority to require that all explosive storage sites submit to an annual inspection; two, require licensing of all explosive storage sites; three, any agency that fails to comply with ATF safety and security requirements will be decertified to store explosives or operate a Bomb Disposal Squad; four, require a specific training course for managers of bomb squads to ensure that they have knowledge of professional practices and to ensure compliance with all appropriate protocols.

That concludes my comments, and I would again like to thank this committee for your leadership in this issue and for your work in helping to develop national standards for explosive storage facilities.

[The prepared statement of Mr. Horsley follows:]

Office of the Sheriff

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ADDRESS ALL COMMUNICATIONS TO THE SHERIFF

Homeland Security:
Surveillance and Monitoring of Explosive Storage Facilities
Monday, August 2, 2004
San Mateo, California

**Testimony of Sheriff Don Horsley:**

Thank you members of the Subcommittee on National Security for your leadership on this issue and for your willingness to work with law enforcement on developing National Standards for Explosives Storage Facilities.

I would like to begin by giving a brief synopsis of the events that highlighted the need for this hearing.

The San Mateo County Sheriff's Office, along with San Francisco Police Department and the FBI have maintained a munitions storage site on the City of San Francisco Watershed property for nearly 20 years. Over the July 4th weekend, the storage facility was burglarized and approximately 200 lbs of explosives were taken. We promptly notified the media and all State and Local agencies of the theft. Thanks to the combined efforts of local law enforcement and the investigative work of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), the culprits were quickly apprehended and all of the stolen material, including the 10 lbs of C4 explosives belonging to the San Mateo County Bomb Squad, was recovered.

Since the buck stops at the top of an organization, I take full responsibility for the breach in security of our munitions bunker. While the Bomb Squad stored the explosives in an approved and theft resistant munitions storage container and sited the secure container in a remote location, away from buildings and population centers, we mistakenly relied on the remoteness and secrecy of the location and the physical security of the BATFE approved munitions storage sheds for security. It was also thought that the random patrols by watershed rangers who are responsible for keeping out trespassers, but were not specifically responsible for the munitions storage site was additional security for the site. Unfortunately, I was not made aware that the alarm on the storage containers was inoperable.

In hindsight, the Sheriff's Office Administration should have established a regularly scheduled inspection of the site by our Office of Professional Standards. Clearly, fencing of the site, a functioning alarm and remote surveillance by camera could have prevented this incident from occurring.

Some may ask why have these materials at all? All law enforcement agencies that maintain bomb disposal squads need to have both explosive material and a safe and secure storage facility. Explosive materials are used for training purposes. Specifically, we must have explosive materials if we are to train canines to locate explosive devices. Additionally, bomb disposal units are called upon to dismantle explosive devices and store the material for either evidence and/or destruction. Lastly, there are occasions when unstable and explosive materials are recovered by a bomb disposal squad that must be destroyed by the use of explosive materials.

Subsequent to the incident in San Mateo County, I have found that there have been similar losses of explosive materials nationwide. I think that it is timely that this review of National and State regulations and standards takes place.

At the request of this committee, I have been asked to make recommendations regarding Federal and State Guidelines for the storage, monitoring and protection of publicly owned explosives material storage sites.

The current regulations are found in Title 27, Code of Federal Regulations. In summary, BATFE requires that explosive material be stored certain distances from populated buildings and that the munitions storage facility be constructed of quarter inch steel and lined with two inch plywood and that it be theft resistant. Our storage container met these minimum requirements.

The FBI requires that bomb technicians must have successfully completed the Redstone Arsenal training curriculum.

From our review of this event, the Sheriff's Office will be taking the following steps and I would suggest that these local requirements might be a good starting point for future legislative action:

1. We will need to find a secure location at which to store explosives and other volatile substances that meets BATFE guidelines.

2. The location will be fenced.

3. The site will have a working alarm system.

4. Cameras should monitor the location. Bomb squad members will monitor the cameras.

5. Physical checks which include:
   a. Entry log
   b. Inventory log update when items are being utilized or stored
   c. The log will include an employee signature and date
   d. Inventory entries must be specific regarding item, amount, weight or volume of content

6. A regular rotation of five to six on call bomb techs will check and double check log entries and inventory.

7. The Bomb Squad manager will receive a monthly copy of the storage facility's current contents and inventory.

8. The Bomb Squad manager will make random, periodic inspections of the site to verify the accuracy of the inventory reports and the working conditions of all security devices. These inspections will occur no less than twice yearly and will be reported directly to the Sheriff.

9. BATFE will be requested to inspect the storage site yearly with the results to be reported directly to the Sheriff.

Regarding National Standards, I would also recommend the following:

1. Give BATFE authority to require that all explosive storage sites submit to an annual inspection.

2. Require licensing of all explosive storage sites.

3. Any agency that fails to comply with BATFE safety and security requirements would be decertified to store explosives or operate a Bomb Disposal Squad.

4. Require a specific training course for managers of Bomb Squads to ensure that they have knowledge of professional practices and to ensure compliance with all appropriate protocols.

That concludes my comments. I would like to again thank the committee for your interest in this issue and for your work in helping to develop National Standards for Explosive Storage Facilities.

Mr. SHAYS. Thank you, Sheriff. Thank you for your recommendations. Chief.

Ms. FONG. Chairman Shays, Congressman Lantos, Congressman Eshoo, thank you for giving us the opportunity to participate in this hearing. This is a key matter throughout not only law enforcement and the subcommittee but to the public at large.

The San Francisco Police Department has, since at least the mid-1970's, shared explosive storage magazines with the San Mateo County Sheriff's Office and the Federal Bureau of Investigation. As a result of a burglary over the 4th of July holiday weekend, a large quantity of explosives and other materials were stolen. Officers from the San Francisco Police Department uncovered this crime on July 6 and immediately made notifications to our law enforcement colleagues. Because of the good work of the agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives and other allied agencies, suspects were rapidly apprehended and the stolen items located.

This incident has given rise to a much-needed examination of how we in the San Francisco Police Department store explosive materials. I have reviewed the department's practices in this area and would like to briefly go over them to provide context for this discussion. The San Francisco Police Department maintained two of the magazines at the Crystal Springs Skyline Quarry facility. One of the magazines was used to store high explosives, along with breaching and demolition charges. The other was used to store flares, tear gas and so forth but no high explosives. At the time that the burglary was discovered, the watershed site was only being used as a storage magazine. It was no longer being used as an explosives range. Since the burglary, our department no longer stores any materials at the site.

This site is a former quarry, which has generally been secluded from public access. The magazines themselves are in a remote area behind two locked gates. The bunkers are standard explosive magazines and meet the industry standards for explosive magazines. Unfortunately, what makes this such an attractive site due to its isolation from populated areas or structures also makes it susceptible to theft. Aside from the FBI, no other entity outside of the San Francisco Police Department stored any explosive materials in our magazines.

The officers of our department's EOD team have undergone the same rigorous training as bomb officers do across the country. They attend the FBI-sponsored Explosive Ordnance Disposal training at the Redstone Arsenal in Huntsville, Alabama. Our EOD officers belong to the International Association of Bomb Technicians and Investigators, a professional organization that sets standards, internationally, holds regular conferences and offers cutting-edge training to its members.

As for the security of the explosive magazines, we, in part, depended on resident watershed rangers that have been deputized by San Mateo County. The San Francisco Police Department relied on them to notify law enforcement if they saw anything unusual during their regular patrols of the area. There was also a verbal understanding that any suspicious activities observed by other Water Department employees would immediately be relayed to law en-

forcement, including the San Francisco Police Department and the San Mateo County EOD Units.

Beyond question, the San Francisco Police Department needs a secure, modern facility to store munitions, and this incident gives great urgency to that need. A new site should have an alarmed fence, as well as motion sensors that would activate a video camera system. In contrast to what was available when the current facility was built, there is much better technology today. We need to relocate to a site in a more protected area with new magazines, equipped with reliable security safeguards.

We further need to have a site that has electricity and can serve as a real training range. With electricity, there would be greater usage and consequently, an enhanced law enforcement presence. Motion-sensitive video cameras could be placed on the perimeter and record trespassers once activated. A permanent structure, with lighting, video surveillance and completely meeting the ATF standards must be constructed to meet an inarguably compelling and immediate need for safe and secure explosive storage.

In addition to the construction of a new facility for storage, a strong internal protocol detailing the safety and security guidelines for the bunkers must be developed and rigorously enforced. The verbal agreements of the past must be replaced with written protocol, frequent documented site visits and regularly scheduled inventories. The officer-in-charge of the EOD Unit will be responsible for ensuring adherence to these guidelines, for personal site inspections and for coordinating an annual inspection by the Bureau of Alcohol, Tobacco and Firearms. Additionally, every officer assigned to the unit must be fully familiar with all pertinent regulations governing the operation and maintenance of an explosive magazine facility.

There is no question that the lessons learned from this incident have brought the issue of secure explosive materials storage to the forefront of our concerns. We understand that a new location is mandatory, and we look to whatever assistance we can obtain from our local, State and Federal partners to assist us in this endeavor. We must identify a solution to this pressing issue, and I have designated a member of the command staff to work closely with Sheriff Horsley and his designee to look for that location and to ensure that it is one that is safe.

As I am sure you are well aware, there are no properties in San Francisco County that would qualify as a site given the large radius needed to store explosive materials. Furthermore, State regulations bar the transport of explosives over bridges, thus precluding, at a minimum, siting any facility in Marin County. We sincerely hope that as a result of these hearings, steps can and will be taken to once and for all identify a site where the storage of explosives can be done safely and securely and with minimum impact on the surroundings.

We thank you for your consideration, we thank you for your concern, and we are committed to working together with you and local law enforcement, as well as the Federal Government, to ensure that this situation is never presented again. I look forward to answering any questions you may have.

[The prepared statement of Ms. Fong follows:]

**Presentation on Explosive Storage Facilities by Chief Heather Fong, San Francisco Police Department, to the Subcommittee on National Security, Monday, August 2, 2004**

Good Morning. I would like to begin by thanking the Subcommittee on National Security for the invitation to speak on this critical matter. I greatly appreciate the opportunity to speak with you on a subject of such importance and concern to this subcommittee and to the public at large.

As you have learned, the San Francisco Police Department has, since at least the early-1970's, shared explosive storage magazines with the San Mateo County Sheriff and the Federal Bureau of Investigation. As a result of a burglary over the Fourth of July holiday weekend, a large quantity of explosives and other materials were stolen. Officers from the San Francisco Police Department uncovered this crime on July 6th and immediately made notifications to our law enforcement colleagues. These steps ensured timely notice was made to the public. Thanks to the hard work of agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), suspects were rapidly apprehended and the stolen items located.

This incident has given rise to a much-needed examination of how we in the San Francisco Police Department store explosive materials. I have reviewed the department's practices in this area and would like to briefly go over them to provide context for this discussion. The SFPD maintained two of the magazine bunkers at the Crystal Springs Skyline Quarry facility. The SFPD has been at the site for some 30-plus years. One of the magazines was used to store high explosives, along with breaching and demolition charges. The other bunker was used to store flares, tear gas, etc., but no high explosives. At the time that the burglary was discovered, the watershed site was only being used as a storage magazine.

**Presentation on Explosive Storage Facilities by Chief Heather Fong, San Francisco Police Department, to the Subcommittee on National Security, Monday, August 2, 2004**

It was no longer used as a site for disposal, demolition or training. In other words, it was not being used as an explosives range. Since the burglary, the SFPD is no longer storing high explosives at the site, and in fact has removed all explosive materials from the bunkers for safe storage elsewhere. The site is a former quarry, which had generally been secluded from public access. The magazines themselves are in a remote area, behind two locked gates. The bunkers are standard explosive magazines and meet the industry standards for explosive magazines. Unfortunately, what makes this such an attractive site due to its isolation from populated areas or structures also makes it susceptible to theft. Aside from the FBI, no other entity outside the San Francisco Police Department stored any explosive materials in our magazines.

As far as the training of our officers, our EOD team has undergone the same rigorous training as bomb officers do across the country. They attend the FBI-sponsored Explosive Ordnance Disposal training at the Redstone Arsenal in Huntsville, Alabama. Our EOD officers belong to the International Association of Bomb Technicians and Investigators (IABTI), a professional organization that sets international standards, holds regular conferences, and offers cutting edge training to its members. As for the security of the explosive magazines, we in part depended on resident watershed rangers that have been deputized by San Mateo County. The SFPD relied on them to notify law enforcement if they saw anything unusual during their regular patrols of the area. There was also a verbal understanding that any suspicious activities observed by other Water Department employees would be immediately relayed to law enforcement, including the SFPD and San Mateo County EOD Units.

**Presentation on Explosive Storage Facilities by Chief Heather Fong, San Francisco Police Department, to the Subcommittee on National Security, Monday, August 2, 2004**

Beyond question, the San Francisco Police Department needs a secure, modern facility to store munitions and this incident gives great urgency to that need. A new site should have an alarmed fence, as well as motion sensors that would activate a video camera system. In contrast to what was available when the current facility was built, there is much better technology now available. We need to relocate to a site in a more protected area with new bunkers, equipped with reliable security safeguards.

We further need to have a site that has electricity and can serve as a real training range. With electricity, there would be greater usage and consequently, an enhanced law enforcement presence. Motion-sensitive video cameras could be placed on the perimeter and record trespassers once activated. A permanent structure, with lighting, video surveillance and completely meeting the BATFE standards has to be constructed to meet an inarguably compelling and immediate need for safe and secure explosive storage.

Above and beyond the construction of a new facility for storage, a strong internal protocol detailing the safety and security guidelines for the bunkers must be developed and rigorously enforced. The verbal agreements of the past must be replaced with frequent, documented site visits and regularly scheduled inventories. The officer-in-charge of the EOD Unit will be responsible for ensuring adherence to these guidelines, for personal site inspections, and for coordinating an annual inspection by BATFE.

**Presentation on Explosive Storage Facilities by Chief Heather Fong, San Francisco Police Department, to the Subcommittee on National Security, Monday, August 2, 2004**

Additionally, every officer assigned to the Unit must be fully familiar with all pertinent regulations governing the operation and maintenance of an explosive magazine facility.

There is no question that the lessons learned from this incident have brought the issue of secure explosive materials storage to the forefront of our concerns. We in the San Francisco Police Department understand that a new location is mandatory and we look to whatever assistance we can obtain from our local, state and federal partners to assist us in this endeavor. We must identify a solution to this pressing issue and look forward to working with you and others to arrive at that solution.

As I am sure you are well aware, there are no properties in San Francisco County that would qualify as a site given the large radius needed to store explosive materials. Furthermore, state regulations bar the transport of explosives over bridges, thus precluding, at a minimum, siting a facility in Marin County.

We sincerely hope that as a result of this hearing steps can and will be taken to once and for all identify a site where the storage of explosives can be done safely and securely, and with minimum impact on the surroundings. We look to you for your assistance in this matter of high public concern. The San Francisco Police Department is committed to working with this subcommittee in the development of thorough and stringent national standards in this area.

Thank you again for calling for this hearing and for your attention. I will do my best to answer any questions you may have.

Mr. SHAYS. Thank you, Chief. Now we will hear from Scott MacGregor, assistant chief, California Highway Patrol. Welcome.

Mr. MACGREGOR. Good morning Mr. Chairman and committee members. Thank you also for this opportunity to speak before you this morning on this important issue dealing with the monitoring and protection of publicly owned explosive material storage sites. For the most part this morning, I will be——

Mr. SHAYS. Just check, is your mic on? I am hearing you so well, but I am not sure it is on.

Mr. MACGREGOR. I appear to have a green light if that is an indicator. For the most part this morning, I will be talking about the activities of the California Highway Patrol rather than specifically the site here in San Mateo County.

And let me first say that the CHP does follow existing Federal and State guidelines regarding the storage and transportation of explosive materials. While the CHP is a Statewide law enforcement agency, we are currently operating in all 58 counties of California, and today we maintain 13 Type 2 magazines for explosive materials. The majority of our magazines are maintained for preservation of explosives in small amounts for ongoing training for CHP explosive detection canines, as the Sheriff had pointed out. The canine handler teams are located throughout the State and are an integral part of our homeland security efforts here in California.

In response to the recent events here in San Mateo County, the CHP, as well as other law enforcement agencies, have reviewed its procedures to ensure that both the safety and the security of the magazines have not been compromised. And this process has included a number of steps involving the review of current Federal, State and local law and guidelines, as well as discussions with members from Alcohol, Tobacco and Firearms, the California Department of Toxic Substances Control, the State Fire Marshal and California Department of Forestry. And a summary of our review of those pertinent regulations and laws has been provided to this committee.

Now, in the time for my remarks, I won't be able to adequately describe each of the agency's specific roles and responsibilities regarding explosive handling. However, I can say that I have been very impressed by the spirit of cooperation and level of communication from Federal, State and local leaders. And as I am sure you are aware, law enforcement agencies are exempt—as has been pointed out in this hearing thus far, they are exempt from Federal and State laws relating to obtaining a license for storing explosive materials. However, we are not exempt from any Federal storage requirements, and, simply put, and I think this has been reinforced by other speakers, we must follow the Federal regulations, but we do not have to obtain a physical license in order to do so.

On the State level, law enforcement derive a similar exemption from explosives regulations from the California Health and Safety Code and the California Penal Code. Regardless of those State exemptions, the requirement to follow Federal storage regulations still exists. And once again, the CHP does meet or exceed all current Federal explosive storage requirements.

For example, while there is currently no Federal or State requirement for an outside entity to inspect our magazines, as a mat-

ter of departmental policy, the CHP does request and receive, through the California State Fire Marshal, inspections of our magazines to ensure they are properly located, secure and compliant with title 27 provisions.

The CHP also follows up with formal letters of confirmation from the California State Fire Marshal outlining that those inspections have taken place and their results. And, additionally, the CHP has established an internal guideline regarding the inventory and inspection of our storage facilities, and we maintain a secure roster of all key holders. And, further, as a matter of policy, these magazines do not hold evidentiary explosive materials. We also fulfill the requirement that is currently in Federal regulation to notify local fire officials regarding the locations of those magazines sites.

While I am not going to detail specifics regarding the actual CHP security measures at each of the locations, I can assure you that we take into account the need for a higher level of protection based upon the unique nature of each individual facility.

And if I could summarize our research very quickly, it appears that there is no Statewide list of law enforcement agencies' explosive storage facilities. One simply does not exist to date. And since a list of that type may be beneficial for Statewide operations, security and certainly the security of all these sites, we have provided the California's Office of Homeland Security with a list of several items to be considered here by the State of California.

And those items include an evaluation and consideration of the following: First of all, an evaluation of the State of California formally adopt title 27 of the Code of Federal Regulations through legislation. We also provided a recommendation that the State of California develop and maintain a confidential list of all law enforcement explosive storage magazines and their locations that would be updated on a semi-annual basis. Additionally, law enforcement agencies conduct and maintain a log of physical security inspections available for random audit and that law enforcement agencies provide to the State of California ongoing, updated confidential rosters of people who are authorized to access explosive storage magazines. One additional item that we have discussed with the Department of Homeland Security here in California is the possibility of law enforcement agencies maintaining current physical inventoies of explosive storage magazines, and, again, that those magazines be randomly audited and reported. And, finally, an improved notification system be established for purposes of collecting and maintaining reports of lost or stolen explosives.

And in closing, while the events here in San Mateo County were unfortunate, it has given the law enforcement community, the Federal, State and local government the opportunity to evaluate current regulatory and operational standards and to take the additional steps necessary to heighten the security of those facilities.

And, Mr. Chairman and committee, I thank you for this opportunity and welcome any questions you may have.

[The prepared statement of Mr. MacGregor follows:]

Statement of Assistant Chief Scott MacGregor
California Highway Patrol
2555 First Avenue, Sacramento, California 95818
August 2, 2004

Good morning Mr. Chairman and Committee members. My name is Scott MacGregor, Assistant Chief in the Planning and Analysis Division of the California Highway Patrol (CHP). It is an honor to appear before you this morning to discuss the federal and state guidelines for storage, monitoring, and protection of publicly-owned explosive material storage sites.

I will for the most part discuss the activities of the CHP. Let me first say that the CHP follows federal, state, and local guidelines regarding the storage and transportation of explosive materials. The CHP, as a statewide law enforcement agency, has a presence in all 58 counties within the State of California and currently maintains 13 secured Type 2 magazines for explosive materials. The majority of our magazines are maintained for the preservation of explosives in small amounts for the ongoing training of CHP explosive detection canines. The canine handler teams are located throughout the state and are an integral part of our homeland security program.

In response to the recent events in San Mateo County, the CHP, as well as many other law enforcement agencies, has reviewed its procedures to ensure that both the safety and the security of the magazines have not been compromised. This process included a review of federal, state, and local law and guidelines, as well as, discussions with the Bureau of Alcohol, Tobacco and Firearms, the California Department of Toxic

Substances Control, the California State Fire Marshal, and the California Department of Forestry. A summary of our review has been provided to this Committee.

In the time allotted for my remarks, I am unable to adequately describe each agency's specific role and/or responsibility regarding explosives handling. However, I can say that we have been impressed by the spirit of cooperation and the level of communication from federal, state, and local government leaders.

As I'm sure you are aware, law enforcement agencies are exempt from both federal and state laws relating to obtaining a license for storing explosive materials. However, we are not exempt from any of the federal storage requirements. Simply put, we must follow the federal regulations but we do not have to obtain a physical license to do so. On the state level, law enforcement derives state exemption from explosives regulations from the California Health and Safety Code and the California Penal Code. Regardless of the state exemptions, the requirement to follow federal storage regulations still exists. The CHP meets or exceeds all current federal explosive storage requirements.

For example, there are no current federal or state requirements for an outside entity to inspect our magazines. As a matter of departmental policy, the CHP requests and receives, through the California State Fire Marshal, inspections of our magazines to ensure they are properly located and secure. The CHP also receives formal letters of confirmation outlining the inspections and their results. Additionally, the CHP has established guidelines regarding the inventory and inspection of our storage facilities,

and maintains a secure roster of key holders. Further, as a matter of our policy, these magazines do not hold evidentiary explosive materials. We also fulfill notification requirements to local fire officials regarding the locations of our magazines. This varies based on locality.

While not going in to detail regarding the actual CHP security measures, we take into account the need for higher levels of protection based upon the unique nature of the facilities.

If I could summarize from our research, it appears that a statewide list of law enforcement agencies' explosive storage facilities does not currently exist. Since a list of this type may be beneficial for statewide operations, security, and planning purposes, we have provided California's Office of Homeland Security with a list of several items to be considered by the state. They include evaluation and consideration of the following:

- The State of California formally adopt Title 27 of the Code of Federal Regulations.

- The State of California develop and maintain a confidential list of all law enforcement explosive storage magazines and their locations that would be updated on a semi-annual basis.

- Law enforcement agencies conduct and maintain a log of physical security inspections, available for random audit by the State of California.

- Law enforcement agencies provide to the State of California ongoing updated confidential rosters of people who are authorized to access explosive storage magazines.

- Law enforcement agencies maintain current physical inventories of explosive storage magazines for random audit and reporting to the State of California.

- An improved notification system be established for the purpose of collecting and maintaining reports of lost or stolen explosives.

While, the events in San Mateo County were unfortunate, it has given the law enforcement community; and federal, state, and local governments, the opportunity to evaluate current regulatory and operational standards and to take any additional proactive steps necessary to heighten the security of these necessary sites.

Mr. Chairman, I thank you for the opportunity to testify before you and this distinguished Committee. I would be pleased to answer any questions you might have.

Mr. SHAYS. I thank you very much. I appreciate the helpful advice and concern that all three of you have shown. We will now go to this side now and hear from our two supervisors. First, Mark Church and after him, Michael Nevin.

Mr. CHURCH. Good morning, Mr. Chair and committee members. Thank you, Representative Shays for the opportunity to address this subcommittee. Those of us here in San Mateo County especially want to thank Representative Lantos for making this hearing possible and Representative Anna Eshoo for bringing to the attention of Secretary Tom Ridge and this subcommittee the challenges that local governments face, such as San Mateo County, in improving security for explosives storage facilities.

In a recent letter to Secretary Ridge, Representative Eshoo pointed out that inadequate first responder funding and misallocation of Homeland Security funds were important factors in the recent theft of government-owned explosives from a storage bunker located on San Francisco Public Utility Commission property in San Mateo County. I believe this incident highlights how important it is for the Federal Government to assume an appropriate role in assisting local agencies to protect their communities and the Nation.

The State fire marshal has promulgated regulations to address the storage of explosives in California. While these regulations set physical standards for explosive storage facilities, they were adopted long before the present threat environment emerged, and they do not reflect current risks to these facilities.

Further, to the extent that Federal regulations address explosives storage, much more needs to be done to increase the coordination and communication between the Federal agencies and the operators of these local facilities. The Federal Government, with its much greater knowledge of how risks to explosive storage facilities affect homeland security, must work with local agencies to continue developing appropriate standards at the national level. And once such standards are developed, it will be equally important for the Federal Government to provide local agencies with the resources necessary to implement them.

Local governments' law enforcement and first responder resources have been stretched thin due to the recent budget crisis in this State. This fact makes Federal homeland security assistance, such as through the State Homeland Security Grant Program, more critical than ever before. We believe a number of important improvements could be made to the Homeland Security Grant Program that would make the program more effective. First, a greater degree of flexibility with respect to the use of funds provided through the program would assist local agencies as they prioritize their homeland security spending. Second, a streamlined application process, which would allow local agencies to apply directly to the Department of Homeland Security for grants and deal directly and expeditiously with the Department on inquiries related to grants, would greatly increase local law enforcement and first responder effectiveness. And, third, it is essential that Federal Homeland Security Grant funding be tied to a realistic assessment of the threats based upon localities and the costs incurred in responding to those threats.

It seems clear that parts of the country, such as the San Francisco Bay Area with its large population and popular tourist attractions, present a number of potential terrorist targets far in excess of those other parts in the country. The costs of defending against potential terrorists threats is also much higher here than in other parts of the country. Yet, as both Representative Lantos and Representative Eshoo have pointed out, under the current Homeland Security grant allocations, Wyoming, for instance, receives $38 per capita whereas California receives only approximately $5 per capita. The level of funding made available under the State Homeland Security Grant Program simply much take into account the disparate terrorist threats and the resulting differences in fiscal demands placed on local governments.

In addition to the formulaic calculation, another issue relates to the fact that metropolitan area homeland security funds were allocated last year to urban cities through the Urban Area Security Initiative Program. And while San Francisco has vulnerabilities, the funding model does not reflect the fact that the San Francisco Bay Area, including San Mateo County, is really one urbanized area with vulnerabilities typical of urban cities. The largest intermodal transportation hub west of St. Louis, for example, is located in San Mateo County, as are other critical infrastructure such as the San Francisco International Airport and the San Francisco Hetch Hetchy watershed—the location of the bunker that brought us all here today. Yet, to date, San Mateo County, though it is home to significant economic and public infrastructure, has not received grant funding targeted to urban cities. This, underscores, I believe, a major flaw in the current allocation methodologies and the need to ensure that future homeland security funds are allocated based on real threats and allocated to localities that are vulnerable.

As the 9/11 Commission found, the last best hope for the community rests primarily with first responders. We must ensure that they have the resources, the information and the flexibility necessary to do their jobs effectively. Thank you again, Mr. Chair and committee members, for holding this meeting in San Mateo County and for the opportunity to address this subcommittee.

[The prepared statement of Mr. Church follows:]

**Supervisor Mark Church, President**
**San Mateo County Board of Supervisors**

**Remarks before the**
**Subcommittee on National Security, Emerging Threats, and International Relations**
**Field Hearing: Homeland Security: Surveillance and Monitoring**
**of Explosive Storage Facilities**

**Monday, August 2, 2004**
**San Mateo City Council Chambers**
**330 West 20th Avenue, San Mateo, California**

On behalf of the County of San Mateo, I would like to thank Representative Shays, Representative Lantos and the other members of the Subcommittee on National Security, Emerging Threats, and International Relations of the United States House of Representatives for this opportunity to address the Subcommittee on important issues of both local and national concern related to the surveillance and monitoring of explosive storage facilities and homeland security.

I first want to state that I agree with Chairman Shays' statement that the "physical security of publicly owned explosive material storage facilities is crucial because of the potential for catastrophic damage should these facilities be successfully penetrated." I believe that the threat posed by possible theft of, or sabotage to, such facilities presents a problem of national proportions, and that leadership, coordination and assistance at the national level are essential to appropriately address this threat.

Those of us here in San Mateo County especially want to thank Representative Lantos for making this hearing possible and for his leadership on this issue. We are also indebted to Representative Anna Eshoo for bringing to the attention of Secretary Tom Ridge of the Department of Homeland Security and this Subcommittee the challenges that local governments, such as San Mateo County, face in improving security for explosive storage facilities. In a recent letter to Secretary Ridge, Representative Eshoo pointed out that inadequate first responder funding and misallocation of Homeland Security funds were important factors in the recent theft of government-owned explosives from a storage bunker located on San Francisco Public Utility Commission property, in San Mateo County. While this incident was unfortunate, it highlights how important it is for the federal government to assume an appropriate role in assisting local agencies to protect their communities and the Nation.

Among the support that would greatly enhance readiness at the local level would be federal assistance in assessing and identifying the threats posed to explosive storage and chemical facilities. Local governments simply lack the resources to carry out these functions, especially given the national and international scope of the potential threat. Along similar lines, federal assistance and coordination in the sharing and dissemination of threat information is absolutely critical and of utmost importance.

The State Fire Marshal has promulgated regulations to address the storage of explosives in California. *See, generally*, Cal. Code Regs., tit. 19, §§ 1566, et seq. While these regulations set physical standards for explosive storage facilities, they were adopted long before the present threat environment emerged and they do not reflect current risks to these facilities. Further, to the extent that federal regulations address explosives storage, much more needs to be done to increase the coordination between federal agencies and operators of local ammunition storage facilities. The federal government, with its much greater knowledge of how risks to explosive storage facilities affect Homeland Security, must work with local agencies to continue developing appropriate standards at the national level for security of explosive storage facilities. Once such standards are developed, it will be equally important for the federal government to provide local agencies with the resources necessary to implement them.

Explosive storage facilities generally contain explosives used or confiscated by law enforcement agencies, and it is no secret that local governments' law enforcement and first responder assets have been stretched thin due to the recent budget crisis in this State (as well as in other parts of the country). This fact makes federal Homeland Security Assistance, such as through the State Homeland Security Grant Program, more critical than ever.

We believe that a number of improvements could be made to the Homeland Security Grant Program that would make the program more effective and responsive to threats at the local level. First, a greater degree of flexibility with respect to the use of funds provided through the Program would assist local agencies as they prioritize their Homeland security spending. Further, a streamlined application process which would allow local agencies to apply directly to the Department of Homeland Security for grants and deal directly and expeditiously with the Department on inquiries related to grants (rather than through the State, as is currently the case), would greatly increase local law enforcement and first responder effectiveness.

In fact, included in the recommendations made by the 9/11 Commission is to "*– base federal funding for emergency preparedness solely on risks and vulnerabilities, putting New York City and Washington, D.C., at the top of the current list. Such assistance should not remain a program for general revenue sharing or pork-barrel spending*." Realistic assessment of homeland security vulnerabilities must be the number one priority. As you can see by the analysis of the current homeland security grant allocations attached to my testimony, Wyoming receives grant funding of nearly $38 per capita (the single largest amount per capita of all the states), whereas California receives $5.03 per capita, ranking the state dead last. This skewed allocation demonstrates the need to change the current homeland security allocation formula.

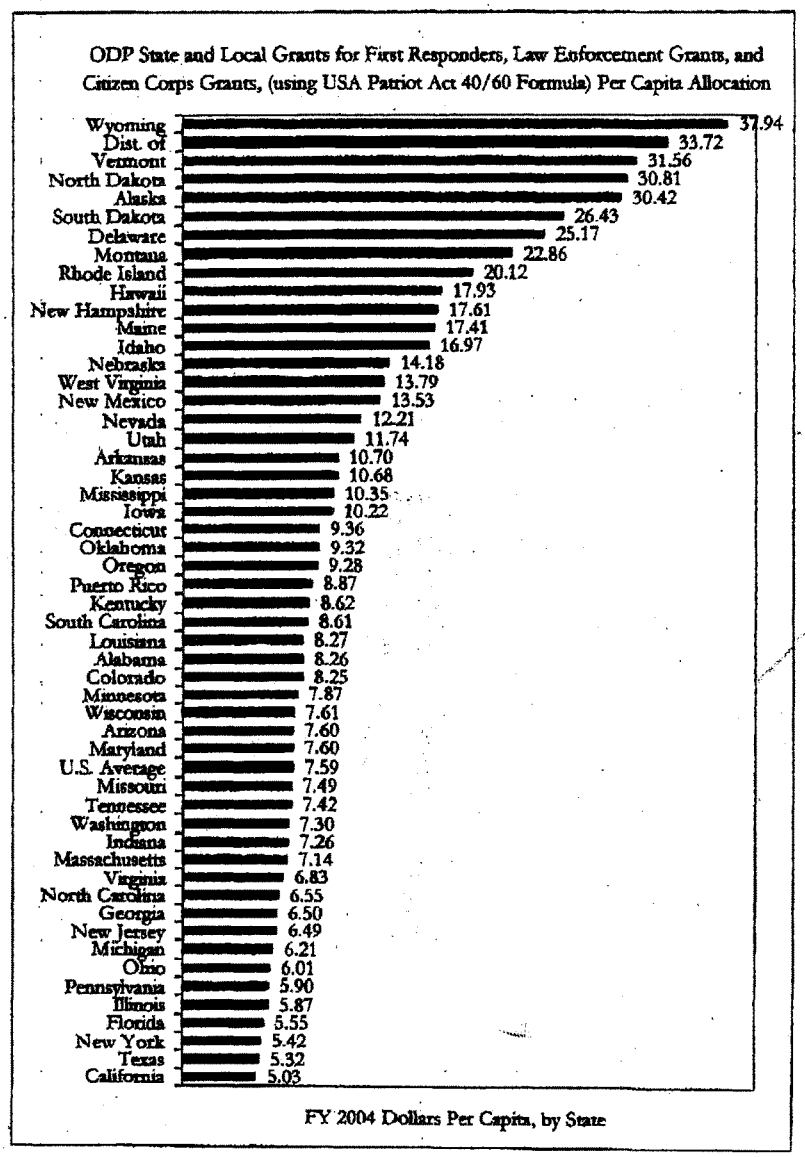
The 9/11 Commission's final report further recommends that homeland security funding be contingent on the adoption of an incident command system to strengthen regional teamwork in a crisis. San Mateo County's Office of Emergency Services operates through a joint power authority (JPA) in which all 22 police and public safety agencies in the County come together to ensure a coordinated, collaborative crisis response. Federal formulas do not reward that level of cooperation. Federal policies often laud collaboration, but the funding rarely follows. I urge you to take that message back to your colleagues. Establish a funding formula that truly rewards collaboration.

Finally, it is essential that federal Homeland Security Grant funding be tied to an assessment of the threats faced by localities and the costs incurred in responding to those threats. In addition to the formulaic allocation, another issue relates to the fact that metropolitan area homeland security funds were allocated last year to urban cities through the Urban Area Security Initiative Program, which included funds for the City and County of San Francisco. And while San Francisco does have vulnerabilities - the Golden Gate Bridge, the Transamerica Building and the Bay Bridge for example, the funding model does not reflect the fact that the San Francisco Bay Area, including San Mateo County, is really one urbanized area with vulnerabilities typical of urban cities. The largest intermodel transportation hub west of St. Louis, for example, is located in San Mateo County, as are other critical infrastructure such as the San Francisco International Airport and the San Francisco Hetch Hetchy watershed - the location of the bunker that brought us all here today. Yet San Mateo County, though it is home to significant economic and public infrastructure, did not receive grant funding targeted to urban cities. This underscores a major flaw in the current allocation methodologies, and the need to ensure that future homeland security funds are allocated based on real threats and allocated to localities that are vulnerable.

Let me say in closing that I believe the single most important lesson learned from 9/11 is the need to improve communication. While the final report of the 9/11 Commission speaks to the need to improve communication among intelligence agencies as paramount, I believe it is equally critical for the federal government agencies to strengthen their ability to communicate clearly with local agencies. This is underscored by our recent experience with shared responsibility for the explosives bunker.

Like you, I found the testimony before the 9/11 Commission troubling and often painful. Resounding, however, was the observation that on the morning of September 11 "the last best hope for the community" rested primarily with first responders: fire, police and emergency medical service professionals. We must ensure that they have the resources, information and flexibility necessary to do their jobs effectively and efficiently.

Thank you again for holding these hearings in San Mateo County and for the opportunity to address this Subcommittee.


ODP State and Local Grants for First Responders, Law Enforcement Grants, and Citizen Corps Grants, (using USA Patriot Act 40/60 Formula) Per Capita Allocation
Wyoming 37.94
Dist. of 33.72
Vermont 31.56
North Dakota 30.81
Alaska 30.42
South Dakota 26.43
Delaware 25.17
Montana 22.86
Rhode Island 20.12
Hawaii 17.93
New Hampshire 17.61
Maine 17.41
Idaho 16.97
Nebraska 14.18
West Virginia 13.79
New Mexico 13.53
Nevada 12.21
Utah 11.74
Arkansas 10.70
Kansas 10.68
Mississippi 10.35
Iowa 10.22
Connecticut 9.36
Oklahoma 9.32
Oregon 9.28
Puerto Rico 8.87
Kentucky 8.62
South Carolina 8.61
Louisiana 8.27
Alabama 8.26
Colorado 8.25
Minnesota 7.87
Wisconsin 7.61
Arizona 7.60
Maryland 7.60
U.S. Average 7.59
Missouri 7.49
Tennessee 7.42
Washington 7.30
Indiana 7.26
Massachusetts 7.14
Virginia 6.83
North Carolina 6.55
Georgia 6.50
New Jersey 6.49
Michigan 6.21
Ohio 6.01
Pennsylvania 5.90
Illinois 5.87
Florida 5.55
New York 5.42
Texas 5.32
California 5.03
FY 2004 Dollars Per Capita, by State

**Homeland Security Grants from DHS Office of Domestic Preparedness (ODP), Fiscal Year 2004**
(as announced by Dept. of Homeland Security on November 3, 2003)

| | State Grants | Law Enforcement | Citizen Corps | Total Grants | Grants ($) Per Capita | Percent of Grants | Percent of Population | Population (7/1/2002) |
|---|---|---|---|---|---|---|---|---|
| TOTALS | 1,685,000,000 | 500,000,000 | 35,000,000 | 2,220,000,000 | 7.59 | 100.00 | 100.00 | 292,617,433 |
| Alabama | 28,138,000 | 8,350,000 | 584,000 | 37,072,000 | 8.26 | 1.67 | 1.53 | 4,486,508 |
| Alaska | 14,862,000 | 4,410,000 | 309,000 | 19,581,000 | 30.42 | 0.88 | 0.22 | 643,786 |
| Arizona | 31,490,000 | 9,344,000 | 654,000 | 41,488,000 | 7.60 | 1.87 | 1.86 | 5,456,453 |
| Arkansas | 22,001,000 | 6,529,000 | 457,000 | 28,987,000 | 10.70 | 1.31 | 0.93 | 2,710,079 |
| California | 133,964,000 | 39,752,000 | 2,783,000 | 176,499,000 | 5.03 | 7.95 | 12.00 | 35,116,033 |
| Colorado | 28,208,000 | 8,370,000 | 586,000 | 37,164,000 | 8.25 | 1.67 | 1.54 | 4,506,542 |
| Connecticut | 24,594,000 | 7,298,000 | 511,000 | 32,403,000 | 9.36 | 1.46 | 1.18 | 3,460,503 |
| Delaware | 15,427,000 | 4,578,000 | 320,000 | 20,325,000 | 25.17 | 0.92 | 0.28 | 807,385 |
| Dist. of Columbia | 14,610,000 | 4,335,000 | 303,000 | 19,248,000 | 33.72 | 0.87 | 0.20 | 570,898 |
| Florida | 70,382,000 | 20,885,000 | 1,462,000 | 92,729,000 | 5.55 | 4.18 | 5.71 | 16,713,149 |
| Georgia | 42,214,000 | 12,526,000 | 877,000 | 55,617,000 | 6.50 | 2.51 | 2.93 | 8,560,310 |
| Hawaii | 16,939,000 | 5,026,000 | 352,000 | 22,317,000 | 17.93 | 1.01 | 0.43 | 1,244,898 |
| Idaho | 17,271,000 | 5,125,000 | 359,000 | 22,755,000 | 16.97 | 1.03 | 0.46 | 1,341,131 |
| Illinois | 56,173,000 | 16,669,000 | 1,167,000 | 74,009,000 | 5.87 | 3.33 | 4.31 | 12,600,620 |
| Indiana | 33,917,000 | 10,065,000 | 704,000 | 44,686,000 | 7.26 | 2.01 | 2.10 | 6,159,068 |
| Iowa | 22,784,000 | 6,761,000 | 473,000 | 30,018,000 | 10.22 | 1.35 | 1.00 | 2,936,760 |
| Kansas | 22,021,000 | 6,534,000 | 457,000 | 29,012,000 | 10.68 | 1.31 | 0.93 | 2,715,884 |
| Kentucky | 26,779,000 | 7,946,000 | 556,000 | 35,281,000 | 8.62 | 1.59 | 1.40 | 4,092,891 |
| Louisiana | 28,125,000 | 8,346,000 | 584,000 | 37,055,000 | 8.27 | 1.67 | 1.53 | 4,482,646 |
| Maine | 17,110,000 | 5,077,000 | 355,000 | 22,542,000 | 17.41 | 1.02 | 0.44 | 1,294,464 |
| Maryland | 31,495,000 | 9,346,000 | 654,000 | 41,495,000 | 7.60 | 1.87 | 1.87 | 5,458,137 |
| Massachusetts | 34,846,000 | 10,340,000 | 724,000 | 45,910,000 | 7.14 | 2.07 | 2.20 | 6,427,801 |
| Michigan | 47,362,000 | 14,054,000 | 984,000 | 62,400,000 | 6.21 | 2.81 | 3.43 | 10,050,446 |
| Minnesota | 29,981,000 | 8,896,000 | 623,000 | 39,500,000 | 7.87 | 1.78 | 1.72 | 5,019,720 |
| Mississippi | 22,560,000 | 6,694,000 | 469,000 | 29,723,000 | 10.35 | 1.34 | 0.98 | 2,871,782 |
| Missouri | 32,236,000 | 9,556,000 | 670,000 | 42,472,000 | 7.49 | 1.91 | 1.94 | 5,672,579 |
| Montana | 15,780,000 | 4,682,000 | 328,000 | 20,790,000 | 22.86 | 0.94 | 0.31 | 909,453 |
| Nebraska | 18,612,000 | 5,523,000 | 387,000 | 24,522,000 | 14.18 | 1.10 | 0.59 | 1,729,180 |
| Nevada | 20,147,000 | 5,978,000 | 418,000 | 26,543,000 | 12.21 | 1.20 | 0.74 | 2,173,491 |
| New Hampshire | 17,043,000 | 5,057,000 | 354,000 | 22,454,000 | 17.61 | 1.01 | 0.44 | 1,275,056 |
| New Jersey | 42,317,000 | 12,557,000 | 879,000 | 55,753,000 | 6.49 | 2.51 | 2.94 | 8,590,300 |
| New Mexico | 19,047,000 | 5,652,000 | 396,000 | 25,095,000 | 13.53 | 1.13 | 0.63 | 1,855,059 |
| New York | 78,827,000 | 23,391,000 | 1,637,000 | 103,855,000 | 5.42 | 4.68 | 6.55 | 19,157,532 |
| North Carolina | 41,384,000 | 12,280,000 | 860,000 | 54,524,000 | 6.55 | 2.46 | 2.84 | 8,320,146 |
| North Dakota | 14,828,000 | 4,400,000 | 308,000 | 19,536,000 | 30.81 | 0.88 | 0.22 | 634,110 |
| Ohio | 52,098,000 | 15,459,000 | 1,082,000 | 68,639,000 | 6.01 | 3.09 | 3.90 | 11,421,267 |
| Oklahoma | 24,708,000 | 7,332,000 | 513,000 | 32,553,000 | 9.32 | 1.47 | 1.19 | 3,493,714 |
| Oregon | 24,804,000 | 7,360,000 | 515,000 | 32,679,000 | 9.28 | 1.47 | 1.20 | 3,521,515 |
| Pennsylvania | 55,255,000 | 16,396,000 | 1,148,000 | 72,799,000 | 5.90 | 3.28 | 4.22 | 12,335,091 |
| Puerto Rico | 25,970,000 | 7,706,000 | 539,000 | 34,215,000 | 8.87 | 1.54 | 1.32 | 3,858,806 |
| Rhode Island | 16,333,000 | 4,847,000 | 339,000 | 21,519,000 | 20.12 | 0.97 | 0.37 | 1,069,725 |
| South Carolina | 26,828,000 | 7,961,000 | 557,000 | 35,346,000 | 8.61 | 1.59 | 1.40 | 4,107,183 |
| South Dakota | 15,267,000 | 4,530,000 | 317,000 | 20,114,000 | 26.43 | 0.91 | 0.26 | 761,063 |
| Tennessee | 32,667,000 | 9,694,000 | 679,000 | 43,040,000 | 7.42 | 1.94 | 1.98 | 5,797,289 |
| Texas | 87,888,000 | 26,079,000 | 1,826,000 | 115,793,000 | 5.32 | 5.22 | 7.44 | 21,779,893 |
| Utah | 20,640,000 | 6,125,000 | 429,000 | 27,194,000 | 11.74 | 1.22 | 0.79 | 2,316,256 |
| Vermont | 14,768,000 | 4,382,000 | 307,000 | 19,457,000 | 31.56 | 0.88 | 0.21 | 616,592 |
| Virginia | 37,837,000 | 11,228,000 | 786,000 | 49,851,000 | 6.83 | 2.25 | 2.49 | 7,293,542 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Washington | 33,606,000 | 9,972,000 | 698,000 | 44,276,000 | 7.30 | 1.99 | 2.07 | 6,068,996 |
| West Virginia | 18,863,000 | 5,597,000 | 392,000 | 24,852,000 | 13.79 | 1.12 | 0.62 | 1,801,873 |
| Wisconsin | 31,437,000 | 9,329,000 | 653,000 | 41,419,000 | 7.61 | 1.87 | 1.86 | 5,441,196 |
| Wyoming | 14,360,000 | 4,261,000 | 298,000 | 18,919,000 | 37.94 | 0.85 | 0.17 | 498,703 |
| Virgin Islands | 4,588,000 | 1,361,000 | 95,000 | 6,044,000 | 105.50 | 0.27 | 0.02 | 57,291 |
| American Samoa | 4,410,000 | 1,309,000 | 92,000 | 5,811,000 | 37.54 | 0.26 | 0.05 | 154,805 |
| Guam | 4,747,000 | 1,409,000 | 99,000 | 6,255,000 | 90.36 | 0.28 | 0.02 | 69,221 |
| No.Mariana Islands | 4,452,000 | 1,321,000 | 92,000 | 5,865,000 | 54.00 | 0.26 | 0.04 | 108,612 |

Source: Dept. of Homeland Security, Census Bureau, California Institute. http://www.dhs.gov/interweb/assetlibrary/FY04 State Grants.PDF.

Homeland Security Grants from DHS Office of Domestic Preparedness (ODP), Fiscal Year 2004
(as announced by Dept. of Homeland Security on 11/3/2003 and 11/13/2003)

| | Formula Grants | Formula ($) Per Capita | Urban Grants | Mass Transit | Total Grants | Total ($) Per Capita |
|---|---|---|---|---|---|---|
| TOTALS | 2,220,000,000 | 7.59 | 675,000,000 | 50,000,000 | 2,945,000,000 | 10.06 |
| Alabama | 37,072,000 | 8.26 | 0 | 0 | 37,072,000 | 8.26 |
| Alaska | 19,581,000 | 30.42 | 0 | 0 | 19,581,000 | 30.42 |
| Arizona | 41,488,000 | 7.60 | 12,200,204 | 0 | 53,688,204 | 9.84 |
| Arkansas | 28,987,000 | 10.70 | 0 | 0 | 28,987,000 | 10.70 |
| California | 176,499,000 | 5.03 | 135,708,491 | 6,805,266 | 319,012,757 | 9.08 |
| Colorado | 37,164,000 | 8.25 | 8,646,361 | 0 | 45,810,361 | 10.17 |
| Connecticut | 32,403,000 | 9.36 | 9,632,961 | 800,000 | 42,835,961 | 12.38 |
| Delaware | 20,325,000 | 25.17 | 0 | 0 | 20,325,000 | 25.17 |
| Dist. of Columbia | 19,248,000 | 33.72 | 29,301,502 | 2,809,313 | 51,358,815 | 89.96 |
| Florida | 92,729,000 | 5.55 | 37,187,212 | 1,600,000 | 131,516,212 | 7.87 |
| Georgia | 55,617,000 | 6.50 | 10,744,248 | 1,491,848 | 67,853,096 | 7.93 |
| Hawaii | 22,317,000 | 17.93 | 0 | 0 | 22,317,000 | 17.93 |
| Idaho | 22,755,000 | 16.97 | 0 | 0 | 22,755,000 | 16.97 |
| Illinois | 74,009,000 | 5.87 | 34,142,222 | 5,519,029 | 113,670,251 | 9.02 |
| Indiana | 44,686,000 | 7.26 | 10,151,880 | 800,000 | 55,637,880 | 9.03 |
| Iowa | 30,018,000 | 10.22 | 0 | 0 | 30,018,000 | 10.22 |
| Kansas | 29,012,000 | 10.68 | 0 | 0 | 29,012,000 | 10.68 |
| Kentucky | 35,281,000 | 8.62 | 8,987,662 | 0 | 44,268,662 | 10.82 |
| Louisiana | 37,055,000 | 8.27 | 14,346,633 | 0 | 51,401,633 | 11.47 |
| Maine | 22,542,000 | 17.41 | 0 | 0 | 22,542,000 | 17.41 |
| Maryland | 41,495,000 | 7.60 | 15,918,745 | 1,837,753 | 59,251,498 | 10.86 |
| Massachusetts | 45,910,000 | 7.14 | 19,131,723 | 3,726,559 | 68,768,282 | 10.70 |
| Michigan | 62,400,000 | 6.21 | 13,754,597 | 0 | 76,154,597 | 7.58 |
| Minnesota | 39,500,000 | 7.87 | 20,108,247 | 0 | 59,608,247 | 11.87 |
| Mississippi | 29,723,000 | 10.35 | 0 | 0 | 29,723,000 | 10.35 |
| Missouri | 42,472,000 | 7.49 | 24,080,699 | 0 | 66,552,699 | 11.73 |
| Montana | 20,790,000 | 22.86 | 0 | 0 | 20,790,000 | 22.86 |
| Nebraska | 24,522,000 | 14.18 | 0 | 0 | 24,522,000 | 14.18 |
| Nevada | 26,543,000 | 12.21 | 10,531,025 | 0 | 37,074,025 | 17.06 |
| New Hampshire | 22,454,000 | 17.61 | 0 | 0 | 22,454,000 | 17.61 |
| New Jersey | 55,753,000 | 6.49 | 32,166,412 | 0 | 87,919,412 | 10.23 |
| New Mexico | 25,095,000 | 13.53 | 0 | 0 | 25,095,000 | 13.53 |
| New York | 103,855,000 | 5.42 | 63,956,401 | 17,484,581 | 185,295,982 | 9.67 |
| North Carolina | 54,524,000 | 6.55 | 7,404,955 | 0 | 61,928,955 | 7.44 |
| North Dakota | 19,536,000 | 30.81 | 0 | 0 | 19,536,000 | 30.81 |
| Ohio | 68,639,000 | 6.01 | 31,919,279 | 800,000 | 101,358,279 | 8.87 |
| Oklahoma | 32,553,000 | 9.32 | 0 | 0 | 32,553,000 | 9.32 |
| Oregon | 32,679,000 | 9.28 | 8,161,143 | 0 | 40,840,143 | 11.60 |
| Pennsylvania | 72,799,000 | 5.90 | 35,057,238 | 3,925,651 | 111,781,889 | 9.06 |
| Puerto Rico | 34,215,000 | 8.87 | 0 | 0 | 34,215,000 | 8.87 |
| Rhode Island | 21,519,000 | 20.12 | 0 | 0 | 21,519,000 | 20.12 |
| South Carolina | 35,346,000 | 8.61 | 0 | 0 | 35,346,000 | 8.61 |
| South Dakota | 20,114,000 | 26.43 | 0 | 0 | 20,114,000 | 26.43 |
| Tennessee | 43,040,000 | 7.42 | 10,067,477 | 0 | 53,107,477 | 9.16 |
| Texas | 115,793,000 | 5.32 | 38,455,299 | 800,000 | 155,048,299 | 7.12 |
| Utah | 27,194,000 | 11.74 | 0 | 0 | 27,194,000 | 11.74 |
| Vermont | 19,457,000 | 31.56 | 0 | 0 | 19,457,000 | 31.56 |
| Virginia | 49,851,000 | 6.83 | 6,543,378 | 800,000 | 57,194,378 | 7.84 |
| Washington | 44,276,000 | 7.30 | 16,516,007 | 800,000 | 61,592,007 | 10.15 |
| West Virginia | 24,852,000 | 13.79 | 0 | 0 | 24,852,000 | 13.79 |
| Wisconsin | 41,419,000 | 7.61 | 10,177,999 | 0 | 51,596,999 | 9.48 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Wyoming | 18,919,000 | 37.94 | 0 | 0 | 18,919,000 | 37.94 |
| Virgin Islands | 6,044,000 | 105.50 | 0 | 0 | 6,044,000 | 105.50 |
| American Samoa | 5,811,000 | 37.54 | 0 | 0 | 5,811,000 | 37.54 |
| Guam | 6,255,000 | 90.36 | 0 | 0 | 6,255,000 | 90.36 |
| No.Mariana Islands | 5,865,000 | 54.00 | 0 | 0 | 5,865,000 | 54.00 |

Source: Dept. of Homeland Security, Census Bureau, California Institute. http://www.dhs.gov/interweb/assetlibrary/FY04_State_Grants.PDF and http://www.dhs.gov/interweb/assetlibrary/UASI_FY04_Allocations.doc

Mr. SHAYS. Thank you, Mr. Church. I didn't properly note that you are the president of the supervisors at this time, and we appreciate you being here. And at this time, we will hear from Michael Nevin.

Mr. NEVIN. Thank you, Mr. Chairman, and the last shall try to be brief. But, first of all, please take back to Washington for us how very proud we are of the gentleman and the gentle lady representing California and representing us in San Mateo County.

Mr. SHAYS. Duly noted and it is in the record. It will stay in the record.

Mr. NEVIN. I want Congress to know that.

I asked that you come and you came, and I am very grateful for that. As a former San Francisco police inspector, I fully recognize that national security begins with local law enforcement. Homeland Security's foot soldiers can be found patrolling the streets of America's cities and counties as police officers and as deputy sheriffs.

While we go to great lengths to ensure that security at our high-level profile military and governmental facilities is not compromised, we cannot ignore the potential threats that exist on the local level. It is not enough that the Federal Government is aware of the dangers that these threats pose. They must also take definitive steps to ensure that local governments and our first responders have the direction, the training and the funding necessary to effectively protect our citizens.

The facility held explosives that were powerful enough to blow up a hole in the Golden Gate Bridge. This is pretty serious. It is important to understand that this is not a situation unique to the Bay Area or to San Mateo County. In fact, last year, the ATF figures were 79, mine were 80, that is close enough for government work, but 80 instances of stolen high-level explosives nationwide. Facilities like ours are scattered across the landscape of this country, and, unfortunately, the security protocols at these facilities are just as scattered.

As Anna Eshoo pointed out, this particular bunker is right near our watershed, right near the watershed and also the power line, the pipeline that sends water to the people in the peninsula right near by. Another question that I have after being involved in this hearing this morning is should we look at the life expectancy of these bunkers and these facilities?

This is the simple task in the interest of the public. AFT mandates high-level explosives are stored away from the population areas, I understand that. But, unfortunately, the more remote areas become, the more difficult it is to patrol for local government. In these cases, protecting our citizens requires expert planning and clear, specific directive.

If this incident can happen here, it can happen anywhere. As long as all other law enforcement agencies in our county and in our State are each individually responsible for securing these dangerous materials, we will not be able to guarantee that they are adequately protected as long as there are no standards to meet or oversight to ensure accountability to those standards, we cannot claim to be doing our best to protect our citizens.

You have come today. We are very grateful to San Mateo County because you too recognize that there are flaws in the system, and

they need to be changed. It is my recommendation that you take necessary steps to enact uniform, nationwide, minimum security standards where high-level explosives are stored and that those standards, their implementation, their enforcement, their oversight, their training to local government be funded by a Federal agency.

Again, I want to thank you, Congressman Lantos and Congressman Eshoo, for listening to our call and obviously, Mr. Chairman, for coming here to California. And we are all very grateful and maybe a little safer because of these hearings.

[The prepared statement of Mr. Nevin follows:]

**Michael D. Nevin**

Member • Board of Supervisors • San Mateo County

**CONGRESSIONAL TESTIMONY**
**Subcommittee on National Security, Emerging Threats and International Relations**

Field Hearing
*Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities*

MIKE NEVIN, Supervisor, County of San Mateo
San Mateo, CA
August 2, 2004

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify before you regarding this urgent matter. And let me also thank you for agreeing to conduct this hearing locally. When I first contacted Congressman Lantos and Congresswoman Eshoo regarding this matter, I knew that action needed to be taken, but the responsiveness that you all have shown is remarkable and appreciated.

As a former San Francisco Police Inspector, I fully recognize that national security begins with local law enforcement. Homeland Security's foot soldiers can be found patrolling the streets of America's cities and counties as police officers and sheriff's deputies.

While we go to great lengths to ensure that security at our high-profile military and government facilities is not compromised, we cannot ignore potential threats that exist at the local level. It is not enough that the federal government is aware of the danger that these threats pose. They must also take definitive steps to ensure that local governments and our first responders have the direction, training and funding necessary to effectively protect our citizens.

The storage facility here in San Mateo County that was burglarized in July was used by local law enforcement agencies to store high-level explosives. Some of these explosives were confiscated evidence and some served a legitimate purpose and function, and were the original property of the respective agencies. Altogether, the facility held explosives that were powerful enough to blow a hole in the Golden Gate Bridge.

It is important to understand that this is not a situation that is unique to the Bay Area. In fact, last year there were 80 incidents of stolen high-level explosives nationwide. Facilities like ours are scattered across the landscape of this country, and unfortunately, security protocols at these facilities are just as scattered. While it is true that the Bureau of Alcohol, Tobacco, Firearms and Explosives has jurisdiction over where and how an agency stores its explosives, there are no uniform standards regulating how those materials are secured from theft.

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This is not a simple task. In the interest of the public, ATF mandates that high-level explosives are stored away from populated areas. Unfortunately, remote areas like these are the most difficult to patrol and secure. In these cases, protecting our citizens requires expert planning and a clear, specific directive.

The facility here in San Mateo County contained materials used by three different law enforcement agencies and was protected by gates, locks, regular patrols and alarms that may or may not have been functioning properly. Obviously, immediate steps have been taken within the San Mateo County Sheriff's Department to improve the level of security at new, undisclosed facilities. But fixing the problem here will not prevent this from happening again somewhere else. Many agencies across the country store high-level explosives in facilities that are less secure than the one in Crystal Springs. If this incident can happen here, it can happen anywhere.

As long as all other law enforcement agencies, in other counties, and in other states, are each individually responsible for securing these dangerous materials we will not be able to guarantee that they are adequately protected. As long as there are no standards to meet or oversight to ensure accountability to those standards, we cannot claim to be doing our best to protect our citizens.

You have come to San Mateo County today because you recognize that the system that currently exists is flawed and needs to be changed. It is my recommendation that you take the necessary steps to enact uniform, nationwide minimum security standards where high-level explosives are stored and that those standards: their implementation, enforcement and oversight be monitored and fully funded by the federal government.

Again, I want to thank Congressman Lantos for hearing our call to bring attention to this issue and Congresswoman Eshoo for being a consistent voice of concern for where and how our homeland security funds are spent.

I am happy to answer any questions you might have.

Mr. SHAYS. Thank you both very much. Because you all have basically stayed within the 5-minute framework, we will stay with our 10-minute questioning. So, Mr. Lantos, you have 10 minutes, and then, Ms. Eshoo, you will have 10.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first thank the five outstanding witnesses for extremely helpful testimony. I usually brag about my 17 grandchildren, but this time I am going to brag about our public servants, and I do so with great pleasure.

Let me first turn to Sheriff Horsley, and let me say before I raise my questions how grateful we all are for your outstanding public service to our community.

Mr. HORSLEY. Thank you.

Mr. LANTOS. You have done an outstanding job, and we are profoundly mindful of it.

Since the purpose of this hearing is not to be deal with the particular episode but to use this episode as a catalyst device to build national legislation, let me just hear from you, Sheriff Horsley, which I think will put this issue at rest in terms of the San Mateo County happening, you state, "In hindsight, the Sheriff's Office administration should have established a regularly scheduled inspection of the site by our Office of Professional Standards. Clearly, fencing of the site, a functioning alarm and remote surveillance by camera could have prevented this incident from occurring." We agree and I think we can move on to other items.

Since this is a nationwide problem, and I think it is very important to underscore that according to the statistics, we were given 79 or 80 thefts occurred last year, and I would like each of you to respond to my question, do you see any justification for exempting public entities, not including the military, public entities from the same mandatory requirements that are presently in effect for private entities? You may begin, Sheriff.

Mr. HORSLEY. Well, I see no reason why there shouldn't be same standards for public as well as private, and it is inexcusable the breach in security, and I welcome that there be national standards, and we need to all comply with national standards. And there should be some very rigorous regulations on these kinds of sites.

Mr. LANTOS. Chief Fong.

Ms. FONG. I concur with Sheriff Horsley. As this incident shows, we are not immune from criminal activity, and the situation occurred. I think that we should meet the same guidelines as all other storage facilities.

Mr. LANTOS. Thank you. Chief MacGregor.

Mr. MACGREGOR. Congressman, as I stated in my testimony, the State of California, we have provided some recommendations for the State to consider here as far as enhancing current regulations and have actually implemented some on our own above and beyond what is currently required. So I see that being a very positive step.

Mr. LANTOS. Do you see any justification for having a different set of criteria for facilities which are privately owned or publicly owned?

Mr. MACGREGOR. No, sir, not as it relates to safety components, no.

Mr. LANTOS. Right.

Mr. CHURCH. I see no basis for the distinction. The same risks are associated with both types of facilities.

Mr. NEVIN. The standards should be the same. You articulated it well, Congressman, when you spoke about health care and hospitals. The standards should be no different for public or private, no different when it comes to explosives in an issue this serious.

Mr. LANTOS. I very much appreciate this. One of the comments you made, Chief Fong, if I understood you correctly, is that you removed all of your explosives from this facility and you are using another facility outside of San Francisco at the moment because San Francisco is not equipped to handle this. Am I correct?

Ms. FONG. The high explosive materials that were stolen have been recovered, and they are currently in evidence, and so they are being stored by the ATF as evidence at this time. So we are not storing any high explosive materials.

Mr. LANTOS. Is it your intention in the future to use an upgraded and appropriately secured San Mateo County facility?

Ms. FONG. We will be working together with Sheriff Horsley to identify a suitable location with suitable security.

Mr. LANTOS. Now, Chairman Church, you spent a lot of time on the funding issue, and I fully agree with all of your comments. Explain to me, if you can, other than blatant pork belly legislation, how could anyone justify giving Wyoming almost eight times the per capita support that California has? With all due respect to Wyoming, I think the San Francisco International Airport is a slightly more exposed place.

Mr. CHURCH. Well, Representative Lantos, I think our thinking is the same on this issue. I think it is very important that Congress place a high level of priority in metropolitan areas throughout the country. That is the first area that has the greatest threat. Rural areas, certainly if funding is available at a later date, would be provided for as well, but the greatest threat, I think we can all agree, is in major metropolitan areas.

Mr. LANTOS. Major metropolitan areas cannot be divided into the core city and the surrounding region, because San Francisco International Airport, among other things, clearly is a potential location of threat.

Mr. CHURCH. That is right. And as I pointed out in my testimony, we are really one urbanized area. We have 6 to 7 million people in the San Francisco Bay Area. For all practical purposes, we are one urbanized city, we have critical infrastructure located here, we have the water supply, we have the power supply, we have San Francisco Airport, we have the largest transportation hub west of the St. Louis right here in San Mateo County. And it is inequitable for San Francisco and other major cities to receive all of the funding without providing some of that funding to the outlying areas, such as San Mateo County, which has practically the same population as San Francisco.

Mr. LANTOS. I fully agree with you, and I think both my colleagues and I will use whatever influence we have to see to it that the funding formulas be changed. Supervisor Nevin, you wanted to comment.

Mr. NEVIN. I just wanted to make the comment you made the comment about Wyoming. The comment about California we are

the seventh largest nation in the world, and we are also a border State, which makes it even more of a difficulty as far as national security is concerned with the security of this State and this area.

Mr. LANTOS. Now, I must admit to considerable surprise, that the testimony from the previous panel, in response to my question, was that they don't know how many such sites there are in the United States. I wonder what your reaction was to this, to me, mind-boggling response.

Mr. HORSLEY. If you are asking me, Congressman Lantos, I was very surprised. I assumed that they knew that—where all the sites were at in the State of California and throughout the Nation. So I was surprised that they did not have clear information or clear knowledge of all those potential sites.

Mr. LANTOS. Chief Fong.

Ms. FONG. I think given the lack of requirement for licensing and inspections, this would be a conclusion that without those initials steps, it would be difficult to know where all the sites are.

Mr. LANTOS. So, in a sense, what you are saying is the same requirements should be applied to public entities, which then would enable it the appropriate deal to have a number for us as to how many such types there are which contain hazardous materials.

Ms. FONG. That is correct. I think we can be helpful to whoever the regulatory agency is then.

Mr. LANTOS. Chief MacGregor.

Mr. MACGREGOR. Congressman, as I pointed out, we were quite surprised as well after the fact. We certainly were aware of where each and every one of our particular——

Mr. LANTOS. Of course.

Mr. MACGREGOR [continuing]. Magazines were, but in investigating this further, we quickly found out that there was not a Federal or State entity that had knowledge of all the locations, and as such, that was one of the recommendations we brought forth to the State Office of Homeland Security as a consideration here for California.

Mr. NEVIN. I would be surprised if we didn't hear when those statistics come out that the number of situations like San Bruno in San Mateo County are in the hundreds, if not up to a couple thousand, of those same kinds of bunker situations throughout this country. That would surprise me if those figures aren't extremely high in those kinds of numbers.

Mr. CHURCH. In order to assess the full extent of the risk and the threat, we think that step No. 1 would be to identify all the sites and conducting an inventory, and so, yes, I was surprised it hadn't been done.

Mr. LANTOS. Now I will use my final question to take advantage of your presence, Mr. Chairman, and ask each of our panelists to share as candidly as you are willing, which I think is a very high degree of candor, what recommendations would you like the three of us to take back to our friend Tom Ridge, with respect to the whole issue of funding homeland security issues? Sheriff, start with you.

Mr. HORSLEY. Well, one of the things that I think that ATF probably doesn't have the personnel, and I would probably recommend that they get some additional personnel to conduct what I would think would be just a basic requirement and we would have to—

I think all these facilities should be licensed, should be inspected and should have some basic requirements. And I think Chief Fong and I, as well as the Highway Patrol, have outlined what we would recommend that there are some basic security measures that must be in place and should be part of the licensing requirement.

Mr. LANTOS. Chief Fong.

Ms. FONG. I think with regards to instituting regulations and expectations on different agencies, it is much like the acquisition of personal protective equipment. There needs to be funding up-front, not only for the ATF or the regulatory agency but for all law enforcement to be able to comply with the regulations. Otherwise, the unfunded mandate becomes very problematic at the local government level. No matter how hard we try to meet those regulations, we would not be able to. So I think there needs to be directed funding toward that goal.

Mr. LANTOS. I couldn't agree with you more. Chief MacGregor.

Mr. MACGREGOR. Yes. I was going to echo the Chief's comments with regards to unfunded mandates and also point out on this discussion of establishing a confidential list of locations, I think confidentiality in terms of that list is paramount in that if you have a list that is readily available that shows you, hey, here are all the locations, it tends to potentially bring folks that would use that as a guide, if you will, to try to go searching for what they are looking for.

Mr. LANTOS. Chairman Church.

Mr. CHURCH. Well, I agree with all the witnesses. We need uniform standards, they need to be mandated, but we need the resources necessary to implement those standards. But on the broader issue of funding, local government knows its needs better than national government.

Mr. LANTOS. We need flexibility.

Mr. CHURCH. We need flexibility, we need local control. The State budget crisis, as I mentioned, has created a real problem for us, and we need flexibility not with just equipment but perhaps with personnel as well. Perhaps there can be some flexibility to allow some of this funding to go for personnel. Having the equipment is great, but if you don't have the staffing to use it, it doesn't do us much good.

Mr. LANTOS. You have been the leader of this whole issue, Supervisor Nevin. You have great personal experience in the general field. What are your thoughts?

Mr. NEVIN. Well, my thoughts are, first of all, let me tell you what you have brought out, that this congressional committee has brought out, is in fact homeland security, and I am very satisfied that we are going to get from you and your leadership passed through Congress regulations, minimum regulations or whatever to take us out of this horrible situation we find us in. But funding should never be dependent on a city and county's ability to pay, law enforcement's ability to pay. Those standards could never be met unless the funding marries the regulation, so to speak. So that is why I think it is so important, and at no time in our history could we be talking about more important than homeland security and these bunkers in San Bruno.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman. Ms. Eshoo.

Ms. ESHOO. First, I want to salute everyone that just gave testimony. You are a great source of pride to me, and it reminds me of the cooperation that San Mateo County has had with the City and County of San Francisco for decades and decades and decades. In fact, the City and County of San Francisco owns more property in San Mateo County than San Mateo Countians. So what we share and how we cooperate with one another I think is one of the more important stories of our region, and I salute you for it.

To Sheriff Horsley, thank you for being forthright and saying that the buck stops with you. You said it up-front, and because you did, it has allowed us to get on to the really larger issues that are attendant to what this hearing is all about. To my two colleagues from the board of supervisors, I couldn't be prouder. We have a great tradition of local government here and the people that have served, and I say that—I think she was—well, she was here earlier—former Supervisor Mary Griffin who served with distinction on your board as well. And, of course, to the Highway Patrol, you are very special to me and people throughout our State, and what you have done during periods of real crisis and tension, I thank you.

On the first issue of homeland security, I want to associated myself with what my colleagues have said. We do not have enough flexibility with the grants that come through Homeland Security, and I say to my colleagues that serve on the committee that will take this back, I think it is an area that deserves some special attention now. We have been discussing homeland security for a while. Now we are talking about hometown security and what people need. First responders and law enforcement people say to me over and over and over again, "We need some flexibility," and we have to remind ourselves that all of these areas relative to homeland security are personnel-heavy. They are manpower-heavy. If we don't have the people to implement all of this, then most frankly we are missing the point.

In the highly prescriptive list of authorized program expenditures in the State Homeland Security Grant Program, they permit our local first responders to buy night vision goggles and euthanasia kits but prohibit them from using the money for fundamentals. Now, we need to take a look at this. I am not saying the night goggles and euthanasia kits aren't important and appropriate at the right time, but if we can't train people in the Sheriff's Department and in the local PDs, then again we have missed the boat.

Now, in terms of questions, I would like to ask the Sheriff, was everything that was stolen from the site recovered, regardless of what it is called? And I am not out of the law enforcement community, so I am not going to try to resolve your language, but was everything that was stolen recovered?

Mr. HORSLEY. In short answer, yes, everything was recovered. I would like to just echo something about your comments about flexibility. You have been a great help to us in getting some flexibility when it came to training and backfill for our officers, and, as you know, before that wasn't possible, and thanks for your efforts in helping us getting some degree of flexibility. And I would echo

what you say in terms of the Homeland Security grants. There does in fact need to be greater flexibility to meet local needs.

Ms. ESHOO. Good. So everything has been secured?

Mr. HORSLEY. Everything has been recovered, yes.

Ms. ESHOO. Was there ever any guidance given to your agencies after September 11, formally or otherwise, from Federal officials on the need and the best courses of action to protect high explosives from theft?

Mr. HORSLEY. Not that I am aware of, no.

Ms. ESHOO. Chief.

Ms. FONG. No.

Ms. ESHOO. No? That is stunning to me. That is really stunning to me that the Federal Government, given what we face to secure our country, never put anything out on this.

Is this the first security breach at this facility, Sheriff?

Mr. HORSLEY. No. Actually, one predates my taking office. I think it was in 1988 there was a burglary at the site, and at the time it was thought that we should put an alarm in. And an alarm actually was for both San Francisco's munitions storage sites as well as ours, and there were a couple that handled fireworks that were not alarm. So an alarm was put in about—right after that burglary in 1988.

Ms. ESHOO. What kind of security clearance is there relative to those that know that such a site exits? How did this individual even know that this place was there? Was a superviser for 10 years. I never knew that this place existed. Not that I needed to, but——

Mr. HORSLEY. I guess we mistakenly believed that it was a secret location, and the only people who knew about it were the EOD staff from both SFPD, the FBI and the Sheriff's Office. Unbeknownst to us, this particular individual, and I won't say too much, but was a plumber in that area and apparently had seen the officers going into that area and perhaps followed them in.

Ms. ESHOO. So there really aren't—again, when we speak about standards, something needs to be spoken to about the individuals that are in charge of being secured—not only a secured facility with standards surrounding it, but also do you think that there need to be standards developed about who in fact knows where these facilities are and what they contain?

Mr. HORSLEY. I do indeed. I think all of our EOD people should be greater security clearance than the average officer.

Ms. ESHOO. When the theft was discovered, was there any initial concern about it being a terrorist threat? I mean how was that determined? Common sense?

Mr. HORSLEY. To be honest, yes, that was exactly my initial thought was that it was potentially a terrorist. So we did notify the FBI's Joint Terrorist Task Force. As I said, we also notified every law enforcement agency, I think, in the entire country and put every particular resource that we and all of the local law enforcement had——

Ms. ESHOO. What did they do, Sheriff, when you contacted them? Were they cooperative?

Mr. HORSLEY. There was a great deal of cooperation between all law enforcement agencies, and we have what is called a High-In-

tensity Drug Trafficking Task Force here, which Chief Fong is part of, as well as myself and Highway Patrol. We have eight different Federal law enforcement agencies that are part of it, as well as eight State and local agencies. And so we have really established, I think, a great network of excellent working relationships with both our Federal and State counterparts, and I think all of that was helpful in bringing this case to a successful conclusion.

Ms. ESHOO. Does the State of California—I don't know who wants to take this—does the State of California have regulations regarding the storage of explosives that are more explicit than those created by the ATF?

Mr. MACGREGOR. I don't know—referring to who was going to answer the question. To answer your question, I think the short answer is we rely on title 27 of the Federal regulation as a guide here in California. We have recommended or we have asked that the State look at adopting those regulations formally through legislation. There are some additional enhancements here in the State as it relates to transportation of explosives, but storage really falls under those Federal criteria.

Ms. ESHOO. Don, did you want to add anything to that?

Mr. HORSLEY. No.

Ms. ESHOO. Well, again, I want to thank you. I am very proud to work with you, and I think that when we talk about standards that in listening to you and watching you work and valuing our partnership, that there is only one standard for all of you, and it is called high. So thank you to all of you. Thank you, Mr. Chairman.

Mr. SHAYS. I thank you very much. Let me say to all of you that I sometimes go to an event and sometimes after the event I say, "I really had a tougher question but I didn't want to ask you." The tougher question I appreciate having the opportunity to respond to. I learn from it. And if I could just go beyond the issue of the buck stops here and so on and just ask you to respond to a few questions, Sheriff.

When I saw the facility, I thought the facility was short of pathetic, and I am just curious, have you ever seen that facility, and is that facility that you have been to or has it just never showed up on your radar screen?

Mr. HORSLEY. I have seen it once.

Mr. SHAYS. Yes. I expected to see a facility with an outer gate and inner gate and I won't say a moat but close to it. I expected to see an alarm system that was attached to all four magazines. I think the alarm system was only attached to one; is that correct?

Mr. HORSLEY. No. It was attached to two.

Mr. SHAYS. To two of the four.

Mr. HORSLEY. Of the four.

Mr. SHAYS. And it was basically a solar panel that gives it some kind of juice to do the alarm system if it is functioning. What do we know about how long that system hasn't functioned?

Mr. HORSLEY. Regrettably, I believe it has been off for probably 10 years.

Mr. SHAYS. Yes. OK. And in terms of this to say, who is in charge of it, ultimately? By the buck stops here, are you in charge

or is San Francisco in charge, is the State in charge? Who is in charge?

Mr. HORSLEY. I think each agency is responsible for their own magazine, so I was certainly responsible for ours.

Mr. SHAYS. OK. But in a sense, my feeling is if everyone is in charge, no one is in charge, candidly.

Mr. HORSLEY. I agree.

Mr. SHAYS. Yes. So in a sense, I mean it is important for us to know what the Federal requirement is and the Federal mandate, but I suspect you don't believe that we have to tell you how to run a facility to have it be performing properly, correct?

Mr. HORSLEY. In retrospect, certainly not. We should have—we were certainly negligent in the way it was run. And I would have to say that I had never been out to the site, to be honest, until after the break-in, and I was as appalled as you to see the surroundings.

Mr. SHAYS. Which just suggests with the requirements that people have it just didn't show up on radar screens. What I don't quite understand is, first, tell me why this facility is needed and maybe the other two—first off—when I say first off, I have a lot of first offs, sorry—the county uses this facility, correct?

Mr. HORSLEY. Right.

Mr. SHAYS. The FBI uses this facility?

Mr. HORSLEY. Yes, they do.

Mr. SHAYS. And the San Francisco Police uses it. Anybody else use this facility?

Mr. HORSLEY. Not to my knowledge, no.

Mr. SHAYS. So, basically, there is a mixture of three, and each of you know you have to keep track of your own use of it, but are you able to use each of the magazines or are you assigned? Explain to me.

Mr. HORSLEY. We were assigned to two of the magazines.

Mr. SHAYS. And the two that you were assigned to you had an alarm system that didn't work, but you had an alarm system to those?

Mr. HORSLEY. No, to only one. Only one of them. The one that stored the high explosives. The one that stored the confiscated fireworks did not have an alarm.

Mr. SHAYS. OK. So why would the County need this facility? What would you have that you would need to put in there?

Mr. HORSLEY. Well, a bomb squad has to have a certain amount of material. For example, recently, discovered a couple of World War II torpedoes in one of our harbors, and you have to destroy it. So you do need to have some explosive to explode those torpedoes. So you do need to have some explosive to get rid of devices like that.

There are other cases where we will sometimes come across dynamite that some person has in the house and maybe they have subsequently been deceased and an executive comes along and finds that we have a very unstable substance. So we have to take it somewhere before we can dispose of it. And the other is that we oftentimes have to respond to bomb calls and again we seize that material and you have to keep it for both evidence until eventually

you can destroy it. And then, last, you do need to have some C4 if you are going to do some training for your canine officers.

Mr. SHAYS. Thank you. Chief Fong, how does San Francisco use this facility? Is this the only facility you use or is it one of many?

Ms. FONG. This is the main facility for the city. There is a separate EOD facility at the airport.

Mr. SHAYS. OK. And what do you use it for?

Ms. FONG. As the Sheriff mentioned——

Mr. SHAYS. The same things?

Ms. FONG. Similar things.

Mr. SHAYS. Anything different than other than the Sheriff's mentioned?

Ms. FONG. No.

Mr. SHAYS. OK. What I didn't understand was your reference to the bridges. I mean if you have explosives on one side, you have to get it to the other side, whether or not the facility is here. I don't get the concept of the bridges as it relates to this issue.

Ms. FONG. There are Department of Transportation regulations that prohibit us from transporting explosive devices over bridges.

Mr. SHAYS. No, I understand that. But I don't understand how that relates to a facility. I mean if you have it in San Francisco, how does that relate to having this facility?

Ms. FONG. If the evidence, for instance, is from San Francisco, we can come to San Mateo County without going on a bridge. If we were to have a facility for storage in Marin or in the East Bay, we would have to rely on bridges in order to get there.

Mr. SHAYS. OK. So since the issue is from San Francisco this is a site you can get to without a bridge.

Ms. FONG. Without a bridge, yes.

Mr. SHAYS. Right. And if I could ask out deputy chief, how do you—you don't use this facility.

Mr. MACGREGOR. Don't use that particular facility; no, sir.

Mr. SHAYS. But you do have facilities. Did you use them for the same general purposes?

Mr. MACGREGOR. Largely, almost the vast majority of ours is exclusively for training.

Mr. SHAYS. When we look at our nuclear facilities, we realize I think we have too many. This is where we have weapons grade material, where we process it and so on, and we make our country safer, I think, I believe, if we are able to reduce the number of facilities. Is there logic, do you think, in trying to find less facilities or do we need to have these facilities close enough? I guess you wouldn't know how many we have around the country, none of us seem to. Amazing.

Mr. HORSLEY. We do know something about the Bay Area. There are facilities in other counties, and we do—the idea of having a regional with San Francisco and San Mateo County I think is exactly what you are saying, is that we don't each individually have a separate site, and when we find a new site, it will again be a shared site between San Francisco and San Mateo County.

Mr. SHAYS. OK. And the bottom line, though, is from that it is conceivable that we might want to see some consolidation around the country. That might be a question we might——

Mr. HORSLEY. I would suggest that is an excellent idea, and we will probably work with Santa Clara County as well.

Mr. SHAYS. OK. In terms of cost sharing, is there any costs involved here that you had to cost share or is there no real costs?

Mr. HORSLEY. Well, there wasn't any cost sharing, but probably there would be in the future.

Mr. SHAYS. Let me just react to something, Chief MacGregor, that you said when you made reference to the whole issue of mandate. I believe you require things that most of the time you need to come up with the money. But if we require a local school system that is discriminating to stop discriminating, we don't necessary feel we have to provide them money so that they can do what they should be doing, which is not discriminate.

It seems to me that if you all move this stuff, that it is not necessarily a requirement—I mean I am throwing it out for dialog—not necessarily a requirement that the Federal Government enable you to have it just because we tell you you need to store it safely. It doesn't seem to me as a general rule that just because we say we want there to be safety and there should be some uniformity that the Federal Government has to come up with everything to pay for it. Otherwise, you are basically saying to me that any time the Federal Government does anything, we have to give you money, give my local community money.

Now, I do have some sensitivity on this other issue. Our subcommittee, as I said, has had over 50 hearings. We have had a lot of hearings on the whole issue of how do we provide money to first-line responders, or first responders, and we believe it needs to be on a threat, not based on a per capita, which is your point, Mr. Lantos.

The fact is, in Congress, when we saw that bill come out of the Select Committee on Homeland Security, because we haven't yet decided how we reorganize government to have oversight, it went to the Transportation Committee, and the Transportation Committee on a bipartisan basis almost uniformly decided that it would be based on per capita, a good chunk of it. So this is a debate that we have to sort out in Congress, and it doesn't seem to know Republican or Democrat, it seems to be based on who is getting more money and who is getting less.

I believe that if parts of my State got less and you donated parts of my own, that I could make argument to a threat area because we are in New York City. Clearly, a place like New York City needs a lot more money and Boston and Washington, DC, and San Francisco, and then it seems to me it filters down from there. But I just want you to know in this debate that we are having in Washington, it doesn't seem to have fallen on party lines, it seems to be on geographic issues, and everybody, every member wanted to say, "I did something."

You had your September 11 book here. I will say to you, they have done a great job. I think they have done a great job, and they have given us—and they say it needs to be threat-based allocation of money and they say a lot of other things, but they have given us, I think, a very fine instrument to be able to move forward.

I don't really have any other general points other than to say I think we are all on the same wavelength here, and I do appreciate,

Sheriff, your candor. We all need to be working together, we all need to be doing a better job. We all, ultimately, are part of the same team—not, ultimately, we are, and, ultimately, we better figure that out. I don't know if there is any closing comments that any of you would like to make or, Mr. Lantos, do you have any——

Mr. NEVIN. Just a follow-out from this, what I would hope that a look, a side look or whatever from this, although it wouldn't be necessarily part of this issue this morning, but a look at environmental regulations when it comes to destruction of disposing of these materials, how many of these materials is necessary for evidence, real, true evidence in future work of law enforcement and how many can we safely and environmentally soundly get rid of?

Mr. SHAYS. I think that is a key point. Thank you for making it. Bottom line, some of this stuff we may not need to keep, but the stuff we do we want to have better be secured.

Mr. CHURCH. When you consider the criteria for proposed legislation, you might consider with respect to shared facilities requiring an agreement between the agencies as to an assumption of responsibility and perhaps a filing of that assumption with the ATF.

Mr. SHAYS. So your point is it needs a formal agreement to protect, and it seems to me we are letting it—one person ultimately needs to take charge. We shouldn't have these shared facilities without ultimately one person saying, "This will be my responsibility."

Mr. CHURCH. Exactly. You raised the point that when everybody is sharing a responsibility and everyone is in charge, no one is in charge. I think a written agreement would delineate that and solve that issue.

Mr. SHAYS. OK. Thank you. That is a very helpful way to describe it. Any last comment from any of you?

Mr. HORSLEY. I would just say that I oftentimes tell my staff that a crisis sometimes creates an opportunity for growth and this crisis certainly creates an opportunity, I guess, for us to look at this from a State and national perspective, and it forces us internally to do a much better job than we did in the past. So thanks for the hearing.

Mr. SHAYS. Well, thank you. But it also, I think, gives you all an opportunity, given you had this experience, to kind of lead the charge and say, "These are lessons we have learned, and this is what we think needs to happen," and I appreciate that a lot.

Mr. HORSLEY. Thank you.

Mr. SHAYS. Thank you. All set?

Mr. LANTOS. Can we just thank all the other officers for their participation in the hearing?

Mr. SHAYS. Oh, absolutely, yes.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. SHAYS. I will say that one of the things of September 11th that is very touching for me, is September 11 was one of my white collar constituents who knew that their services were not required as we tried to deal with dealing with September 11, obviously, as you know, it was right near our community, and so I saw presidents of companies literally handing out gloves at the Ground Zero just wanting to be a part and a tremendous respect for our police, fire, emergency medical, our first responders of all kinds and I pray

that we haven't lost that respect, because we have deep respect for what all of you do, and I don't think we have lost that respect, but it is good to be reminded. Thank you, Mr. Lantos.

We are going to get to the next panel. I will just call them up. I am going to have Mr. Lantos swear them in and begin the testimony. Mr. James Christopher Ronay, president of the Institute of Makers of Explosives, and Mr. Barney T. Villa, international director, International Association of Bomb Technicians and Investigators. Mr. Lantos will swear in our witnesses. I will be back shortly to proceed.

Mr. LANTOS. If you gentlemen will please raise your right hands.

[Witnesses sworn.]

Mr. LANTOS [presiding]. Please be seated. We will begin with you, Mr. Christopher Ronay. You are president of the Institute of Makers of Explosives. You have a long history of experience in this field. I would like to ask you to summarize your testimony in about 5 minutes or so, telling us what your institute does and what your views are concerning the issue that brought us here and the broader issue of what Federal legislation we might need to plug the loopholes which exist.

**STATEMENTS OF JAMES CHRISTOPHER RONAY, PRESIDENT, THE INSTITUTE OF MAKERS OF EXPLOSIVES; AND BARNEY T. VILLA, INTERNATIONAL DIRECTOR, INTERNATIONAL ASSOCIATION OF BOMB TECHNICIANS AND INVESTIGATORS, WHITTIER, CA**

Mr. RONAY. Thank you, Mr. Shays and other members of the subcommittee. My name is Christopher Ronay. I am the president of the Institute of Makers of Explosives, commonly in the community referred to as the IME. The IME represents the U.S. manufacturers of industrial high explosives and other companies that distribute explosives or provide related services.

Over 2½ million metric tons of industrial explosives are consumed annually in the United States, as you have pointed out. They are essential to mining, quarrying, construction, demolition, the production of petroleum and natural resource exploration. Metals, minerals, oil, electricity, construction activities and materials and many consumer products are available today because of these explosive products.

The IME is the safety and security institute serving the industrial explosives business, the government and industry for over 90 years. IME member companies produce over 98 percent of the explosives that I have described. Our mission at the IME is to promote safety and the protection of employees, users, the public, the environment and to encourage the adoption of uniform rules and recommendations in the manufacture, transportation, storage, handling, use and disposal of these explosive materials.

The history of our involvement in the development of Federal explosives law dates back to 1913. Industry best practices and recommendations are codified in our Safety Library Publications. Many of these have parts of them that pertain to explosives storage. They are constantly updated and evaluated by our experts in the industry. These recommendations were developed over the

years through scientific application of engineering principals and practical experience.

Immediately following the events of September 11, the institute developed a set of enhanced security measures, a copy of which is attached to my statement in the back. We developed this actually on September 11, on that date. I was in touch with many of my member companies in order to develop these enhanced security measures. We knew we needed to step up vigilance due to the increased terrorist threats to America, even though explosives had never been used on that day.

These measures were disseminated throughout industry and to all relevant government agencies. One of the most significant recommendations in this document was for government-administered background checks and security clearances for everyone who handles explosive materials. And, as the ATF testified, that was brought about in the Safe Explosives Act of 2002.

While these enhanced security measures generally addressed security, background checks and facility and transportation security, it was only the beginning. The institute is developing a 30-page set of comprehensive recommendations regarding the security of all operations involving explosives materials.

It is anticipated that these recommendations will be published in the next couple of months. They are not yet approved by our board and our membership, but this is a very extensive and detailed document, which goes far beyond what is required by Federal law today. This is in keeping with developing a viable strategy to protect the Nation's explosive storage facilities that you mentioned at the beginning of this hearing. It has been our practice to update and make new recommendations, as necessary, throughout the 90-year history of this organization.

Finally, I would like to reiterate that the IME's founding documents in 1913 set forth safety and security as a platform of the organization. Regulating entities have relied on us ever since as the most knowledgeable and competent source of information on which to base their explosive regulations. We do not take that responsibility lightly.

I want to thank this subcommittee for the opportunity to participate in this hearing and to present the best practices of the industry as they relate to the storage of these essential products. We appreciate your efforts to address this sensitive and important issue surrounding the protection of explosive materials. This concludes my summary testimony. I will be pleased to answer any questions that you have.

[The prepared statement of Mr. Ronay follows:]

*Statement of*

J. Christopher Ronay
President
Institute of Makers of Explosives

*before the*

House Government Reform Committee
Subcommittee on National Security, Emerging Threats and International Relations

*concerning*

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities

August 2, 2004

Mr. Chairman and Members of the Subcommittee:

I am Christopher Ronay, President of the Institute of Makers of Explosives commonly referred to as the IME.

The IME represents the U.S. manufacturers of industrial high explosives and other companies that distribute explosives or provide related services. Over 2.5 million metric tons of industrial explosives are consumed annually in the United States. Of this, IME member companies produce over 98 percent of the high explosives and the great majority of the blasting agents and oxidizers. These products are used in every state of the Union and are distributed worldwide. The value of this essential commodity is estimated in excess of $1 billion annually. The ability to manufacture, transport and distribute these products safely and securely is critical to this industry.

Industrial explosives are essential to mining, quarrying, construction, demolition, petroleum production and natural resource exploration. They are the backbone of our industrial society. Metals, minerals, petroleum, electricity, construction activities and

materials, and consumer products are available today because commercial explosives make them possible.

The IME is the safety and security institute serving the commercial explosives industry and the government for over 90 years. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. This is not a trade association. The Institute is prohibited by its bylaws from engaging in any activity that is marketing or sales related.

The history of IME's involvement in the development of the federal explosives law dates back to 1913. Explosive industry best practices and recommendations are codified in our Safety Library Publications. These recommendations were developed over the years through scientific application of engineering principals and practical experience.

The first significant explosives security legislation of the century was the Organized Crime Control Act of 1971. It was modeled after our industry's best practices, which were embodied in the IME's recommendations. This Act was also the enabling legislation for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Ever since that time, the IME has worked closely with the ATF as well as many other federal, state and local agencies in the development of uniform and realistic rules to govern the safe and secure handling of industrial explosives.

Immediately following the horrific events of September 11th, 2001, the IME developed the attached "Enhanced Security Measures" in recognition of the need to step up vigilance due to increased terrorist threats to America. One of the most significant recommendations was for government-administered background checks and security clearances for those who not only direct explosive operations but also those who handle explosives.

Throughout the post 9/11 period, the IME has endorsed and disseminated the security advisories and recommendations issued by various federal agencies, including the Department of Transportation (DOT), the Department of Homeland Security (DHS) and the ATF.

The Institute actively participates in DHS's National Critical Infrastructure Protection Program through the Chemical Sector Council. IME member security representatives are kept advised of DHS advisories and notices as appropriate.

We continually encourage and provide enhanced security training at industry forums and national and regional blasting seminars. The IME participates in the safety and security work of other standard setting organizations like the American National Standards Institute, National Fire Protection Association, International Code Council and the United Nations.

The Institute promotes advancements in technology that allow the explosives industry to operate in a safer and more secure manner, and in this regard we have endorsed and participated in the development of explosive detection technologies for more than 30 years. It is a testament to the self-regulating nature of the explosives industry that it conscientiously continues to be one of the safest and most secure hazardous material enterprises in America.

This self-regulation has been fostered by liability and insurability concerns as well as a most genuine concern for the safety and security of the people, property and businesses involved in the manufacture, transportation, storage and use of our products. The recommendations of the industry have been embodied in our Safety Library Publications since 1914 and cover all aspects of industry operations.

This industry has always taken security very seriously and supports the development of appropriate measures to safeguard our operations. By any standard, the commercial

explosives industry was already one of the most highly regulated businesses in America at the time of 9/11. The IME has always supported this high level of regulation. We have worked closely with Congress and federal agencies in the development of enhancements to the federal explosives law.

Most recently, we were instrumental in strengthening the language of this statute, which resulted in the Safe Explosives Act of 2002 (SEA) - the most comprehensive legislation affecting the explosives industry since the Organized Crime Control Act of 1971. Over the last thirty years prior to enactment, the Institute had expressed concern about the shortcomings of federal law which exempted intrastate purchasers of explosives from federal permit requirements. The reasons for our concern were that state regulation of intrastate purchasers was inconsistent and sometimes lacking, and that ATF data showed that persons without federal permits accounted for nearly half of all explosives thefts reported to the Bureau.[1] IME has always held that all purchasers of explosives should be required to obtain a federal permit and meet all safety and security conditions necessary to obtain such permit. At our urging, the SEA closed the long-standing loophole exempting in-state purchasers of explosives from the requirement to obtain an ATF permit.

The SEA, however, created other issues when it provided a "limited permit" option for intrastate purchasers. Of particular relevance to this hearing, ATF is required to conduct a physical inspection of applicants for "user permits" or renewals prior to obtaining a user permit to ensure that storage requirements are being met. Once a user permit is issued, ATF may conduct repeat inspections without prior cause. However, the SEA allows ATF to issue limited permits without a prior inspection. In addition, a physical inspection of a limited permittee is only allowed once every three years. As contrasted to other regulated entities, ATF is effectively prohibited from inspecting limited permittees without a search warrant.

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[1] This statistic together with the fact that ATF routinely recovers more explosives than are reported stolen suggests that an even higher percentage of thefts resulted from non-permittees inasmuch as they were not required to keep inventory records nor were they subject to ATF inspections unless a search warrant was obtained. On the other hand, ATF licensees and permittees are routinely audited for inventory discrepancies.

As noted earlier, the IME's Enhanced Security Measures recommend background checks for all explosives handlers. In 2002, the SEA provided for, and IME supported, background checks for all explosives handlers and company directors that set explosives policy.

In addition to the contribution our best practices have made to federal explosives law, our recommendations have also been embedded in the many federal regulations in existence today. Many, including those regarding the storage of explosive materials, are enforced by the ATF.

The IME has recommended for many years that all industrial explosives moved in commerce in the United Sates bear manufacturers' identification markings for safety and security reasons. ATF emphasizes that the lack of such markings inhibits law enforcement from tracing explosives to their source. However, the regulations omit a similar requirement that imported products bear these markings. Four years ago, IME petitioned the ATF to require the same identification markings on imported high explosives as for domestically manufactured explosives.

When ATF issued a rulemaking on this matter last year, a different marking scheme was proposed for imports than that in effect for domestic manufacturers. Among other things, the proposed rule would allow foreign manufactured explosives into the commerce of the Nation for 24 hours before markings would be required. It is our belief, that for the most part, the only persons who would take advantage of this loophole to apply marks after clearing customs would be those with no intention to mark these materials. Congress has joined us in this concern. Earlier this year, the leadership of the House and Senate Judiciary Committees urged the Department of Justice to take prompt action to close the loophole by using the same marks as required of domestic manufacturers. Most recently, Senator Herb Kohl (D-WI), who along with Senators Orrin Hatch (R-UT), Mike DeWine (R-OH), and Dianne Feinstein (D-CA) introduced S. 2563 to require that this loophole be closed within six months. IME strongly supports this bill and recommends it for your consideration and endorsement. In the meantime, thousands of metric tons of high

explosives have been imported into the United States without identification markings necessary for tracing.

Another area of concern, which I believe will be of interest to the Subcommittee, is the potential proliferation of explosives storage sites in America. Explosives storage sites must be set-back a safe distance from "inhabited buildings," and historically, the government has accepted IME's definition to exclude those buildings which are occupied in connection with explosives operations. This definition has been adopted by all commercial regulating and standard setting entities in the United States. The exclusion allows multiple entities to collectively store explosives at one shared facility, thereby more effectively securing the site and consolidating the inspection procedure.

Today, the ATF is contemplating a regulation that would require these shared sites to separate into numerous smaller locations based on the ownership or control of the explosive operation by changing the definition of "inhabited building" to include all buildings not operated by the same entity.[2] Such a policy would diminish redundant security controls typical at shared facilities and compound industry compliance and agency enforcement obligations. Such regulation is contrary to the best practices of the industry.

While the IME "Enhanced Security Measures" of 2001 addressed security background checks, facility and transportation security, the restriction of public information about movements of explosives and the exact locations and status of storage facilities; which at the time were above and beyond the current requirements - this was only the beginning.

The IME is developing a 30-page set of comprehensive recommendations regarding the security of all operations involving explosive materials. It is anticipated that these recommendations will be published in the Fall of this year. This document is intended to address security in routine daily operations as well as measures applicable to elevated security threat conditions. It includes vulnerability assessment methods and security plan

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[2] Docket 2000R-9P, Reference # 968, 68 FR 4406 (January 29, 2003).

development. While companies involved in explosives operations have long conducted vulnerability assessments and developed security plans, this document will provide guidelines for a performance-based approach to these efforts and will codify the industry recommendations in this regard.

Another significant initiative is our development of a quantitative risk assessment tool for the enhanced management of storage facilities and other explosives operations. It is intended that this tool have a component addressing escalating security threat levels as well as normal activity and is modeled after risk assessment tools used by the armed forces.

I would like to make note of the safety and security materials produced by the IME. For more than 90 years, the Institute has produced countless materials promoting safety and the security of our products. We promote not only our Safety Library, but posters and training videos as part of our product stewardship program to encourage the safe and secure handling of industrial explosives.

A few years ago, the ATF joined us in the production of a video training program conveying the principals of safe and secure storage of industrial explosives. The result was the program titled: "Safe Storage of Explosive Materials," which has been used ever since in the education of industry and government employees.

With all of these activities under way, it is with some concern that we note the issuance of government inspection security checklists developed without the benefit of industry involvement. As the goals of these checklists closely mirror IME's, it would seem to be in the best interests of security and consistency to develop guidelines in partnership with the regulated community. Such unofficial checklists can be unevenly and inappropriately applied and will be perceived as mandatory. This is a circumvention of the regulatory process and results in uncertainty and confusion. It, in fact, raises fears of non-compliance in daily operations and places an undue burden on the industry.

Finally, I would like to emphasize that the IME's founding documents in 1913 set forth safety and security as a platform of the organization. Regulating entities have relied on us ever since as the most knowledgeable and competent source of information on which to base their explosives related regulations. We do not take that responsibility lightly, and strive to fulfill our part of the mandate set forth in the federal explosives law: The government *"shall take into consideration ... the standards of safety and security recognized in the explosives industry."* It therefore stands to reason that any unilateral development of regulations or recommendations by the government leaves industry disenfranchised from the most serious responsibility of securing America.

I want to thank this Subcommittee for the opportunity to present the best practices of the industrial explosives industry as they relate to the storage of these essential products. Despite the fact that on September 11th terrorists used no explosives in their attacks on the United States, history shows that they will use explosives to further their ends. We praise the efforts of the Subcommittee to address the sensitive and important issues surrounding the storage of explosive materials.

This concludes my testimony. I would be pleased to answer any questions.

Mr. LANTOS. We will have some questions. First, I want to introduce Mr. Barney T. Villa, with 30 years of law enforcement experience. You currently are director of the International Association of Bomb Technicians and Investigators, and we are delighted to have you here.

Mr. VILLA. Good afternoon, sir. Thank you very much. Mr. Chairman and members of the subcommittee, good afternoon. I am Barney T. Villa, international director of the International Association of Bomb Technicians and Investigators, referred to as the IABTI. I am also a full-time deputy sheriff for the Los Angeles County Sheriff's Department, assigned to the Arson Explosives Detail. With me today is Greg Smith, Region 1 director of the IABTI. Greg is also a full-time employee with the California Department of Forestry, Arson Bomb Unit.

The IABTI was formed after the first National Explosive Ordnance Disposal Conference, held in March 1973, in Sacramento, CA. It was decided then that a professional association was required to address the needs of this unique group. This led to the establishment of the International Association of Bomb Technicians and Investigators. A formal charter was developed with a total of 64 members. We are now 5,000 members, in 60 countries around the world.

The IABTI is an international, independent, nonprofit, professional association committed to countering and defeating the growing menace that bombs and weapons of mass destruction present worldwide. The IABTI is the world leader in the dissemination of information and training on destructive devices to the national and international public safety community. This is sought through the exchange of training, expertise and information among personnel employed in the fields of law enforcement, fire and emergency services, the military, forensic science and other related fields.

While the legitimate uses of explosives in areas such as construction, mining and land clearance has made our modern lives easier, tragically, explosives have also been diverted to criminal activities, including murder, intimidation, extortion and malicious destruction of property. Explosives have always been a critical tool for bomb disposal technicians, bombing investigators and in other related fields. They are used in the render safe and disposal of improvised explosive devices and components, technician training and scientific testing.

The IABTI strongly advocates that all of its members who maintain explosive storage facilities ensure that they are in compliance with local, State and Federal guidelines related to explosive magazines. State and local authorities are subject to Federal explosive law relative to storage, but as they are not licensees or permit holders, they do not have oversight by ATF. Entities request an ATF review of their storage facility to verify their compliance. Additionally, technicians can receive training on the proper use, handling and storage of explosives through the IABTI.

The IABTI further advocates that their members exercise best practices and measure up to an equivalent of ATF standards and regulations or some other professional set of guidelines. We recommend that additional security enhancements, such as security lighting, fencing, alarms and cameras, are installed at their respec-

tive explosive storage facilities wherever practicable. The IABTI understands and respects the budgetary problems faced by bomb squad commanders who seek funding for such items for the safety and security of their explosive storage facilities. We understand from our membership that this funding is sometimes only approved after substantial delays or after a theft occurs. This is often due to conflicting priorities in the allocation of the funding that is available to most agencies.

The IABTI believes that the aforementioned enhancements to the current standards are critical to ensuring the secure storage of explosives. The budget constraints experienced by most agencies prohibit the implementation of many of the recommended security enhancements. We believe that the security of explosive storage facilities might prove to be a proper allocation for Homeland Defense funds. Further, we respectfully request that the committee review the allocation of these funds to determine if any might be available for this important project.

We encourage all of our members to provide best practice standards and advisory functions in the preparation of relevant safety and security legislation. Many of our members in the United States solicit the ATF to inspect their explosive storage facilities on a more frequent basis than that which is mandated by current regulations. Federal Law relating to explosives taken from 18 USC chapter 40, subpart K- Storage, section 55.204, states any person storing explosive materials shall inspect his magazine at least every 7 days. We encourage our membership to surpass this mandate and perform inspections on a daily basis whenever possible.

We know from ATF statistics that break-ins occur in many different ways. Locks cut and pried, doors pried or blown open, keys used, wall entry, roof entry, window and/or vent entry, floor entry and even the inside helper from the respective company who owns and maintains the explosive storage facility. The IABTI encourages its membership to adhere to all of the Federal laws and regulations as a best practice policy to prevent such activities from happening.

The possession of explosives by civilian bomb technicians is paramount in order for them to perform their daily duties. In addition to the functions while doing render-safe procedures, we are also mandated to perform a minimum amount of training with both high and low explosives each year to keep our certification current as working bomb technicians. Major bomb squads across the United States maintain and operate their own explosive storage facilities. They strictly adhere to current Federal regulations by working very closely with each other in their efforts to prevent such thefts.

On behalf of the men and women of the International Association of Bomb Technicians and Investigators, we thank you for your time today. We remain committed to bringing the very best to our membership with new ideas that may come forth from these meetings. The use of explosives remains the preferred weapon of terrorists, and the use of explosives by bomb disposal technicians will continue to be a valuable tool in their fight in the war on terrorism.

We praise the efforts of the subcommittee to address the sensitive and important issues surrounding the storage of explosive materials. This concludes my testimony, and I, too, would be pleased to answer any questions that you might have.

[The prepared statement of Mr. Villa follows:]

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Statements of

Barney T. Villa
International Director
International Association of Bomb Technicians and Investigators

before the

House Government Reform Committee
Subcommittee on National Security, Emerging Threats, and International Relations

concerning

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities

August 2, 2004

Mr. Chairman and Members of the Subcommittee:

Good Morning, I am Barney T. Villa, International Director of the International Association of Bomb Technicians and Investigators, commonly referred to as the IABTI. I=m also a full time Deputy Sheriff for the Los Angeles County Sheriff=s Department, assigned to the Arson Explosives Detail. With me today is Greg Smith, Region 1 Director of the IABTI, Greg is also a full time employee with the California Department of Forestry, Arson Bomb Unit.

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members, in sixty countries around the world.

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Explosives have always been a critical tool for Bomb Disposal Technicians, Bombing Investigators and in other related fields. They are used in the render safe and disposal of improvised explosive devices and components, technician training and scientific testing.

The IABTI strongly advocates that all of its members who maintain explosive storage facilities, ensure that they are in compliance with local, state and federal guidelines related to explosive magazines. State and local authorities are subject to federal explosive law relative to storage, but as they are not licensees or permit holders, they do not have oversight by the ATF. Entities can request an ATF review of their storage facility to verify their compliance. Additionally,

technicians can receive training on the proper use, handling and storage of explosives through the IABTI.

The IABTI further advocates that their members exercise best practices and measure up to an equivalent of ATF standards and regulations, or some other professional set of guidelines. We recommend that additional security enhancements, such as security lighting, fencing, alarms and cameras are installed at their respective explosive storage facilities whenever practicable.

The IABTI understands and respects the budgetary problems faced by Bomb Squad Commanders who seek funding for such items for the safety and security of their explosive storage facilities. We understand from our membership that this funding is sometimes only approved after substantial delays, or after a theft occurs. This is often due to conflicting priorities in the allocation of the funding that is available to most agencies.

The IABTI believes that the aforementioned enhancements to the current standards are critical to ensuring the secure storage of explosives. The budget constraints experienced by most agencies prohibit the implementation of many of the recommended security enhancements. We believe that the security of explosive storage facilities might prove to be a proper allocation for Homeland Defense funds. Further, we respectfully request that the Committee review the allocation of these funds to determine if any might be made available for this important project.

We encourage all of our members to provide best practice standards and advisory functions in the preparation of relevant safety and security legislation. Many of our members in the United States

solicit the ATF to inspect their explosive storage facilities on a more frequent basis than that which is mandated by current regulations. Federal Law Relating to Explosives taken from 18 U.S.C. Chapter 40, subpart K- Storage, section 55.204, states any person storing explosive materials shall inspect his magazine at least every seven days. We encourage our membership to surpass this mandate and perform inspections on a daily basis whenever possible.

We know from ATF statistics, that break-ins occur in many different ways. Locks cut and pried, doors pried or blown open, keys used, wall entry, roof entry, window and/or vent entry, floor entry and even the inside helper from the respective company who owns and maintains the explosive storage facility. The IABTI encourages its membership to adhere to all of the federal laws and regulations as a best practice policy to prevent such activities from happening.

The possession of explosives by civilian bomb technicians is paramount in order for them to perform their daily duties. In addition to the functions while doing render safe procedures, we are also mandated to perform a minimum amount of training with both high and low explosives each year to keep our certification current as working bomb technicians. Major Bomb Squads across the United States maintain and operate their own explosive storage facilities. They strictly adhere to current federal regulations by working very closely with each other in their efforts to prevent such thefts.

On behalf of the men and women of the IABTI, we thank you for your time today. We remain committed to bringing the very best to our membership with new ideas that may come forth from these meetings. The use of explosives remains the preferred weapon of terrorists and the use of

explosives by bomb disposal technicians will continue to be a valuable tool in their fight in the war on terrorism. We praise the efforts of the Subcommittee to address the sensitive and important issues surrounding the storage of explosive materials.

This concludes my testimony. I would be pleased to answer any questions.

Mr. LANTOS. Well, thank you very much, both of you. First, let me begin by a general question. You were here throughout the hearing, and you noticed that both of my colleagues and I expressed disagreement with the current treatment of privately owned and publicly owned facilities where explosives are located. Do you agree with the current practice, that when it comes to public facilities, we should deal with voluntary compliance while with respect to privately owned facilities, there should be licensing and in case of failure removal of the license? It seems to me and it seems to my colleagues, I take it, that explosives, since they are the weapon of choice of terrorists, in the post-September 11 era must have the same treatment whether they are still the private or public facilities. I would like to ask each of you to give your views on this. Mr. Ronay.

Mr. RONAY. In as much as it is within the purview of the private sector industry to comment on whether it should be or not, I would like to emphasize that they are required to follow those rules. It is the licensing issue that is in question. Since public facilities or agencies are not licensed, ATF does not have the authority to inspect them. They can provide——

Mr. LANTOS. Would you say that we give ATF that authority? That is the question.

Mr. RONAY. I certainly would have no disagreement with giving them the authority. I do have a question in that if they were authorized to license local entities and they found that licensee out of compliance and they removed or rejected his license, he would still have to have explosives in his possession to do his job of public safety.

Mr. LANTOS. Well, the other option would be if, for instance, hypothetically, San Mateo County is now licensed to store explosives, does not live up to the licensing requirements and the license is removed, this county would have to contract out to Santa Clara County for storage of explosives if in fact they need it.

Mr. RONAY. That would certainly be one solution.

Mr. LANTOS. Well, can you think of any other rational solution or do you think that a public—I mean we now had Sheriff Horsley privately and publicly admit they goofed, they made a mistake. The facility was unsafe. It was broken into, 200 pounds of explosives were stolen, and had it not been for the extremely skillful work of our law enforcement agencies, we would not know today where these explosives are, whether they had gotten into the hands of terrorists and what they could be used for. So if a public agency is incapable of living up to its responsibility of safeguarding explosives, then, clearly, that agency will lose its right to store explosives.

Mr. RONAY. That does present a problem for an agency that has those responsibilities in bomb disposal, explosive entry and so forth. So I think the punishment, if you will, or the result of noncompliance would have to be measured in some way other than denying that community the ability to do their job. And I think from ATF's point of view, that is the only way that they enforce the law now except for prosecution, as Mr. Nelson mentioned, they lift the license. And in a private entity, that means out of business. So there is that severe penalty there, and someone else picks up that

business. But in the public atmosphere or arena, that isn't the case, and Mr. Villa is probably in a better position to address that than I, but that would be my perspective on it following a career in law enforcement myself.

Mr. LANTOS. Mr. Villa.

Mr. VILLA. In answer to your question, yes, and I see every day as being a learning experience, and from this situation, be it in northern California or southern California where we know these thefts have occurred at other law enforcement agencies, Nashville, we would encourage again anything that would be proactive to prevent the future theft of explosive magazines.

Mr. LANTOS. Do you therefore favor treating both private and public storage facilities on the same basis, on a mandatory basis, not on a voluntary basis?

Mr. VILLA. It would appear that would be a recommended way of proceeding in the future, yes.

Mr. LANTOS. Now, let me ask a general question of you, Mr. Ronay, because you have lived with this industry for a long time, and most of us know very little about it. You are telling us that is a $1 billion industry; 2½ million tons of explosives are sold every year, about that. How concentrated is the industry, how many manufacturers are we dealing with?

Mr. RONAY. Not very many. We have approximately less than 20 manufacturers.

Mr. LANTOS. On the top five control how much of the market?

Mr. RONAY. The top five probably control—you know, this isn't something that IME keeps tracks of, but I am going to guess that they probably control 80 percent of the market.

Mr. LANTOS. Is there any problem with respect to storage as far as the manufacturers are concerned?

Mr. RONAY. There are always problems surrounding the security of any of our operations when you are dealing with an inherently hazardous material, a dangerous material like explosives. Manufacturers apply not only compliance with the regulations but they go above and beyond those regulations in many cases where their facilities can allow it or mandate it and what they can afford. I mean we have large and small manufacturers, distributors and using entities which are not IME members but all of those mines, quarries and facilities out there that also have to store explosives. The impact of putting a security alarm system in, for example, is very different for them than it is for a large manufacturer who can plan to do that when he doesn't have to move it around necessarily. So it is very difficult to say one size fits all in this type of regulatory activity.

Mr. LANTOS. Mr. Villa, what is your view of the episode here in San Mateo County?

Mr. VILLA. Well, if I may, I do have a prepared statement for that, and if I could read that. I do not know anything about the security conditions, good, bad or otherwise or of the magazines involved in the report of this of explosives. This is in response to the real and anticipated backlash that the incident may entail. By the way, great job to the investigation of this incident and the prompt apprehension of a suspect, major recoveries of the stolen goods. This was a tribute to great teamwork. The ATF press release that

I saw is a nice example of giving appropriate credit to the local agencies involved for their diligent work toward solving these burglaries.

Mr. LANTOS. Now, how many bomb squads are there in the United States, to the best of your knowledge?

Mr. VILLA. Currently, there are 450 accredited bomb squads, and these are accredited by the National Association of Bomb Squad Commanders. I have been touch with Stan Matheson and the current Chair of the National Association of Bomb Squad Commanders. It is my understanding that he has prepared a letter for this hearing today to be read into the record. Greg Smith is a bomb squad commander, and I am sure he would be happy to read that into the record if so be.

Mr. LANTOS. Would you like to do that, sir? Do we have it in the record already? Oh, OK. It is in the record. Good. Good. Do each of these bomb squads have a storage facility, to the best of your knowledge?

Mr. VILLA. To the best of my knowledge, not every single one would have one. It would be a similar situation such as the incident that we are talking about.

Mr. LANTOS. Where they would share it?

Mr. VILLA. Yes. Multiple agencies would share it.

Mr. LANTOS. Mr. Ronay, you were out at the site with us this morning?

Mr. RONAY. Yes, I was.

Mr. LANTOS. This is the first time you saw the San Mateo facility?

Mr. RONAY. Yes.

Mr. LANTOS. Will you share your candid view with us of what your judgment was of the quality of that facility in a time of terrorist threats?

Mr. RONAY. Well, let me address it in terms of the facility as I saw it very briefly this morning and the regulations. It appeared to me that all four of those storage magazines were in compliance or were up to the specifications required for magazines. It also appeared to me that the American Table of Distances, that is the separation distances between the magazines and public highways and inhabited buildings, was appropriate, although I couldn't judge that entirely. The security of the location, that is the locked gates and the access to it, certainly appears to have exceeded what is required in regulations of any explosives storage site. The fact that they had an alarm system on it, albeit it was not functioning, is also in addition to what is required by Federal law.

Now, we are recommending today, in a post-September 11 environment that security alarm systems, photographic security would be a very appropriate and we recommend that it be in place at storage facilities where it is appropriate. There are situations where it cannot possibly be implemented, although technology today is coming around to the point where these things can be as remote as the moon if necessary, and of course that will enhance security down the road. Historically, that hasn't been the case, and because magazines are remotely located for safety reasons, they are very difficult to secure in the public sector and in the private sector.

So my take on what I saw this morning was that it was not particularly unusual. I might even hazard a guess that location was the same when that was an operating commercial quarry. I don't know that but I am guessing 30 years ago when it was a quarry that might have been where those magazines were located. And someone would have had to pass through these security locks to get to it, which is probably in excess of what many facilities have today.

Mr. LANTOS. So what you are saying is this facility, which was broken into by a couple of thugs, is probably better than some facilities elsewhere in the country.

Mr. RONAY. Yes, I would say so, because of the gated security only, really, the fact that we went through how many gates to go in there this morning, which were locked, apparently.

Mr. LANTOS. Mr. Chairman.

Mr. SHAYS [presiding]. Thank you, Mr. Lantos. I apologize for not being here for your oral testimony. I am on a different timeframe back East and had to make a few calls. So some of what I may ask could be a little repetitive, and I apologize, and I hope Mr. Lantos will give me a little leeway there.

I, first, would love to know, this may sound a little strange, but what got you in this line of work? I mean when you grew up, I am not sure that either of you said, "I am going to get into the explosives industry business." Did it just evolve over time or is it——

Mr. RONAY. It would seem to, yes. I mean I had some military experience with explosive ordnance disposal. I got into the FBI and ended up, because of that other experience, working with explosives for, I think, 18 years of that career. And then the industry brought me in to do this, so I have been around it for 35 years.

Mr. SHAYS. Mr. Ronay, when I read your bio, I didn't know, how long were you in the FBI for? I knew you were in——

Mr. RONAY. Twenty-three years, almost 23 years.

Mr. SHAYS. Mr. Villa, how did you get into this line of work?

Mr. VILLA. As a deputy sheriff for the County of Los Angeles, I was invited to joint the bomb squad as a result of a supervisor that I used to work for. And when there were some openings in the bomb squad, I was asked to join the bomb squad. I find it to be the best job in law enforcement based on the fact that as a bomb technician and investigators, we know when we go down range and render the device safe, we are able to go out and investigate the crime and put the criminals in jail who made the bomb.

Mr. SHAYS. Well, I think it is extraordinarily important work, but I think it is highly dangerous. You must have a keen sense of focus, and I appreciate both of you. Mr. Ronay, were you actually in making bombs harmless as well or were you more administrative?

Mr. RONAY. Well, the 2 years that I spent in explosive ordnance disposal operations I was the commander of the Explosive Ordnance Disposal detachment at Fort Benning, Georgia, and we did that on that base and in the surrounding areas. And in those years, in the sixties, the military had a large responsibility for the surrounding community in the bomb disposal business. And as it has developed over the years, law enforcement has taken that responsibility over.

Mr. SHAYS. I have been to Iraq five times, and the last meeting I had was with the folks that—it is an acronym called SEXY but they basically are trying to analyze the detonation devices, who makes these bombs. And I knew the first few times I was there that there were literally hundreds of depots of munitions that were miles square.

But what I learned the last time was that they had pre-deployed these munitions all along the Iranian border, and they are in farms, they are in shacks, and there are just people continually going and getting them. And what fascinated me was all the different ways they detonated these weapons, from your keychain to what opens your car doors, to your garage door openers, to the kids that make these little model cars run, to cell phones and so on.

But what was fascinating to me was they were actually able to tell us how many people made these weapons, and they could almost begin to tell us where they were made based on the materials used. It is an amazing amount of work, and they only had 10 people. They have increased that to many more, and they are getting a lot more successes and actually tracking who is making these weapons.

But from my standpoint, obviously relating to this hearing, is that is the technology continuing to improve, and is it easier for someone not in the profession and in a vocation to make weapons? Is it easier today if it is not your vocation to make weapons, significant explosive devices?

Mr. VILLA. I can answer that based on the age of the computer and the Internet. We have a youthful fascination of children who like to experiment with explosives, and what they don't know they can obtain from the Internet. Anything and everything they want to know about explosives is obtained from the Internet.

Mr. SHAYS. So the technology is there, but is it also easier to make these weapons?

Mr. VILLA. It is everyday materials, some of which you can purchase at grocery stores that they can take home and make bombs with. This isn't really the forum to address how they do it, but——

Mr. SHAYS. Yes. I don't need to know that.

Mr. VILLA [continuing]. But it is very simple for them. The technology, in some cases, is sophisticated when you talk about the electronically controlled devices and electronic countermeasures, but it is readily available.

Mr. SHAYS. Give some reality to 200 pounds worth of explosive devices that were taken. It is not like they needed—two individuals or three with backpacks could have taken away these weapons, correct? They didn't have to drive up. But what could they do with these kinds of weapons? The plastic devices in particular I am curious about. How could these weapons have been used in an a way that would be threatening to society? Is 200 enough, 200 pounds enough or is it more than enough?

Mr. VILLA. Well, I guess the simplest form, to go back to Pan Am Flight 103, it took a very little amount of high explosives to take out a 747 out of the sky and kill the amount of people that it killed.

Mr. SHAYS. How many pounds is speculated that it took?

Mr. VILLA. Less than one.

Mr. SHAYS. Less than one?

Mr. VILLA. One pound.

Mr. SHAYS. And are plastic devices a bigger concern than other types of devices in terms of being able to get through a system?

Mr. VILLA. When you refer to plastic, I am assuming that you are talking about plastic explosives.

Mr. SHAYS. Yes.

Mr. VILLA. C4 or Semtex.

Mr. SHAYS. Yes.

Mr. VILLA. It is available.

Mr. SHAYS. Should we be more alarmed that someone is able to get a C4 explosive device than some other type of device?

Mr. VILLA. We should be alarmed when anyone other than a trained professional is in possession of explosives.

Mr. SHAYS. Yes.

Mr. RONAY. Specifically, to address your question, in the hands of a criminal, whether it is C4 or emulsion commercial explosives or dynamite is probably not the question to be asked. It is how did they get a hold of it and what are they going to do with it? They all do the same relative damage for a terrorist. In the demolition business or in the commercial blasting business, there are big differences between them, but in a criminal bomb it is not significant.

Mr. SHAYS. You are more interested in the fact of not being able to know if someone was bringing a device onto an airplane. Some devices are easier to get into than others. That is really the focus of my question.

Mr. RONAY. Oh, I see. You refer to the making of plastic explosives.

Mr. SHAYS. The bottom line is were there any devices that had been taken from this facility that would have been easier to bring in than some other types of explosive devices?

Mr. RONAY. Not to my knowledge, although I don't know the other explosives that were taken besides the C4. I haven't heard what type they were.

Mr. SHAYS. Is a blasting cap, a blasting detonator large enough to bring down an airplane or would you need something more than that?

Mr. RONAY. You would need something more.

Mr. SHAYS. Can you package a few of them together and then you have—not necessarily?

Mr. RONAY. That generally isn't done, but, yes, if you mass enough of them together, I suppose you could make a pretty good——

Mr. VILLA. And not to minimize what a blasting cap is, a blasting cap is made from raw explosives. A blasting cap could very easily injure someone or possibly kill them.

Mr. SHAYS. The focus of our hearing obviously was to see if this is the wake-up call. Well, first off, we view this as a wake-up call, and now we are just trying to assess what we need to wake up to. It blew me away, but probably not you, because this is something you are more familiar with, but it blew me away that we do not know how many private facilities, we do not know how many public facilities. We clearly are not inspecting the private facilities to the extent they need to be inspected because of resources not being allocated. But in the public facilities it seems like we are not even

sure who is in charge. You can have a few leaders in this facility. Any of that surprise you or was it just common knowledge?

Mr. RONAY. Well, ATF is not authorized, the government is not authorized to know how many public facilities there are. They are exempt from the Federal law. Private facilities, the commercial facilities, I am not sure if the ATF testified to the number of licensees that they had.

Mr. SHAYS. They gave licensees but they couldn't tell us where they were, the extent to the——

Mr. RONAY. Well, they can. He just didn't have that assembly in the data base.

Mr. SHAYS. But they can't because they don't have it in their data base. They have the information in raw data, but they can't—K-Mart can tell us what sold in the last 10 minutes or the last 5 minutes.

Mr. RONAY. There are probably around 50,000 storage facilities in the country, commercial or private, if you will. I believe those probably are operated by 12,000 or so licensees that ATF licenses. They would have a lot of digging to do to be able to account for exactly every location or magazine, which I am sure they will do now, and I think that is a good thing to do, but it is very difficult to know where every magazine is from every licensee.

Mr. SHAYS. Because they keep being moved?

Mr. RONAY. Especially in construction jobs when you have a permit to store and to use but you are moving around with the job. In this day and age, explosives are actually stored on the truck that pumps them into where the drill holes are. So those things are constantly in flux even though the operations are—they are constantly moving. So it is difficult to know where all those vehicles or moving magazines are at any one time.

Mr. SHAYS. Is there anything that would surprise us but not surprise you that you think we should know? And that is not meant to be a cute question, but in other words we focused on what we focused on, but as you were listening, did you say, "My God, if they only knew the half of it."

Mr. RONAY. No, but I did repeatedly realize that there is a lack of understanding, I believe, by everybody as to what the ATF jurisdiction is in these cases. They do not have the authority in the law to oversee these public entities.

Mr. SHAYS. Mr. Lantos, do you have anything?

Mr. LANTOS. Well, I just want to pursue this last answer. Is the ATF lacking authority because it hasn't asked for it or is ATF lacking authority because it never asked for authority?

Mr. SHAYS. Could I add another one? Is it lacking authority because there is some element here that neither of us are grasping, because there is a political challenge here that neither of us seem to understand but everybody else understands?

Mr. VILLA. I think if I could, I think that we expect and we hold ourselves up to a higher standard.

Mr. SHAYS. Who is we?

Mr. VILLA. Law enforcement. And I would suggest that if any bomb squad commander had the appropriation of funds to make sure that his or her facility was secure to the max, that is what they would be doing, but their hands are tied. They do not have

a checkbook that allows them to write a check for $10,000 to update their security standards.

And with respect to what ATF is doing or what they can do or what they have asked for, I believe that it would be a proactive approach on their part to enforce the current regulations that are already in place. It is incumbent upon the local bomb squads to make sure that the security and the necessary implementation of security is installed so that we prevention future thefts.

Mr. LANTOS. But with all due respect, Mr. Villa, this little facility that Congressman Shays and I inspected, and several others were with us, is a very tiny facility, very inexpensive, terribly run down. We are dealing with two very wealthy counties, San Mateo and San Francisco Counties. It simply makes no sense to argue that these two wealthy counties with their population and with their resources could not pay for a secure facility. That simply won't wash.

Mr. VILLA. Agreed.

Mr. LANTOS. It simply won't wash.

Mr. SHAYS. In particular, since they more than anyone else would know the significance of what is in there.

Mr. VILLA. Sure.

Mr. SHAYS. So your comments would almost argue that the reverse should happen. That is why it was so shocking, frankly, to see it. When I asked about was there anything "but you don't know the half of it," you smiled, Mr. Villa. Was that just because you have a great smile or you could think of something?

Mr. VILLA. I am just thinking——

Mr. SHAYS. You are under oath, Mr. Villa. Is there anything that we don't know that is out there that better be addressed?

Mr. VILLA. I am not smiling to make light of what is occurring here today. I am only suggesting that based on what we know and what we hear from bomb squad commanders is sometimes they will put in requisitions for funding and they are not funded. And that, again, would be incumbent upon each individual agency that owns and operates, maintains an explosives storage facility.

Mr. SHAYS. I am going to tell you what I am hearing. You are saying that people who work with these highly explosives know that they are underfunded, put in requests to local agencies or State or Federal—excuse me, local or State, county and are not getting the response, and then they just back off. But to me that is like playing Russian roulette. If something does happen, they would be the ones who will get blamed, ultimately.

Mr. VILLA. Yes.

Mr. SHAYS. Maybe what we can do is we can spark a little bit of a debate that people ask what they need and then it goes up the chain, and ultimately someone will have to be held accountable, even if it comes to us.

Is there anything else, Mr. Lantos, you want to ask? Anything you want to put on the record that is not on the record?

I would just conclude by saying to you that I really don't think I fully grasp the significance. I said it once but I am going to say it again, because the significance of this industry to the economic well-being of our communities, and it does tell me, though, it needs a heck of a lot more attention. And I do believe that there are probably very sound practices in the public sector and the private sec-

tor, but I also suspect that there are some real vulnerabilities in the private sector as well that we need to shore up.

So I am pretty certain that Mr. Lantos and I will be coming up with some recommendations, both in writing to the Secretary in terms of our appropriators as well. And this will be work that we would—some of it might be administrative, some of it might be regulation, some of it could be executive order, and some of it might take an active of Congress, but we will look at all that.

Mr. LANTOS. Mr. Chairman, before we close and before I thank our two witnesses, may I thank members of your staff, Vince Chase and Bob Briggs, for an outstanding job. Thank you for coming out here. Thank the city of San Mateo for their courtesy in making this available to us. We thank the San Mateo Police Department for their usual and extraordinary cooperation.

Mr. SHAYS. We will note that and thank you all. And thank you, Mr. Lantos, for asking that we come here. The fact is when you make those suggestions, we just do it. Thank you.

With that, we will call this hearing closed.

[Whereupon, at 1:37 p.m., the subcommittee hearing was adjourned.]

[Additional information submitted for the hearing record follows:]

## EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET
## TYPE 1 – PERMANENT MAGAZINE (Storage of High Explosives)

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.207

**WALLS** – In Compliance?

Shall be either (check applicable item) -

☐ Masonry wall construction – consisting of brick, concrete, tile, cement block, or cinder block and be not less than 6 inches in thickness. Hollow masonry units used in construction must have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete. Interior walls are to be constructed of, or covered with, a non-sparking material.

☐ Fabricated metal wall construction – consisting of sectional sheets of steel or aluminum not less than number 14 gauge, securely fastened to a metal framework. Metal wall construction is either lined with brick, solid cement blocks, hardwood not less than four inches thick, or will have at least six inches sand fill between interior and exterior walls. Interior walls are to be constructed of, or covered with, a non-sparking material.

☐ Wood frame wall construction – the exterior of outer wood walls is to be covered with iron or aluminum not less than number 26 gauge. An inner wall of, or covered with non-sparking material will be constructed so as to provide a space of not less than six inches between the outer and inner walls. The space is to be filled with coarse, dry sand or weak concrete.

☐ Other bullet resistant construction – refer to ATF Ruling 76-18 – Describe construction:

Comments:

**FLOORS** – In Compliance?

Floors are to be constructed of, or covered with, a non-sparking material and shall be strong enough to bear the weight of the maximum quantity to be stored. Use of pallets covered with a non-sparking material is considered equivalent to a floor constructed of or covered with a non-sparking material.

Comments:

**FOUNDATIONS** – In Compliance?

Type of Construction -

Note: If piers or posts are used, space under buildings shall be enclosed with metal.

Comments:

**ROOF** – In Compliance?

☐ Except for buildings with fabricated metal roof, the outer roof is to be covered with no less than number 26 gauge iron or aluminum, fastened to at least 7/8 inch sheathing.

☐ Bullet-resistant ceilings or roofs – Where it is possible for a bullet to be fired directly thought the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine is to be protected by one of the following methods:

- ☐ A sand tray lined with a layer of building paper, plastic, or other non-porous material, and filled with not less than four inches of coarse, dry sand, and located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.
- ☐ A fabricated metal roof constructed of 3/16 inch plate steel lined with four inches of hardwood. (For each additional 1/16 inch of plate steel, the hardwood lining may be decreased by one inch.)

Comments:

**DOORS** – In Compliance?

Name of Lic./Perm. Mag. #:

All doors are to be constructed of not less than ¼ " plate steel and lined with at least 2"of hardwood.

Comments:

**HINGES AND HASPS** – In Compliance?

Attached to doors by -

Comments:

**LOCKS** – In Compliance?

Each door is equipped with -

Padlocks must meet the following:

- ☐ 5 tumbler, 3/8" case hardened shackle
- ☐ ¼" steel caps to prevent sawing or lever action

Comments:

**VENTILATION** – In Compliance?

Ventilation is to be provided to prevent dampness and heating of explosive materials. Ventilation openings must be screened to prevent the entrance of sparks. Ventilation openings in sidewalls and foundations must be offset or shielded for bullet-resistant purposes.

Comments:

**EXPOSED METAL** – In Compliance?

No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls, which might be exposed to contact with explosive materials, must be blind nailed, counter-sunk, or covered with a non-sparking latticework or other non-sparking material.

Comments:

## **LIGHTING** – 27 CFR 555.217 – In Compliance?

Type of lighting -

- ☐ All electrical switches are outside the magazine and meet standards of the National Electrical Code (NEC).
- ☐ Documentation (invoices, work orders, etc.) indicating compliance with the NEC is available for inspection.

Comments:

## **HOUSEKEEPING** – 27 CFR 555.214 & 555.215 – In compliance?

Check PROBLEM areas only -

- ☐ Explosive materials shall not be placed directly against interior walls of storage facility
- ☐ Containers of explosive materials are to be stored so that marks are visible
- ☐ Only tools of non-sparking materials (including brooms/cleaning utensils) shall be used in storage facilities
- ☐ Magazines are to be kept clean, dry and free of grit, paper, empty packages and containers, rubbish
- ☐ Floors stained by leakage from materials are to be cleaned in accordance with manufacturer's instructions
- ☐ Deteriorated explosives are to be destroyed an accordance with manufacturer's instructions
- ☐ Ground around facility shall slope away for drainage
- ☐ Area surrounding storage facility shall be kept clear of rubbish, brush, dry grass or trees 25' in all directions
- ☐ Volatile materials are to be kept a distance of not less than 50' from outdoor magazines

Comments:

## **ADDITIONAL REMARKS**:

**EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET**
**TYPE 2 – OUTDOOR (Storage of High Explosives)**

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.208(a)

**EXTERIOR CONSTRUCTION** – In Compliance?

The exterior and doors are to be constructed of not less than ¼ inch steel and lines with at least two inches of hardwood. Magazines with top openings will have lids with water-resistant seals or which overlap the sides by at least one inch when in a closed position.

Comments:

**HINGES AND HASPS** – In Compliance?

Attached to doors by -

Comments:

**LOCKS** – In Compliance?

Each door is equipped with -

Padlocks must meet the following:

- ☐ 5 tumbler, 3/8" case hardened shackle
- ☐ ¼" steel caps to prevent sawing or lever action

Comments:

**GENERAL CONSTRUCTION** – In Compliance?

Check applicable items -

- ☐ Outdoor magazines are to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant and ventilated.
- ☐ Magazine must be supported to prevent direct contact with the ground.
- ☐ Ground around magazine must slope away for drainage or other adequate drainage provided.

Comments:

**VEHICULAR MAGAZINES** – In Compliance?

Method of immobilization -

Comments:

**LIGHTING** – 27 CFR 555.217 – In Compliance?

Type of lighting -

- ☐ All electrical switches are outside the magazine and meet standards of the National Electrical Code (NEC).
- ☐ Documentation (invoices, work orders, etc.) indicating compliance with the NEC is available for inspection.

Comments:

Name of Lic./Perm. Mag. #:

**HOUSEKEEPING** – 27 CFR 555.214 & 555.215 – In compliance?

Check PROBLEM areas only -

- ☐ Explosive materials shall not be placed directly against interior walls of storage facility
- ☐ Containers of explosive materials are to be stored so that marks are visible
- ☐ Only tools of non-sparking materials (including brooms/cleaning utensils) shall be used in storage facilities
- ☐ Magazines are to be kept clean, dry and free of grit, paper, empty packages and containers, rubbish
- ☐ Floors stained by leakage from materials are to be cleaned in accordance with manufacturer's instructions
- ☐ Deteriorated explosives are to be destroyed an accordance with manufacturer's instructions
- ☐ Ground around facility shall slope away for drainage
- ☐ Area surrounding storage facility shall be kept clear of rubbish, brush, dry grass or trees 25' in all directions
- ☐ Volatile materials are to be kept a distance of not less than 50' from outdoor magazines

Comments:

**ADDITIONAL REMARKS:**

**EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET**
**TYPE 2 – INDOOR (Storage of High Explosives)**

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.208(b)

**EXTERIOR CONSTRUCTION** – In Compliance?

Shall be either (check applicable item) -

☐ Wood indoor magazines are to have sides, bottoms and doors constructed of at least 2 inches of hardwood and are to be well braced at the corners. They are to be covered with sheet metal of not less than 26 gauge. Nails exposed to the interior must be countersunk.

☐ Metal indoor magazines are to have sides, bottoms and doors constructed of not less than number 12 gauge metal and be lined with a non-sparking material. Edges of metal covers must overlap sides at least one inch.

Comments:

**HINGES AND HASPS** – In Compliance?

Attached to doors by -

Comments:

**LOCKS** – In Compliance?

Each door is equipped with -

Padlocks must meet the following:

☐ 5 tumbler, 3/8" case hardened shackle

☐ ¼" steel caps to prevent sawing or lever action

Comments:

**GENERAL CONSTRUCTION** – In Compliance?

Check applicable items

☐ Indoor magazines are to be fire-resistant and theft-resistant. They need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration.

☐ No indoor magazine is to be located in a residence or dwelling.

☐ The indoor storage of high explosives must not exceed a quantity of 50 pounds.

☐ Detonators must be stored in a separate magazine; the total quantity must not exceed 5,000.

Comments:

**DETONATOR BOXES** – 27 CFR 555.208 (c)

**CONSTRUCTION** – In Compliance?

☐ Magazines for detonators in quantities of 100 or less are to have sides, bottoms and doors constructed of not less than number 12 gauge metal and lined with a non-sparking material.

☐ Hinges and hasps must be attached so they cannot be removed from the outside.

☐ 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 is sufficient for locking purposes.

Comments:

Name of Lic./Perm. Mag. #:

**HOUSEKEEPING** – 27 CFR 555.214 & 555.215 – In compliance?

Check PROBLEM areas only -

- ☐ Explosive materials shall not be placed directly against interior walls of storage facility
- ☐ Containers of explosive materials are to be stored so that marks are visible
- ☐ Only tools of non-sparking materials (including brooms/cleaning utensils) shall be used in storage facilities
- ☐ Magazines are to be kept clean, dry and free of grit, paper, empty packages and containers, rubbish
- ☐ Floors stained by leakage from materials are to be cleaned in accordance with manufacturer's instructions
- ☐ Deteriorated explosives are to be destroyed an accordance with manufacturer's instructions
- ☐ Ground around facility shall slope away for drainage
- ☐ Area surrounding storage facility shall be kept clear of rubbish, brush, dry grass or trees 25' in all directions
- ☐ Volatile materials are to be kept a distance of not less than 50' from outdoor magazines

Comments:

**ADDITIONAL REMARKS**:

**EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET**
**TYPE 3 – Temporary Storage Of Attended Explosives Materials**

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.209

**CONSTRUCTION** – In Compliance?

Day boxes are to be constructed of not less than number 12-gauge (.1046") steel, lined with at least either ½-inch plywood or ½-inch Masonite type hardboard.

Comments:

**DOORS OR COVERS** – In Compliance?

Doors must overlap sides by at least one inch.

Comments:

**HINGES AND HASPS** – In Compliance?

Attached by -

Comments:

**LOCKS** – In Compliance?

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 is sufficient for locking purposes.

Comments:

## OTHER REQUIREMENTS:

For temporary storage of explosive materials, ensure that the nagazine is also in compliance with:

☐ 27 CFR 55.206

☐ 27 CFR 55.213

Comments:

## ADDITIONAL REMARKS:

**EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET**
**TYPE 4 (Storage of Low Explosives)**

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.210(a)

**CONSTRUCTION** – In Compliance?
Type of Construction -
Comments:

**DOORS OR COVERS** – In Compliance?
Type of Construction -
Comments:

**FOUNDATIONS** – In Compliance?
Type of Construction -
Comments:

**INTERIOR** — In Compliance?
Walls & floors to be constructed of or covered with a non-sparking material
Comments:

**HINGES AND HASPS** – In Compliance?
Attached to doors by -
Comments:

**LOCKS** – In Compliance?
Each door is equipped with -
Padlocks must meet the following:
- ☐ 5 tumbler, 3/8" case hardened shackle
- ☐ ¼" steel caps to prevent sawing or lever action

Comments:

**VEHICULAR MAGAZINES** – In Compliance?
Method of immobilization -
Comments:

**LIGHTING** – 27 CFR 555.217 – In Compliance?
Type of lighting -
- ☐ All electrical switches are outside the magazine and meet standards of the National Electrical Code (NEC).
- ☐ Documentation (invoices, work orders, etc.) indicating compliance with the NEC is available for inspection.

Comments:

Name of Lic./Perm. Mag. #:

**HOUSEKEEPING** – 27 CFR 555.214 & 555.215 – In compliance?

Check PROBLEM areas only -

- ☐ Explosive materials shall not be placed directly against interior walls of storage facility
- ☐ Containers of explosive materials are to be stored so that marks are visible
- ☐ Only tools of non-sparking materials (including brooms/cleaning utensils) shall be used in storage facilities
- ☐ Magazines are to be kept clean, dry and free of grit, paper, empty packages and containers, rubbish
- ☐ Floors stained by leakage from materials are to be cleaned in accordance with manufacturer's instructions
- ☐ Deteriorated explosives are to be destroyed an accordance with manufacturer's instructions
- ☐ Ground around facility shall slope away for drainage
- ☐ Area surrounding storage facility shall be kept clear of rubbish, brush, dry grass or trees 25' in all directions
- ☐ Volatile materials are to be kept a distance of not less than 50' from outdoor magazines

Comments:

**INDOOR STORAGE FACILITIES** – 27 CFR 555.210(b) – In Compliance?

- ☐ No indoor storage facility shall be located in a residence or dwelling
- ☐ No indoor storage facility shall contain a quantity of low explosives in excess of 50 lbs.
- ☐ Detonators that will not mass detonate must be in a separate magazine; quantity shall not exceed 5,000.
- ☐ Indoor magazines located in secure rooms may have each door locked with one steel padlock, no hood required.

Comments:

**ADDITIONAL REMARKS**:

**EXPLOSIVES MAGAZINE COMPLIANCE DATASHEET**
**TYPE 5 (Storage of Blasting Agents)**

Name of Lic./Perm. Mag. #:
Magazine location:
License/Permit #:
Inspector(s): Inspection Date:
Is magazine in overall compliance with regulations?

**CONSTRUCTION:** 27 CFR 555.211

**CONSTRUCTION** – In Compliance?

Outdoor magazines are to be weather-resistant and theft-resistant. The ground around the magazine must slope away for drainage or other adequate drainage be provided.
Comments:

**HINGES AND HASPS** – In Compliance?

Attached to doors by -
Comments:

**LOCKS** – In Compliance?

Each door is equipped with -
Padlocks must meet the following:

- ☐ 5 tumbler, 3/8" case hardened shackle
- ☐ ¼" steel caps to prevent sawing or lever action

Comments:

**VEHICULAR MAGAZINES** – In Compliance?

Method of immobilization -
Comments:

**LIGHTING** – 27 CFR 555.217 – In Compliance?

Type of lighting -

- ☐ All electrical switches are outside the magazine and meet standards of the National Electrical Code (NEC).
- ☐ Documentation (invoices, work orders, etc.) indicating compliance with the NEC is available for inspection.

Comments:

**PLACARDS** – In Compliance?

The placards required by Department of Transportation regulations at 49 CFR Part 172, Subpart F, for the transportation of blasting agents shall be displayed on all magazines.
Comments:

**HOUSEKEEPING** – 27 CFR 555.214 & 555.215 – In compliance?

Check PROBLEM areas only -

- ☐ Explosive materials shall not be placed directly against interior walls of storage facility
- ☐ Containers of explosive materials are to be stored so that marks are visible

Name of Lic./Perm. Mag. #:

- ☐ Only tools of non-sparking materials (including brooms/cleaning utensils) shall be used in storage facilities

**HOUSEKEEPING** (continued) –

- ☐ Magazines are to be kept clean, dry and free of grit, paper, empty packages and containers, rubbish
- ☐ Floors stained by leakage from materials are to be cleaned in accordance with manufacturer's instructions
- ☐ Deteriorated explosives are to be destroyed an accordance with manufacturer's instructions
- ☐ Ground around facility shall slope away for drainage
- ☐ Area surrounding storage facility shall be kept clear of rubbish, brush, dry grass or trees 25' in all directions
- ☐ Volatile materials are to be kept a distance of not less than 50' from outdoor magazines

Comments:

**ADDITIONAL REMARKS**:

**Department of the**
**California Highway Patrol**
D. O. Helmick, Commissioner
M. J. Padilla, Deputy Commissioner
G. J. Townsend, Assistant Commissioner, Staff
M. J. Nivens, Assistant Commissioner, Field

# HOMELAND SECURITY SURVEILLANCE AND MONITORING OF EXPLOSIVE STORAGE FACILITIES

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# EXPLOSIVE MATERIALS STORAGE

## INTRODUCTION

The California Highway Patrol (CHP) has prepared this informational document on publicly owned law enforcement explosive storage facilities within the State of California. This document discusses the federal and state regulations pertaining to explosive storage facilities, the roles and responsibilities of state agencies, and provides information about law enforcement's explosive storage facilities.

## REGULATIONS

**Federal**:

- The storage of explosives is regulated by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives (BATF). The publication "Federal Explosives Law and Regulations" covers these regulations.

- Law Enforcement's exemption from a federally required **permit** is covered under Title 27CFR Section 55.141. Exemptions (a) General (3) states "The transportation, shipment, receipt, or importation of explosives materials for delivery to any agency of the United States or to any State or its political subdivision." BATF has confirmed that this is the law enforcement exemption applied nationwide.

- Title 49CFR Section 107.606 exempts an agency of the federal government, a state agency, or an agency of a political subdivision of a state from federal hazardous material licensing requirements.

- California National Guard has a dual state/federal position. They conform to the regulations of the Department of Defense and are exempt from BATF regulations. Criminal investigations involving these facilities are handled by the military criminal investigators.

- There are three classes of explosive materials. They are high explosives, low explosives, and blasting agents. The description of each class is listed in the BATF regulations. [55.202]

- Explosive materials are required to be stored in BATF-approved explosives storage magazines as set forth in regulations. [55.201]

- There are five types of approved explosives storage magazines. The type of magazine, together with the classes of explosive materials which may be stored in each, are defined in the BATF regulations. [55.203]

- The BATF regulations specifies how each of the five types of magazines are to be constructed, types of locks required, and ventilation requirements. [55.207 through 55.211]

- The quantity of explosive materials in each magazine determine the minimum distances from inhabited buildings, public highways and/or passenger railways, as well as other magazines in the same facility, as defined in the Table of Distances in the BATF regulations. [55.218]

- Any person storing explosive materials shall inspect his/her magazines, at least every seven days to determine whether there has been unauthorized or attempted entry into the magazines, or unauthorized removal of the contents of the magazines. [55.204]

- Any state can establish their own regulations regarding explosives. Those regulations which are the stricter shall be followed. State regulations cannot exempt a user from a stricter federal regulation.

- California has many federal military installations throughout the state that may warehouse explosives. These are out of the purview of state regulations, inspections and enforcement. They are also exempt from federal explosive laws and regulations pursuant to Title 18, Chapter 40, Section 55.141 (a) 3.

- A building such as an office building or repair shop which is a part of the premises of an explosives business and is used by the business in connection with the manufacture, transportation, storage, or use of explosive materials is not an "inhabited building". (27 CFR 55.11]

**State**:

- According to California State Fire Marshal, the State of California has not formally adopted Title 27 CFR. Therefore, the provisions cannot be enforced by the state. However, this information is not widely known and most law enforcement agencies conform to Title 27 CFR requirements.

- The California State Fire Marshal has the authority to investigate explosions or fire on state property or when requested by local authority. [Section 13107 of the Health and Safety (H&S) Code.]

- The California State Fire Marshal also regulates dangerous fireworks. [Section 32000.5(d) of the California Vehicle Code (VC).]

- Section 12086 H&S requires the immediate reporting of any theft or loss of explosives to the local police or county sheriff. The local law enforcement shall immediately transmit a report of such theft to the State Bureau of Criminal Identification and Investigation at Sacramento.

**Exemptions**:

- Law enforcement **is** exempt from licensing requirements.
- Law enforcement **is not** exempt from the **federal storage** requirements.
- Law enforcement **is** exempt from BAFT transportation regulations contained in Title 27, and **is** exempt from Title 49 CFR transportation requirements except regarding placarding as required by Section 27903 VC.
- The transportation of 1,000 pounds or less of explosive materials does not require the use of designated routes as contained in Title 13 CCR. [Section 31601 CVC]
- California Vehicle Code Section 27903 exempts any law enforcement agency from placarding requirements when **transporting** explosives in an authorized emergency vehicle when required within the scope and course of law enforcement explosives detection or removal duties (i.e. bomb detection dog handlers or bomb squad removal teams) and meet one of the following:
    - Comply with all regulations adopted by the CHP pursuant to subdivision (b) of Section 34501, notwithstanding Section 34500 and subdivision (a) of Section 34501.
    - The peace officer possesses an exemption by the Commissioner.
- Section 1160.4(g)(5) of Title 13 of the California Code of Regulations (CCR) exempts state and local government agencies from **state** transportation licensing requirements.
- Section 12005 (H&S) – Exempts CHP and law enforcement agencies, and fire departments from H&S Code transportation and usage regulations.
- Section 12302 PC – Nothing in this chapter shall prohibit the sale to, purchase by, or possession, transportation, storage, or use of, destructive devices or explosives by:

(a) Any peace officer listed in Section 830.1 or 830.2, or any peace officer in the Department of Justice authorized by the Attorney General, while on duty and acting within the scope and course of his or her employment.

**ROLES AND RESPONSIBILITIES**

**CHP**

- The CHP regulates the transportation of explosives as well as the storage incidental to transportation.

**BATF**

- The U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms & Explosives regulates the storage of explosives.

**State Fire Marshal (SFM)**

- They have primary jurisdiction for explosions and fires involving state property. They also assist counties with local investigations when requested. They also regulate "dangerous" fireworks. They derive their authority from H&S Code, VC, and Attorney General Opinion.

**Department of Toxic Substances Control (DTSC)**

- Permitting of generators and transporters of hazardous waste. This may include explosives. They work in concert with the CHP and the enforcement of transportation of hazardous materials regulations.

**Miscellaneous**

- There are many materials used in the agricultural sector such as fertilizer, which are not classified as explosives, but when mixed with other materials could be used to create an explosive device. Federal agencies (i.e. navy yards, depots owned by or operated by or on behalf of, the United States) are exempt from all transportation and storage regulations.

**DEFINITIONS**

- Magazine - Any building or structure, other than an explosive manufacturing building, used for the storage of explosive materials.

- Type-2 Magazine – Most commonly used by law enforcement. A Type 2 magazine is a mobile and portable indoor and outdoor magazine for the storage of high explosives, subject to the limitations prescribed by 55.206, 55.208, and 55.213 (Federal Explosives Law and Regulations). Due to weight, a portable dolly is required for relocating.

- Explosive Materials - Any blasting agents, water gels and detonators. Explosive materials include, but are not limited to, all items "in the List of Explosive Materials" provided for in 55.23.

- Explosives - Any chemical compound, mixture of device, the primary or common purpose of which is to function by explosion. The term includes, but not limited to, dynamite and other high explosive, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord igniter cord and igniters.

- Inhabited Building – Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials. (27 CFR 55.218]

**Locations**:

- The CHP has 13 explosive storage facilities located throughout the state.

- The exact number of explosive storage locations utilized by public safety agencies is unknown. It is a common practice that any agency with a bomb squad or SWAT team will have some type of storage facility that they utilize. This may be a storage magazine located away from their respective office or simply space in the departmental armory.

- BATF's regulatory division issues permits to all commercial facilities. Lists are maintained by region and are stored in their Atlanta headquarters. In the Sacramento/Bay Area Region alone, BATF lists approximately 800 permits.

- There are 137 explosives transporters licensed to transport within the State of California. 70 of these are located within the state.

**Inventory and Security**:

- Federal regulations require magazine storage containers to be placarded and padlocked as specified according to their contents and designated storage type. [55.207-55.211]

- Federal regulation requires the reporting to BATF of theft or loss of explosive materials within 24 hours of discovery. [55.30(b)]

**CONCLUSION**

The occurrence that initiated this review involved a law enforcement storage facility. Law enforcement is required to meet BATF storage requirements. However, law enforcement is exempt from guidelines governing licensing of explosives storage at both the federal and state level. Due to this exemption, a complete list of law enforcement explosive storage facilities is not readily available. While we understand the sensitive nature of the occurrences that generated an examination of laws governing explosives storage, the CHP views this as an opportunity to review our current systems and make adjustments appropriate to the prevailing threat environment.

**LAWS PERTAINING TO EXPLOSIVE MATERIALS STORAGE**
**For Law Enforcement**

| | FEDERAL | STATE | LOCAL |
|---|---|---|---|
| **LICENSING** | | | |
| **To Transport** | **Exemption – License Not Required**<br>Title 49, Section 107.606 of the Code of Federal Regulations (CFR) – Exempts, among other things, a state agency and an agency of a political subdivision of a state from federal licensing requirements for the transportation of hazardous materials. **(Department of Transportation [DOT] Requirements)**<br><br>Title 27, Section 55.141(a)(3) CFR - Exempts law enforcement from licensing as it relates to Bureau of Alcohol, Tobacco, and Firearms (BATF) regulations. (Confirmed with the Director of Industrial Operations at BATF.) **(BATF Requirements)** | **Exemption - On-Highway – License Not Required**<br>Title 13, Section 1160.4(g)(5) of the California Code of Regulations (CCR) – Exempts federal, state, county, city agencies, and other political subdivisions of the state, from state licensing requirements for the transportation of explosives.<br><br>**Exemption - Off-Highway – License Not Required**<br><br>**NOTE:** The State of California has not formally adopted Title 27 CFR. Therefore, there are no off-highway requirements. | Local jurisdictions do not have authority to supersede state or federal law regarding transportation. Section 34500(g) VC grants sole regulatory authority to CHP for on-highway transportation. |
| **To Possess** | **Exemption – License Not Required**<br>Title 27, Section 55.141(a)(3) CFR - Exempts law enforcement from licensing as it relates to Bureau of Alcohol, Tobacco, and Firearms (BATF) regulations. (Confirmed with the Director of Industrial Operations at BATF.) **(BATF Requirements).** Thus, no license to possess required per federal law. | **Exemption – License Not Required**<br><br>Section 12302 PC – Nothing in this chapter shall prohibit the sale to, purchase by, or possession, transportation, storage, or use of, destructive devices or explosives by:<br>(a) Any peace officer listed in Section 830.1 or 830.2, or any peace officer in the Department of Justice authorized by the Attorney General, while on duty and acting within the scope and course of his or her employment. | Local jurisdictions do not have authority to supersede state or federal law regarding transportation. |
| | | | |
| **STORAGE** | **No Exemption**<br>Although federal agencies are exempt from the storage requirements, **there is no exemption in the law or regulations for the storage of explosive materials by state and local agencies**. [18 U.S.C. 845(a)(6); 27 CFR 55.141(a)(3),(a)(5)].<br><br>Title 27, Section 55.202 through 215 - See Annex B for storage requirements.<br><br>Any person who stores explosive material must notify the fire department having jurisdiction over the site where explosive materials are manufactured or stored. [27 CFR 55.11: Definition of "authority having jurisdiction for fire safety", 27 CFR 55.201(f)]. | **Exemption**<br><br>Sections 12005 H&S and 12302 PC exempts law enforcement from state regulations. | Law enforcement is exempt from all local regulations per Sections 12005 H&S and 12302 PC. However, they must meet federal requirements. |

**LAWS PERTAINING TO EX SIVE MATERIALS STORAGE**
**For Law Enforcement**

| | FEDERAL | STATE | LOCAL |
|---|---|---|---|
| **TRANSPORTATION** | Title 27, Section 55.141(a)(3) CFR - Exempts law enforcement from transportation as it relates to BATF regulations. (Confirmed with the Director of Industrial Operations at BATF.)<br><br>Section 171.2 of Title 49 CFR exempts from DOT regulations, anyone who transports a hazardous material not in commerce (for compensation). Because a state or local agency is not transporting hazardous materials in commerce, they are exempt from DOT transportation regulations. | **On-Highway**:<br>CHP adopted portions of Title 49 CFR as specified in Title 13. With respect to law enforcement, the only provision of Title 49 which applies to transportation is listed in Section 27903 VC (placarding requirements).<br><br>Section 27903 VC – An authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, operated by a peace officer as defined in Sections 830.1 and 830.2 of the Penal Code, **is not** subject to DOT hazardous materials **placarding** regulations when transportation is required within the scope and course of law enforcement explosives detection or removal duties, provided specified conditions are met.<br><br>**Off-Highway**:<br><br>**NOTE:** The State of California has not formally adopted Title 27 CFR. Therefore, there are no off-highway requirements.<br><br>Section 12005 (H&S) – Exempts CHP and law enforcement agencies, and fire departments from H&S Code transportation and usage regulations. | **On-Highway** – Local jurisdictions cannot adopt more restrictive regulations.<br><br>**Off-Highway** – Local jurisdictions cannot adopt more restrictive regulations. |