



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

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ATF Ruling 2022-02

Storage of Explosives in Remote Avalanche Control Systems

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES
27 CFR 555.22: ALTERNATE METHODS OR PROCEDURES
27 CFR 555.29: UNLAWFUL STORAGE
27 CFR 555.127: DAILY SUMMARY OF MAGAZINE TRANSACTIONS
27 CFR 555.204: INSPECTION OF MAGAZINES
27 CFR 555.206: LOCATION OF MAGAZINES
27 CFR 555.208: CONSTRUCTION OF TYPE 2 MAGAZINES
27 CFR 555.213: QUANTITY AND STORAGE RESTRICTIONS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorizes an alternate method or procedure to the explosives storage requirements contained in title 27, Code of Federal Regulations (CFR), part 555, subpart K - Storage. Specifically, ATF authorizes Federal explosives licensees and permittees, and State and local government agencies conducting avalanche control/mitigation activities, to store explosives in remote avalanche control systems, provided the conditions set forth in this ruling are met to maximize protection against theft and ensure no decrease in public safety.

ATF has received requests from Federal explosives licensees and permittees (FEL/Ps) and State and local agencies conducting avalanche control/mitigation operations for variances to store explosive materials with detonators attached in remote avalanche control systems (RACS). Typically, RACS are loaded during favorable weather conditions, and in accordance with strict safety protocols, thus minimizing explosives handling risks. RACS are remotely operated, and therefore eliminate workers' exposure to explosives and hazardous avalanche conditions while the explosives are being deployed.

This ruling addresses RACS that have a secured metal container in which explosive charges with attached detonators are stored. The container is mounted on a pole or mast attached to a concrete base and generally accessed by a secured ladder. Upon remote activation via computer or other electronic device, one of the explosive charges is dropped or propelled into or near the snowfield, where it explodes, causing an avalanche. RACS typically are placed high on

mountains near the tops of avalanche paths. Access ladders and each RACS container holding explosive materials are locked with padlocks or internal bolt locks. However, RACS containers typically do not meet ATF's theft-resistance and bullet-resistance standards for explosives storage magazines. Further, RACS require the storage of explosives with detonators attached. This ruling requires that the use of RACS will require implementation of measures, conditions and safeguards to ensure an equivalent level of protection against theft, bullet-penetration, and public safety hazards as provided by the regulations at 27 CFR, Part 555.

FEL/Ps and government agencies often use an explosive charge to intentionally trigger an avalanche when people are not present and when roads are closed. This mitigates the potential for snow to accumulate and create larger avalanches that could destroy nearby buildings or structures and endanger persons in the vicinity or driving on highways. The explosives typically are hand-thrown explosive charges deployed by ski patrollers or other avalanche workers, or charges fired from "gun" type devices, including Howitzers on loan from the U.S. Army under an interagency agreement between the Army and the U.S. Forest Service (USFS). Those methods expose avalanche workers to the inherent risks of handling and initiating explosives in avalanche terrain during adverse weather conditions.

The Federal explosives law at title 18, United States Code (U.S.C.), section 842(j), and the implementing regulation at 27 CFR 555.29, make it unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Attorney General.

The regulation at section 555.208 prescribes construction and locking requirements for type 2 magazines for the storage of high explosives, to secure the explosives and protect them from bullet impact. The regulation at section 555.213(b) generally prohibits the storage of detonators in a magazine with other explosive materials, to ensure that any accidental initiation of stored detonators does not propagate to other explosives. The regulation at section 555.204 requires magazines containing explosive materials to be inspected every seven days to ensure there has been no unauthorized entry or attempted entry into the magazine, or unauthorized removal of the explosives.

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

FEL/Ps and State and local government agencies load RACS with explosives at the beginning of the yearly “avalanche season,”—the period when avalanches must be mitigated in a particular area for public safety purposes—and deploy these explosives remotely via signal from a computer or other electronic device. The benefits of using such systems include reliable avalanche mitigation and a significant reduction in operations requiring the handling and use of explosive materials by avalanche personnel, often in poor weather and dangerous terrain.

RACS typically are located high on mountains at the top of avalanche paths—areas rarely inhabited by members of the public during the winter. In addition, many ski areas, and many avalanche areas outside of ski areas, are located on National Forest System lands administered by the United States Forest Service (USFS). The USFS regulation at 36 CFR 261.10(d) prohibits the discharge of a firearm in, or within 150 yards of, a developed recreation site or occupied area, or in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge. This includes the prohibition against discharging a firearm near structures such as RACS placed inside or immediately outside of developed recreation sites including ski areas.

ATF finds that the construction and location of RACS and the security measures described in this ruling mitigate the likelihood of bullet-penetration and theft of explosives, and that the alternate method is consistent with the effect intended by, and substantially equivalent to, the methods and procedures prescribed by the regulations in 27 CFR part 555, subpart K. In addition, the U.S. Army has signaled its intention to terminate its involvement in the avalanche artillery control program in the coming years. As a result, Howitzers will no longer be a practical option for ski areas’ and government agencies’ avalanche mitigation programs. Thus, ATF finds there is good cause to authorize the storage of explosive materials attached to detonators in RACS not meeting the above ATF bullet-resistance and security requirements, provided certain conditions are met. Further, this alternate method is not contrary to any provision of law, will not increase costs to ATF, and will not hinder the effective administration of the regulations.

Held, FEL/Ps and government agencies conducting avalanche control/mitigation operations may store explosives as described above in Remote Avalanche Control Systems (RACS), provided the following conditions are met at all times:

1. Each RACS must meet the minimum distance requirements to inhabited buildings, highways, passenger railways, other RACS and explosives magazines, per 27 CFR 555.206 and the applicable tables of distances;
2. Each RACS container in which explosive materials are kept must be locked with at least two padlocks having at least five tumblers and a case-hardened steel or boron alloy

shackle of at least $\frac{3}{8}$ -inch diameter; an internal bolt lock with a bolt of at least $\frac{3}{8}$ -inch diameter; or other locks as described in ATF Ruling 2011-3;

3. Any ladder used to access a RACS explosives container must be locked with a padlock having at least five tumblers and a case-hardened steel or boron alloy shackle of at least $\frac{3}{8}$ -inch diameter; or other locks as described in ATF Ruling 2011-3;
4. Each RACS container must:
 - a. meet the bullet-resistance standard under 27 CFR 555.208; or
 - b. be constructed using one of the construction methods under ATF Ruling 76-18; or
 - c. be located in an area where rifle hunting is not permitted under Federal, State or local law/ordinance, or generally does not occur during the time when explosives are stored in the RACS;
5. Each person storing explosive materials under this ruling must maintain a daily summary of magazine transactions as described at 27 CFR 555.127 for each RACS. The record must contain the name of the explosive material's manufacturer, the quantity on hand, the date when materials are placed into the RACS, and the date any materials are used or otherwise removed from the RACS. No entry is required for days when no materials are added to or used/removed from the RACS. This record must be maintained at a location readily accessible for ATF inspection, such as a ski patrol office;
6. Explosive materials may be stored in a RACS under this ruling only during the avalanche season; no explosive materials may be stored in any RACS during other times of the year. At the end of the avalanche season, the explosive materials must be removed from the RACS and properly stored in explosives storage magazines meeting the requirements in 27 CFR Part 555;
7. Each RACS must: (a) be equipped with an electronic monitoring function that alerts the owner/operator when the RACS explosives container is opened; or (b) when safe and practicable, be physically inspected every seven days, as specified at 27 CFR 555.204. If inspection is not safe or practicable due to weather, unsafe conditions or lack of accessibility, inspections must resume immediately when conditions permit;
8. Each RACS must be located in an area that generally is not accessed by the public during the time when explosives are stored in the RACS;
9. Each person storing explosive materials in a RACS under this ruling must meet all other applicable requirements under 27 CFR Part 555; and
10. Adherence to the conditions in this ruling does not relieve any person from their responsibility to comply with State, local, and other Federal requirements.

Held further, if ATF finds that any FEL/P or State or local government agency using and storing explosives in RACS fails to abide by the conditions of this ruling or uses any procedure that hinders the effective administration of the Federal explosives laws or regulations, or if any legal or administrative difficulties arise due to the use of a RACS, ATF may revoke an authorization to use RACS as described in this ruling.

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ATF Deputy Director