EXPLOSIVES INVESTIGATION COORDINATION BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

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EXECUTIVE SUMMARY

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) share jurisdiction for investigating federal explosives crimes.[1] Despite attempts at coordination and division of jurisdiction, these components have historically developed separate and often conflicting approaches to explosives investigations and related activities such as explosives training, information sharing, and forensic analysis.

OIG Audit Approach

This Office of the Inspector General (OIG) audit examined the Department of Justice (DOJ) oversight and the FBI's and ATF's operations of explosives-related activities from fiscal year (FY) 2003 through April 2009. The objective of this review was to evaluate the level of coordination between the FBI and ATF in explosive investigations, including the effectiveness of explosive incident protocols to determine lead agency jurisdiction, the extent of information sharing and consolidation of explosives data, the degree of training coordination, and the use of laboratory resources for explosives analysis.[2]

We conducted interviews with over 100 ATF and FBI employees, including personnel from both components' headquarters and in 8 locations with both ATF and FBI field divisions or offices. Our FBI interviews included officials in the Counterterrorism Division, Criminal Investigative Division, Laboratory Division, and Critical Incident Response Group. ATF interviews included officials from the Office of Field Operations, National Center for Explosive Training and Research, Explosive Enforcement Division, U.S. Bomb

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[1] See Appendix III for a more detailed description of FBI and ATF explosives-investigation authorities.

[2] Explosives incidents include: actual or attempted bombings with improvised (i.e., homemade), misused commercial or military, or incendiary explosives devices (e.g., gasoline bombs); recovered explosives and explosives components; render-safe operations to dispose of or destroy recovered explosives; accidental detonations of commercial explosives; threats to bomb; and the use of hoax devices.

Data Center, and Laboratory. We also conducted interviews with staff in the Office of the Deputy Attorney General and the DOJ Office of the Chief Information Officer.

We reviewed policies and procedures for explosives investigations and interagency interactions, Special Agent training records, and explosives-related course curricula. Additionally, we analyzed case data for FY 2003 through mid-FY 2008 from both components' case management systems and the Bombing and Arson Tracking System (BATS).[3] We also developed and sent survey questionnaires to all ATF and FBI Field Division Special Agents-in-Charge, ATF and FBI Special Agent Bomb Technicians, ATF Certified Explosive Specialists, ATF Explosives Enforcement Officers, and the commanders of each accredited state and local bomb squad in the country.

Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

Results in Brief

Our audit found that the FBI and ATF are not adequately coordinating explosives-related operations and have developed similar technical abilities to respond to explosives incidents. Conflicts continue to occur throughout the country regarding which agency is the lead agency for federal explosives investigations and their differing explosives-handling techniques. These disputes can cause confusion for local first responders about the roles of the FBI and ATF during explosives-incident responses and delays in conducting investigations. Disputes between ATF and FBI personnel have affected working relationships, and in some locations have resulted in their racing to crime scenes to determine which agency leads an investigation. The disputes have also resulted in the two agencies declining to work and train together.

In 2004, DOJ attempted to define the roles of the FBI and ATF in explosives investigations and related activities through an Attorney General Memorandum.[4] However, this 2004 memorandum contained ambiguous directives for determining lead agency authority for explosives matters. In addition, DOJ, the FBI, and ATF did not implement the memorandum's procedures for explosives information sharing and database consolidation, training, and laboratory resources.

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[3] BATS is ATF's automated incident reporting system developed to streamline the gathering, retrieving, reporting, and archiving of investigative information of fires and the criminal misuse of explosives.

[4] See Appendix IV for the 2004 Attorney General Memorandum.

A subsequent 2008 Memorandum of Understanding between the FBI and ATF also did not clarify investigative jurisdiction.[5] This memorandum reiterated many of the ambiguous elements of the 2004 Attorney General Memorandum and stated the FBI and ATF, in instances where the motive of an explosives incident (e.g., a criminal act or terrorist incident) is not readily apparent, will jointly investigate the incident pending a definitive determination of intent. However, we found during this review that each agency viewed the criteria articulated in the memorandum differently. In addition, we found that a significant percentage of the FBI and ATF field division managers and explosives specialists we interviewed or surveyed believe their own agency should lead an investigation when the motive of an incident is not readily apparent.[6]

Our audit also found that the FBI and ATF maintain separate explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. The 2004 Attorney General Memorandum directed the consolidation of DOJ's explosives-incident reporting systems within ATF and required DOJ's Chief Information Officer to perform a feasibility study for consolidating all of DOJ's explosives databases. ATF identified BATS to be the DOJ's consolidated explosives-incident reporting system. Although the FBI provided an initial data file of its explosives-incident information to ATF in 2004, it has not reported any subsequent explosives-incident information into BATS. Moreover, ATF did not consolidate its own incident reporting systems into BATS. DOJ's OCIO conducted a feasibility study in November 2004 and concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technologies. However, we found that DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF. As a result, the agencies' separate databases cause a duplication of effort and the inability to accurately determine trends in explosives incidents.

The 2004 Attorney General Memorandum also directed ATF to coordinate all DOJ post-blast explosives training and certify all explosive detection canines deployed by DOJ components. However, the FBI and ATF have not implemented either directive.

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[5] See Appendix VI for the 2008 Memorandum of Understanding.

[6] Between 20 to 30 percent of FBI and ATF field division managers and about 40 percent of the FBI and ATF explosive specialists – Explosive Enforcement Officers, Special Agent Bomb Technicians, and Certified Explosive Specialists – responding to our survey believe their agency has initial lead agency jurisdiction when it is not clear whether an explosives incident is related to terrorism.

The 2004 Memorandum required that an Explosive Training Review Board assess possibilities for consolidating all DOJ explosives-related training and training facilities. DOJ did not convene the board and never examined the feasibility of consolidating all DOJ explosives-training programs and facilities. Instead, the FBI and ATF continue to operate separately their respective explosives-training facilities and programs and they disagree on certain aspects of training – for example, the guidelines for training explosives-detection canines.

The FBI and ATF each have laboratories that perform explosives-related analyses. The 2004 Attorney General Memorandum directed that a Laboratory Review Board be established to examine DOJ laboratory resources and workloads and to make recommendations to the Deputy Attorney General for the most productive allocation of DOJ laboratory resources. Although a Laboratory Review Board was formed in September 2004, it still has not provided a report or recommendations to the Deputy Attorney General.

The issues we found related to investigative jurisdictional disputes, database information consolidation and sharing, and the lack of coordination between the FBI and ATF in explosives-related operations also increase the risk that DOJ will not meet the requirements of Homeland Security Presidential Directive (HSPD)-19, which requires a united, multi-layered strategy to mitigate the threat and prevent the use of explosives by terrorists.

Our report makes 15 recommendations to DOJ, the FBI, and ATF to assist in improving coordination and reducing conflict between the FBI and ATF on explosives investigations and related activities. This audit report contains detailed information on the full results of our review of ATF and FBI coordination of explosives investigations and associated support activities. The remaining sections of this Executive Summary discuss our audit findings in more detail.

Background

Federal law provides the FBI and ATF with concurrent jurisdiction over most explosives incidents. After Congress merged ATF into DOJ, DOJ took steps to direct greater collaboration between the FBI and ATF on explosives-related matters. On March 4, 2004, Attorney General Ashcroft created the Explosives Review Group (ERG) to "identify options and develop recommendations" for the most effective coordination of explosives

investigations.[7] The ERG completed its review and reported its findings and recommendations to the Deputy Attorney General on May 3, 2004.

In the ERG report, the FBI and ATF disagreed on the roles and responsibilities of each agency for responding to and investigating explosives incidents. In the ERG report, the ATF Chairman of the ERG stated that the basis of the disagreement resulted from each component's belief that it would be best suited to coordinate DOJ assets at crime scenes involving explosives. ATF believed it should have primacy because explosives enforcement and related issues are inherent functions of its central mission; FBI considered it to be the lead agency because it should determine whether an explosives incident has a nexus to terrorism making it a matter exclusively for the FBI to investigate. The FBI and ATF recognized that few explosives incidents are terrorism-related.

In response to the ERG's recommendations, on August 11, 2004, DOJ issued an Attorney General Memorandum entitled Coordination of Explosives Investigations and Related Matters (2004 Memorandum) that directed:

- ATF to control the investigation of all explosive incidents, except in: (1) cases in which a Joint Terrorism Task Force (JTTF) determines the incident is related to terrorism, and (2) cases in which the FBI traditionally has exercised jurisdiction;[8]

- all DOJ arson and explosives incident databases to be consolidated into a single ATF-maintained system accessible to all DOJ law enforcement components;

- the DOJ Chief Information Officer to examine the potential for consolidating all DOJ arson and explosives databases;

- DOJ to form a Laboratory Review Board to examine laboratory resources and workloads and develop recommendations for the most productive allocation of DOJ laboratory resources;

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[7] As mandated by the Attorney General's March 4, 2004, Memorandum entitled Review Group Concerning Coordination of Explosives Investigations and Training, the Explosives Review Group (ERG) was comprised of senior officials from ATF (acting as Chair), the FBI, Office of the Deputy Attorney General, Office of Legal Policy, and the Criminal Division. The memorandum specifically identified as issues for ERG review: explosives-related training, explosives investigations, and the maintenance of databases related to explosives.

[8] Examples of crimes within the FBI's traditional jurisdiction that can involve explosives include bank robberies, hate crimes, and organized crime.

- the establishment of an Explosives Training Review Board to review potential consolidation of explosives training programs and facilities, and the FBI and ATF to consolidate all post-blast explosives training budget, curricula, teaching, and scheduling functions under ATF; and

- DOJ components to use only ATF-certified explosives-detection canines.

The 2004 Memorandum also directed the Deputy Attorney General to resolve all issues relating to: FBI-ATF jurisdiction over explosive investigations; consolidation of FBI and ATF post-blast explosives training; and consolidation of arson and explosives databases. The 2004 Memorandum also directed the Deputy Attorney General to oversee the allocation and use of laboratory resources.

Determining Lead Agency Investigative Jurisdiction

The ERG report made no recommendation regarding investigative jurisdiction. The 2004 Memorandum is ambiguous regarding investigative jurisdiction, which has contributed to conflict and ongoing coordination issues between the FBI and ATF. The 2004 Memorandum assigns ATF jurisdiction over all explosives incidents, except for incidents related to terrorism and those within the FBI's "traditional" jurisdiction. As a result, each component can logically claim a right to respond to almost every incident.

One incident identified during the audit highlights how the ambiguous language of the 2004 Memorandum is subject to interpretation and has left the issue of agency investigative jurisdiction unresolved. In September 2004, an FBI field division assumed it had the authority to lead an explosives investigation until it determined that there was no link to terrorism. When the ATF disagreed with this interpretation, the United States Attorney for that jurisdiction sought further clarification of the 2004 Memorandum from the Office of the Deputy Attorney General. According to the United States Attorney, the Office of the Deputy Attorney General responded:[9]

[9] See Appendix VII for the memorandum from the United States Attorney.

> It is more accurate to say that this [the 2004 Memorandum] means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism . . . that "default" jurisdiction is with the ATF.

This response from the Deputy Attorney General's office provides significant guidance concerning which agency DOJ intended to exercise initial lead-investigative authority, at least in circumstances in which jurisdiction is unclear. Such a clarification, however, was never formally incorporated into any policy, protocol, or other written direction provided by the Office of the Deputy Attorney General to other United States Attorneys, the FBI, or ATF.

2004 Attorney General Memorandum Not Being Implemented

In 2006, Deputy Attorney General Paul McNulty reconvened the ERG to assess progress in implementing the 2004 Attorney General Memorandum and to identify specific ways to improve coordination. The ERG reported to Deputy Attorney General McNulty on January 12, 2007, that four of the seven directives had no issues requiring resolution by the Office of the Deputy Attorney General. The ERG report concluded that three of the seven directives within the 2004 Memorandum – those relating to information sharing, training, and explosives canines – either had not been implemented or remained highly contested between the two components.[10] Our audit found that the FBI and ATF are still not coordinating explosives-related operations and activities for these three areas and that the Office of the Deputy Attorney General did not resolve any of these conflicts. In addition, we determined that issues also remain unresolved for two additional directives in the 2004 Memorandum – investigative jurisdiction and laboratories.

Ambiguous 2008 Memorandum of Understanding

After informal prompting by the Office of the Deputy Attorney General, in July 2008 the FBI and ATF signed a Memorandum of Understanding that was issued through the Office of the Deputy Attorney General entitled

[10] The FBI and ATF developed white papers that they attached to the ERG report describing each component's competing position on the three contested issues.

*Protocols for Response to Explosives Related Incidents (*2008 Memorandum).[11] The purpose of the 2008 Memorandum was to clarify the roles and responsibilities of the FBI and ATF during explosives investigations and to encourage a more productive partnership. However, the 2008 Memorandum did not change the criteria for determining lead agency jurisdiction. As shown in the following table, both the 2004 and 2008 memoranda define jurisdiction according to the crime underlying the explosives incident.

Jurisdictional Definitions

2004 Memorandum	2008 Memorandum
ATF shall control the investigation of all explosives events except: • where the incident is terrorism, the JTTF is responsible • where the FBI has traditionally exercised jurisdiction	Coordination of a joint response will be the responsibility of the respective Special Agents-in-Charge: • the agency with responsibility for the underlying felony will assume investigative lead • where the incident is terrorism, the JTTF is responsible

Source: 2004 Memorandum and 2008 Memorandum

The 2008 Memorandum requires the FBI and ATF to undertake a *joint response* during the *initial* phase of an incident. ATF and FBI Special Agents-in-Charge are directed to coordinate such joint responses under the standard that "the agency with the responsibility for the underlying felony will assume investigative lead, as coordinated by the [Special Agents-in-Charge]." The 2008 Memorandum requires joint investigations pending a definitive determination because jurisdiction may not be readily apparent at the outset of a response.

As shown in the following table, however, the results of our survey questionnaires demonstrate that both components' explosives specialists and field management have widely divergent understandings of the 2008 Memorandum's guidance on investigative jurisdiction when a link to terrorism is unclear.

[11] According to the 2008 Memorandum, the Attorney General, Deputy Attorney General, and key representatives from the FBI and ATF developed the memorandum regarding the DOJ response to explosives-related incidents. See Appendix VI for the July 8, 2008, ATF-FBI Memorandum of Understanding.

Interpretations of 2008 Memorandum of Understanding

2008 Memorandum Lead Agency Interpretation	Management		Specialists	
	ATF	FBI	ATF	FBI
FBI leads for all explosives incidents unless and until it is clear no nexus to terrorism exists.	5%	30%	4%	46%
FBI leads unless or until it is clear that only ATF has jurisdiction.	0%	0%	1%	6%
FBI and ATF jointly lead the investigation unless or until a clear nexus to terrorism or another traditional FBI jurisdiction is established.	61%	42%	31%	24%
FBI and ATF Special Agents-in-Charge will determine which agency leads on a case-by-case basis.	17%	21%	20%	16%
ATF leads unless or until a clear nexus to terrorism or other traditional FBI jurisdiction is established.	17%	7%	40%	2%
Don't know	0%	0%	3%	4%
Did not Answer	0%	0%	1%	2%

Source: DOJ Survey Analysis of survey questionnaire responses

Because 17 to 30 percent of field division managers and about 40 percent of the explosives specialists in each agency responding to our survey have diametrically opposed interpretations of the 2008 Memorandum's lead jurisdiction language, we do not believe the memorandum sufficiently clarified the issue. Further, the agencies did not establish any protocols for joint responses as required by the 2008 Memorandum. In addition, the memorandum did not address the areas that the 2007 ERG report identified as needing resolution – information sharing, training, and canine matters.

Component Competition Rather Than Collaboration

Our audit found that explosives investigation coordination between the FBI and ATF is limited and that field divisions of both components sometimes race to be the first federal agency on scene. Disputes have occurred when one agency arrives first and the other agency believes the incident falls within its lead agency authority. These disputes can delay investigations, undermine federal and local relationships, and may project to local agency responders a disjointed federal response to explosives incidents in their area. We were told of incidents resulting in jurisdictional disputes in six of the eight locations we visited, as described below.

Summary of Identified Disputes

Location	Dispute Summary
Baltimore	July 2008 – The FBI encouraged a local bomb squad not to validate a render-safe technique by remaining on scene and later prohibited ATF bomb technicians from participating in FBI trainings.[12]
New York City	March 2008 – ATF attempted to refer a suspect for prosecution for a bombing in Times Square despite an existing FBI case against the suspect in another state.
Phoenix	Nov. 2007 – ATF protested that it was not notified about a pipe bomb found in a truck at the Palo Verde nuclear facility until several hours after the FBI began investigating the incident.
Seattle/Portland	Dec. 2008 – FBI protested a state's attorney's request that ATF conduct an investigation after a bomb blast killed a local bomb technician.
Los Angeles	June 2007 – ATF disputed late notification by the FBI in front of local first responders during an investigation of an explosives magazine blast in the Mojave Desert.
San Diego	September 2007 – ATF disputed an FBI claim that explosives found at a local bridge were consistent with terrorism in front of first responders.

Source: OIG analysis of interview testimony

To determine the extent of recent disputes between the FBI and ATF on explosives matters, we surveyed ATF and FBI management and explosives specialists regarding conflicts occurring in FYs 2007 and 2008. Approximately 20 percent of ATF and FBI management respondents were personally involved in resolving a dispute during this period. For ATF and FBI explosives specialists — personnel more likely to have contact with one another — more than 30 percent of ATF specialists and 40 percent of FBI specialists were involved in a dispute between the FBI and ATF. These disputes primarily involved whether an incident should be classified as terrorism-related and determining lead agency jurisdiction. Other disputes involved differences in evidence collection and handling techniques.

Both ATF and FBI explosives specialists responding to our survey questionnaire agree that disputes delay interviews, postpone investigations, and confuse state and local partners. We found the effect of a dispute may taint the relationship between the components in those field divisions for years afterwards. During our interviews of ATF and FBI specialists in several locations, we found that these personnel had continuing negative opinions of the other agency based on events that happened years earlier. For example, personnel from both components in Seattle described a dispute over an April 2005 fire-bombing of houses under construction in

[12] In render-safe procedures, specialists neutralize unexploded ordnance (including improvised explosive devices) to prevent an uncontrolled detonation.

Lake Sammamish, Washington, as the low point of their relationship, from which they still have not recovered. In this incident, ATF arrived at the scene first and later sent evidence, including a banner claiming responsibility on behalf of the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise – to its laboratory in California. When the FBI arrived on the scene, it asserted that the banner clearly indicated the incident was domestic terrorism. The conflict over investigative authority ensued. FBI eventually assumed investigative responsibility and retrieved the banner so it could be processed in the FBI Laboratory rather than the ATF laboratory.

As shown below, surveys of ATF and FBI explosives specialists indicate the personnel most likely to interact have a poor opinion of the other agency's capabilities and contributions to explosives investigations.

Opinions of Counterparts by FBI and ATF Explosives Specialists

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	9%	13%	82%	77%	9%	10%
Counterpart adds needed resources for obtaining evidence	18%	9%	72%	84%	10%	7%
Neither helps nor hinders	37%	28%	45%	50%	18%	22%
Counterpart duplicates capabilities already on scene	80%	89%	10%	5%	10%	6%
Counterpart differs in scene-investigation methods	65%	76%	15%	14%	20%	10%
Counterpart delays decision-making on scene	74%	80%	9%	8%	17%	12%
Other	2%	8%	0%	0%	98%	92%

Source: DOJ OIG analysis of ATF and FBI explosives specialists surveys

Information Sharing

Our audit also found that the FBI and ATF have not established adequate avenues for information sharing regarding explosives. The components did not effectively consolidate and maintain one distinct explosives-incident reporting database. In addition, although the DOJ's Chief Information Officer performed a feasibility study on consolidating other explosives databases, DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF.

Incident Reporting not Consolidated

The 2004 Memorandum directed the consolidation of all DOJ arson and explosives incident databases, including the FBI's Automated Incident Reporting System (AIRS) and ATF's BATS into a single ATF-maintained database.[13] In 2004 ATF designated BATS as DOJ's single database for the reporting and sharing of explosives incident information. Federal law mandates that all federal agencies report information concerning explosives incidents to DOJ, and by extension to BATS.[14] Reporting, however, is voluntary for state and local agencies.

Inconsistent Reporting

Although the FBI discontinued use of its AIRS database and transferred its AIRS data to the ATF's BATS database in 2004, the FBI has not reported any additional explosives incident information into BATS since this initial data transfer. Likewise, ATF has not consistently reported all its explosives incidents into BATS. Rather the FBI and, to a lesser extent, ATF rely on state and local agencies responding to the same explosives incidents to report information on the incidents to BATS. However, the FBI and ATF do not have processes to ensure that state and local agencies actually report to BATS. In fact, officials from both components told us they were aware of significant under-reporting by state and local bomb squads of their involvement in explosives incidents. By not reporting explosives incidents to BATS and not ensuring that state and local responders reported to BATS, the FBI and ATF have not complied with their reporting requirements and have thereby reduced the utility of BATS.

Instead of requiring explosives specialists to report explosive incidents to BATS, the FBI requires its explosives specialists to report explosives incidents and activities internally to its FD-542 database. From 2004 to 2008, we found 4,454 explosives incidents recorded in the FD-542

[13] See U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases,* Audit Report Number 05-01 (October 2004). An earlier DOJ OIG audit found that DOJ had not efficiently and effectively collected and made available to the federal, state, and local law enforcement community information relating to arson and the criminal misuse of explosives. Specifically, the similar responsibilities of ATF and the FBI in compiling data have resulted in duplication of effort, duplicate reporting of incidents by state and local agencies, and a lack of uniformity in the reporting process.

[14] 18 U.S.C. § 846 (b).

database.[15] FBI managers contend that information in the FD-542 database is used only for internal resource allocation and personnel evaluations, not for statistical or data-mining purposes. Regardless of the FBI's objective in maintaining the FD-542 database, the FBI is not reporting explosives incidents to the single consolidated database maintained by ATF (i.e., BATS) as required by the 2004 Attorney General Memorandum. As a result, information about a significant number of explosives incidents may not be contained in BATS, thereby undermining the utility of this database.

In addition, an internal review by ATF concluded that the majority of its field divisions were not reporting explosives incidents to BATS as required by internal guidelines. ATF's review revealed that 819 explosives incidents were opened in its case management system from March through June 2008, but only 248 cases were reported to BATS.

Ineffective BATS Implementation

The audit found that ATF's efforts to maintain and promote BATS as DOJ's single explosives incident database also suffered due to ineffective efforts to encourage participation by the state and local explosives enforcement community. Our survey of 470 state and local bomb squad commanders revealed that a minority of the squads consistently reported explosives incidents to BATS, and more than half rarely or never report incidents in BATS for the reasons described in the following table.

Reasons for Not Using BATS

Reason	Number of Respondents	Percentage
BATS is difficult to use	55	41%
ATF has not provided any training	32	24%
Already reporting incidents to state database	13	10%
BATS requires too much detail and is time-consuming	36	27%
Not aware of BATS	3	2%
Other	62	47%

Source: OIG analysis of state and local Bomb Squad Commanders survey responses

[15] We were unable to determine the number of explosives cases in which the FBI was involved because the FBI's case management system does not track this data. While that system has a specific case classification code for explosives incidents that code does not account for cases opened as domestic terrorism, international terrorism, or violent crime violations involving explosives.

When asked about the reasons for not using BATS, half of the survey respondents who checked the choice "other" indicated that access issues such as difficulty in obtaining passwords or getting technical assistance prevented them from using BATS. In addition, 41 percent of the state and local bomb squad commanders who responded to our survey indicated that their lack of participation had more to do with the difficulty in using BATS. Further 24 percent indicated a need for BATS end-user training while 27 percent complained that BATS reports required too much information and took too much time to complete.

DOJ Review of Explosives Databases

In November 2004, the DOJ's Chief Information Officer conducted a feasibility study for consolidating all of DOJ's explosives databases, as required by the 2004 Memorandum. The assessment concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technology. In addition to maintaining rival bomb data centers to provide technical information to explosives specialists, the DOJ components also each possess separate databases for managing laboratory forensic reports, incident reporting, and technical explosives-related information.

Explosives Training and Canines

The audit found that the FBI and ATF continue to expand their respective explosives training facilities, run uncoordinated post-blast training programs, and disagree on training guidelines for explosives-detection canines and on render-safe protocols. According to the ATF, it met with the FBI to discuss explosives training issues in the months following the issuance of the 2004 Memorandum as well as in December 2006 and May 2008. However, DOJ never convened the Explosives Training Review Board (Training Board), as required by the 2004 Attorney General Memorandum, and did not examine the feasibility of consolidating all DOJ explosives programs and facilities.

Explosives Training Facilities

One of the objectives of the 2004 Memorandum was to review the feasibility of consolidating DOJ explosives training facilities. However, since the issuance of the memorandum, both the FBI and ATF have expanded their explosives training facilities. The FBI opened a $23 million Hazardous Devices School in 2004 which trains all civilian bomb technicians at the Redstone Arsenal in Huntsville, Alabama. The FBI also completed a Secure Training Facility for $4.8 million in October 2008 and has proposed

$13.1 million for a large-vehicle-born explosives training facility at the Redstone Arsenal.

ATF currently maintains the National Center for Explosives Training and Research (NCETR) in Fort A.P. Hill, Virginia, and the Canine Training and Operations Support Branch located in Front Royal, Virginia. In addition, ATF is constructing an NCETR facility at Redstone Arsenal.[16] ATF has expended $28.5 million on construction of this facility and sought another $41.6 million of non-personnel funding for ranges, classrooms and development costs at the facility. Neither component has made any attempt to consolidate training or instruction in its explosives training facilities.

Explosives Training Programs

The components also have not worked together to establish joint explosives-training priorities – to identify what training is needed, who has the most pressing need for the training, and who can best provide that training. As a result, DOJ does not have a comprehensive approach for providing explosives-related training to federal, state, and local investigators. For example, both ATF and FBI have training requirements for their explosives specialists to re-certify their status at mandatory intervals, but as shown in the following table, both components are behind in re-certification.

Explosives Specialists Not Currently Recertified

Specialist	Total Number	Percent Not Current
ATF Certified Explosives Specialists	241	57%
ATF Explosives Enforcement Officers	26	12%
ATF Special Agent Bomb Technicians	5	0%
FBI Special Agent Bomb Technicians	174	12%

Source: ATF NCETR and FBI HDS as of March 2009

According to ATF, funding for NCETR training has been declining since FY 2004. In FY 2008, the NCETR was able to provide limited explosives training, including only one re-certification course for Certified Explosives Specialists, far fewer than the five or six courses necessary to keep all personnel up-to-date on training. The FBI indicated that scheduling conflicts

[16] In 2006, the conference committee report of Public Law 109-108 directed ATF to plan for the construction of a permanent facility co-located with other law enforcement and federal government entities that provide similar training and research. Plans to construct the new NCETR facility at Redstone were approved by Congress and ground was broken for the main building of the facility in November 2008.

prevented Special Agent Bomb Technicians from attending required re-certification training. However, these specialists are still responsible for explosives missions within their agencies, and public safety necessitates that they obtain adequate training for re-certification.

Explosives Training Disputes

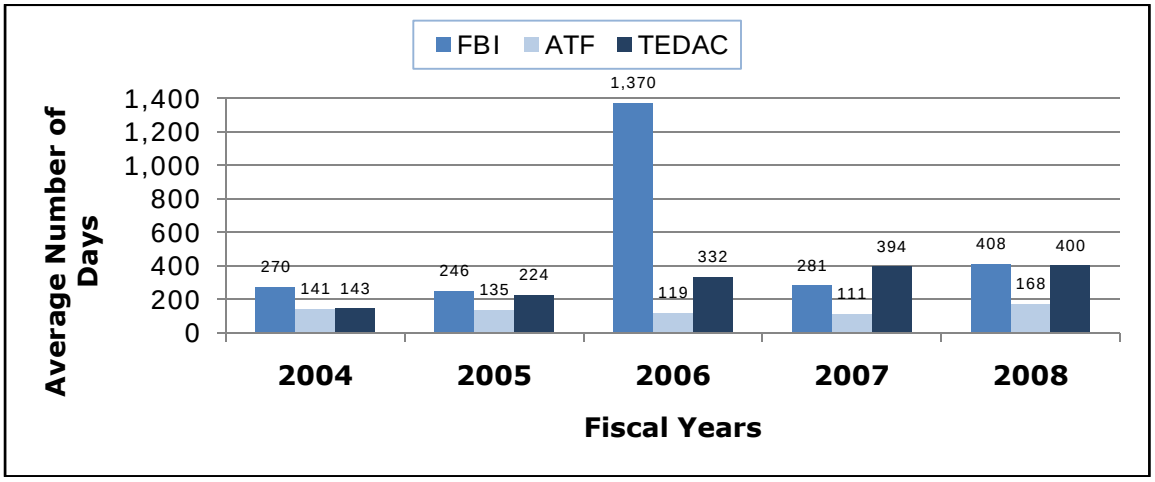
Even though our review of the agencies' training programs confirmed the 2004 ERG report finding that ATF's and FBI's post-blast training is essentially the same, our survey of ATF and FBI explosives personnel indicated that 92 percent of FBI specialists and 83 percent of ATF specialists rarely or never coordinated their post-blast training curricula. In addition, ATF is responsible for certification of all DOJ explosives-detection canines; however, the FBI continues to disagree with ATF on canine certification standards. We also found that DOJ sent conflicting signals to the components, directing that one standard for training canines be administered through ATF, but also funding a working group seeking to adopt a different standard through the FBI and DOJ's National Institute of Justice.

Laboratory Resources

The FBI and ATF each have laboratories that perform forensic analyses on various types of evidence, including explosives evidence. The FBI Laboratory is located in Quantico, Virginia. ATF has laboratories located in Ammendale, Maryland; Walnut Creek, California; and Atlanta, Georgia. Additionally, the FBI and ATF are part of the Terrorist Explosive Device Analytical Center (TEDAC), which is located within the FBI Laboratory in Quantico, Virginia. TEDAC is an FBI-led initiative organized in response to requests from the Department of Defense. It was created in December 2003 to coordinate and manage interagency efforts for gathering and forensically analyzing terrorist Improvised Explosive Devices (IEDs) from war zones in Iraq and Afghanistan. The Director of TEDAC is an FBI employee and the Deputy Director is an ATF employee. Although TEDAC has its own staff and forensic equipment, because they are housed within the FBI Laboratory, dedicated FBI Laboratory personnel and equipment have been used to conduct TEDAC analyses.

We found that the average number of days required to process a laboratory submission in ATF, FBI, and TEDAC laboratories varies significantly, as shown in the chart below.

Laboratory Explosives Submission Turnaround Times for Fiscal Years 2004 through 2008[17]



Source: FBI Laboratory and ATF Laboratory

The 2004 Attorney General Memorandum required a Laboratory Review Board to examine DOJ's laboratory resources and workloads, including the effect of TEDAC, and make recommendations to the Deputy Attorney General for the most productive allocation of DOJ laboratory resources. However, we found no evidence that the Board fulfilled this requirement. Further, because TEDAC and the FBI Laboratory share resources, the large number of TEDAC submissions may adversely affect the turnaround times in the FBI Laboratory.

Homeland Security Presidential Directive-19

Shortly after the ERG issued its report in January 2007, President Bush signed Homeland Security Presidential Directive-19 (HSPD-19) on February 12, 2007, which required executive branch agencies to develop, under the leadership of the Attorney General, a layered and unified approach to aggressively deter, prevent, detect, protect, and respond to terrorists' evolving efforts to employ explosives in the United States. The resulting approach was documented in the *National Strategy for Combating Terrorist Use of Explosives in the United States* (National Strategy), which the President signed on December 20, 2007.

To transform the National Strategy's 36 recommendations into specific and measurable actions, the Attorney General, in coordination with the heads of other agencies, developed the *HSPD-19 Implementation Plan*. One

[17] According to the FBI, FY 2006 average number of days significantly varied from the prior and following fiscal years due to the closure of the Pentagon bombing submissions.

key action outlined in the Implementation Plan was to identify and document the specific roles and responsibilities of departments and agencies through all phases of incident management for terrorist use of explosives.

Additionally, the HSPD-19 Implementation Plan established an HSPD-19 Implementation Joint Program Office (JPO) led by the FBI in partnership with other agencies.[18] According to the FBI, the JPO was designed specifically to bring resolution to issues not previously resolved through other mechanisms. For example, the FBI noted that the Department of Homeland Security (DHS) and DOJ will co-lead an interagency advisory board responsible for developing uniform standards for explosives-detection canine teams, including annual certification and recurring proficiency training. DHS and DOJ, building on the previous ATF National Canine Advisory Board, created the National Explosives Detection Canine Advisory Board, which includes participants from major professional canine associations. The FBI believes that as a result of the creation of this advisory board for the first time, there is consensus across the explosives-detection canine community that national training and performance standards are needed.

However, we found that the JPO was not designed to function as the deciding authority on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to be a formalized, interagency discussion forum. Unless there is consensus among the agencies involved the JPO cannot force settlement between components. Therefore, while the JPO and its members may be used to assess and reflect community opinion and advise on priorities, individual agencies will continue to make programmatic and budgetary decisions independently.

In our judgment, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in handling explosives incidents and related matters, competition between the components on fundamental issues involving explosives investigations and lead agency authority will likely continue and impede the progress of HSPD-19 implementation.

Recommendations

Our report makes 15 recommendations to DOJ, the FBI, and ATF to assist in improving coordination and reducing conflict between the FBI and ATF on explosives investigations and related activities. We believe it is critical that DOJ issue a new directive to clearly define lead investigative authority between the FBI and ATF and require coordination of investigative

[18] The JPO, which meets monthly, had its inaugural meeting on April 8, 2009.

actions when it is unclear at the outset as to which of the agencies has lead investigative authority. Additionally, these recommendations include developing protocols on joint investigations for explosives incidents, implementing new policies to ensure both federal reporting to the BATS and development of a more user-friendly system, as well as agreeing on standardized post-blast curricula, render-safe procedures, and canine training standards.

EXPLOSIVES INVESTIGATION COORDINATION BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

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CHAPTER I: INTRODUCTION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) share jurisdiction for investigating the criminal use of explosives. Since Congress specifically provided the FBI and ATF with concurrent jurisdiction to investigate explosives crimes, both agencies have developed similar, even parallel, operational and technical abilities, such as responding to and investigating explosives incidents, collecting and analyzing intelligence and forensic evidence, and training their employees and other law enforcement agency partners.[1] The framework for coordinating explosives-related activities between the FBI and ATF is set out in several agreements signed by the Directors of the FBI and ATF, by mandates from the Attorney General, and most recently in a February 2007 directive issued by President Bush.

Concurrent Legal Authority Over Explosives Crimes

The FBI has traditionally investigated several federal crimes that may be committed with explosives, such as bank robbery, hate crimes, and organized crime. In 1990, the Attorney General formally assigned the FBI lead responsibility for investigating all crimes for which it has primary or concurrent jurisdiction and which involve domestic terrorist activities.[2] By statute ATF, as part of the Department of the Treasury (Treasury), was assigned primary jurisdiction governing the importation, manufacture, distribution, and storage of explosive materials and enforcement of federal explosives laws. In 1982, ATF was also given expanded authority to

[1] Explosives incidents include actual or attempted bombings with improvised (i.e., homemade), misused commercial or military, or incendiary) explosives devices (e.g., gasoline bombs); recovered explosives and explosives components; render-safe operations to dispose or destroy recovered explosives; accidental detonations of commercial explosives; and threats to bomb and the use of hoax devices.

[2] 18 U.S.C. § 2332b (f) and 28 C.F.R. § 0.85. Section (l). Prior to 1990, the FBI had already been investigating terrorist bombings under a series of Presidential directives, such as a September 6, 1939, directive on subversive activities and the 1982 National Security Decision Directive-30 entitled *U.S. Policy on Counterterrorism*. See Appendix III for a more detailed description of FBI and ATF explosives-investigation authorities.

investigate crimes of arson involving not only explosives but also accelerants such as gasoline and other flammable liquids.[3]

In 2002, the Homeland Security Act, among other things, transferred ATF enforcement functions from Treasury to the Department of Justice (DOJ).[4] The Homeland Security Act and the associated Safe Explosives Act of 2002 state that ATF is responsible for investigating criminal and regulatory violations of the federal firearms, explosives, arson, alcohol, and tobacco smuggling laws and any other investigation of violent crime or domestic terrorism that is delegated to ATF by the Attorney General.[5]

The FBI and ATF currently investigate very similar criminal activities involving explosives — differing mainly by the motive of the perpetrator or the location of the crime. The FBI views explosives use as one of many types of weapons criminals wield in furtherance of a terrorist act or another underlying crime, defining its jurisdiction by the criminal motive. ATF, on the other hand, views its explosives jurisdiction as covering any improper use of explosives regardless of motive, defining its jurisdiction based on the fact that an explosive is intended to be or has been used to commit a crime. The concurrent authorities and differing rationale over jurisdictional decisions have resulted in conflicts between the FBI and ATF concerning which agency has lead investigative authority over specific explosives incidents.

Agreements to Divide Concurrent Jurisdiction

To address their concurrent investigative authority over explosives crimes, the FBI and ATF have a history of attempting to establish exclusive areas of jurisdiction. Such divisions of labor have resulted in relatively fine distinctions justifying which agency will respond to similar explosives incidents. For instance, ATF's location within Treasury for much of the last

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[3] The Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §§ 921 et seq. as amended in the Gun Control Act of 1968, 26 U.S.C. §§ 5841 et seq., prohibited unlicensed trade in firearms and explosives. The Organized Crime Act of 1970, at 18 U.S.C. §§ 842 and 844, covers unlawful acts and penalties. 18 U.S.C. § 843 regulates the explosives industry. 18 U.S.C. § 846(b) authorizes the establishment of a national repository of information on incidents involving arson and suspected criminal misuse of explosives. The National Firearms Act, Title 26 U.S.C. Chapter 53, includes criminal provisions for the unlawful manufacture, transfer, and possession of destructive devices, including explosives or incendiary bombs, grenades, and mines.

[4] 28 U.S.C. § 599A (2008).

[5] *The Homeland Security Act* is Pub. L. 107-296, and Subtitle C, Title XI, is the *Safe Explosives Act*.

37 years resulted in the FBI handling all explosives cases involving federal buildings except for Treasury facilities, which ATF handled.[6]

1973 Memorandum of Understanding

In 1973, the FBI, ATF, and United States Postal Service signed a Memorandum of Understanding (MOU) that attempted to divide enforcement activities for explosives-related crimes among these agencies. This memorandum divided jurisdiction based mainly on differences in the location of bombings but contained overarching exceptions based on the motives of perpetrators, such as terrorism.

According to the 1973 MOU, ATF would be the lead investigative agency over regulatory violations (such as loss or theft of commercial explosives), the interstate transportation of explosives with unlawful intent (other than through the mail), explosives use against property used in or affecting commerce (such as bombing stores or warehouses), explosives possession or use directed at Treasury buildings, and any use of explosives during the commission of another felony where ATF had jurisdiction of the underlying felony (such illegal gun dealers using explosives).

On the other hand, the 1973 MOU provided that the FBI would be the lead investigative agency for arson and bomb threats communicated by phone or mail, for the use or attempted use of explosives to damage property owned or used by the U.S. government (except Treasury facilities), for cases when explosives were used in the commission of another felony for which the FBI had primary jurisdiction (such as bank robbery), and for the unauthorized possession of explosives in a building used by the U.S. government (except Treasury facilities). The memorandum also permitted the FBI to assert the lead on any explosives use directed against diplomatic functions, college campuses, or which appeared at the outset to have been perpetrated by terrorist or revolutionary groups or individuals.

Fair Oaks Accords

In 2000, five ATF and five FBI Special Agents-in-Charge on a Joint Field Managers Working Group issued a report that recommended coordination actions be formalized into a joint investigation protocol for use

[6] Although the U.S. Postal Service also reserved lead agency jurisdiction for explosives incidents in its facilities under the 1973 MOU, this report refers only to ATF and FBI divisions of authority.

at the scene of an explosives incident.[7] The resulting report, also known as the "Fair Oaks Accords," was specific on when joint-lead agency cases should be used, which agency would be the lead agency in other instances, and in what types of bombings each agency's laboratory would be used. For example, the Fair Oaks Accords recommended a joint "50/50" approach for bombings related to women's reproductive health care providers, houses of worship, colleges and universities, and environmental and animal rights movements. For these four areas, the investigative strategies, search warrants, pursuit of leads, and media were to be jointly managed by ATF and FBI agents. In addition, the agreement recommended that evidence from explosives crime scenes involving women's reproductive health care providers and houses of worship would be sent to ATF laboratories, while evidence from colleges and universities and environmental and animal rights movements would be sent to the FBI Laboratory. However, the Fair Oaks Accords and its recommendations were not implemented.

Attorney General Forms the Explosives Review Group

In March 2003, about a month after joining DOJ, ATF officials proposed that the information and publication functions of the FBI's Bomb Data Center be merged into and managed by ATF. It also recommended that ATF be designated as DOJ's primary responding agency to all explosives scenes, and be allowed to coordinate DOJ assets for the entire on-scene investigation regardless of the motive, including terrorism. This proposal was not implemented, and DOJ took no formal steps to redefine responsibilities in explosives incidents for the subsequent year.

On March 4, 2004, the Attorney General Ashcroft created the Explosives Review Group (ERG) to develop recommendations regarding the most effective coordination of explosives investigations between the FBI and ATF.[8] The ERG completed its initial review and reported its findings and recommendations to the Deputy Attorney General on May 3, 2004. ATF chaired the ERG and reported that, with respect to jurisdiction, the majority of bombings in the United States have no link to terrorism, and that when

[7] The July 18, 2000, Working Group Report recommended joint response and common ownership of crime scenes, immediate joint notification, fellowship exchanges of laboratory personnel, joint crime scene processing standards, specific attributes of joint investigations, and delineation of applicable types of incidents.

[8] As mandated by the Attorney General's March 4, 2004, Memorandum entitled Review Group Concerning Coordination of Explosives Investigations and Training, the Explosives Review Group (ERG) was comprised of senior officials from ATF (acting as Chair), the FBI, Office of the Deputy Attorney General, Office of Legal Policy, and Criminal Division. The Memorandum identified as issues for ERG review explosives-related training, explosives investigations, and the maintenance of databases related to explosives.

terrorism was indicated all available resources necessary would be used to fully respond. However, the FBI and ATF did not reach agreement on many issues, such as the role each component should have in explosives investigations when the motive is not clear. Further, the FBI advised the chair of the ERG that it did not agree with the report as drafted and submitted an alternative report highlighting what it believed were the areas of agreement. Although the FBI did not explain in its report why the two agencies could not come to an agreement, the ERG Chairman described in the report the basis of the disagreement as follows:

- Each agency believes it is best suited to coordinate DOJ assets at the crime scene: ATF because explosives and fire investigation is an inherent function of its primary mission and because of the strengths of its specialized positions, and the FBI because of its mandate to detect and prevent terrorism.

- The FBI believes it is appropriate to treat all incidents or threats involving explosives, destructive devices, firearms, or arson as potential terrorism until the best available information determines otherwise and that only the FBI can determine if an incident is related to terrorism.

2004 Attorney General Memorandum

In response to the ERG's report, on August 11, 2004, Attorney General Ashcroft issued a memorandum entitled Coordination of Explosives Investigations and Related Matters (2004 Memorandum). This memorandum directed:

- ATF to control the investigation of all explosives incidents, except in: (1) cases in which a Joint Terrorism Task Force (JTTF) determines the incident is related to terrorism, and (2) cases in which the FBI traditionally has exercised jurisdiction;[9]

- all DOJ arson and explosives incident databases to be consolidated into a single ATF-maintained system and accessible to all DOJ law enforcement components;

- within 90 days, the DOJ Chief Information Officer to examine and report to the Deputy Attorney General on the feasibility of consolidating all DOJ arson and explosives databases;

[9] Examples of crimes within the FBI's traditional jurisdiction that can involve explosives include bank robberies, hate crimes, and organized crime.

- DOJ to form a Laboratory Review Board to examine laboratory resources and workloads and develop recommendations for the Deputy Attorney General;

- the FBI and ATF to consolidate all post-blast explosives training budget, curricula, teaching, and scheduling functions under ATF and, as soon as practicable, require that only ATF-certified explosives-detection canines be used;

- all DOJ personnel engaged in or related to post-blast explosives training to remain with their respective agencies and continue to provide training as they did prior to consolidation; and

- the FBI and ATF to organize an Explosives Training Review Board to report to the Deputy Attorney General on the feasibility of consolidating DOJ's explosives training programs and facilities.[10]

The 2004 Memorandum also stated that the Deputy Attorney General would resolve all issues relating to jurisdiction over explosives investigations, post-blast explosives training consolidation, and the consolidation of arson and explosives databases as well as direct the allocation and use of laboratory resources. The 2004 Memorandum did not reference the 1973 MOU to either incorporate or supersede this agreement.

2008 Memorandum of Understanding

Despite the direction provided in the Attorney General's 2004 Memorandum, the FBI and ATF continued to pursue separate investigations; develop uncoordinated strategies and priorities; and operate separate information systems for communication, reporting, and performance measurement. After informal prompting by the Office of the Deputy Attorney General, ATF and the FBI signed another MOU on July 8, 2008, entitled Protocols for Response to Explosives Related Incidents (2008 Memorandum).[11] According to the memorandum, ATF and FBI Special Agents-in-Charge are required to coordinate where the motive of an explosives incident (criminal act or terrorist incident) is not readily apparent. The 2008 Memorandum directs that the investigation proceed jointly and vigorously with key decisions made in a timely and collaborative manner, thereby encouraging joint investigations pending a definitive determination of intent. Additionally, the 2008 Memorandum states that the agency with

[10] See Appendix IV for the 2004 Attorney General Memorandum.

[11] See Appendix VI for the 2008 Memorandum of Understanding.

the responsibility for the underlying felony will assume the investigative lead and that FBI and ATF Special Agents-in-Charge will determine jurisdiction in the best interest of public safety and law enforcement.

Homeland Security Presidential Directive-19

A government-wide review of strategies to prevent terrorist bombings on American soil also affected the jurisdictional issues between the FBI and ATF. On February 12, 2007, President Bush signed Homeland Security Presidential Directive-19 (HSPD-19), which required executive branch agencies to develop, under the leadership of the Attorney General, a layered and united approach to aggressively deter, prevent, detect, protect, and respond to terrorists' evolving efforts to employ explosives in the United States. A united approach was contained in the *National Strategy for Combating Terrorist Use of Explosives in the United States* (National Strategy), which the President signed on December 20, 2007. The National Strategy contained 36 recommendations to improve federal efforts to combat potential terrorist attacks using explosives. To implement the National Strategy, the Attorney General, in coordination with the Secretaries of Defense and Homeland Security and the heads of other federal agencies, developed an *Implementation Plan*.

One key action outlined in the Implementation Plan was the identification and documentation of the specific roles and responsibilities of departments and agencies through all phases of incident management pertaining to terrorist use of explosives, from prevention and protection through response and recovery. Therefore, coordination of DOJ explosives-related operations, primarily those of the FBI and ATF, is required to comply with the HSPD-19 Implementation Plan.

Parallel Explosive Capabilities

A major function of the FBI and ATF explosives programs is to assist the 471 accredited state and local bomb squads located throughout the United States. These local bomb squads are usually the first responders to explosives incidents and are primarily responsible for the "render-safe procedures" on explosives.[12] The FBI and ATF provide training, equipment, and assistance to state and local bomb squads, when requested, through FBI

[12] In render-safe procedures, specialists neutralize unexploded ordnance (including improvised explosive devices) to prevent an uncontrolled detonation.

and ATF Special Agent Bomb Technicians (SABT), ATF Explosives Enforcement Officers (EEO), and ATF Certified Explosives Specialists (CES).[13]

SABTs are investigators trained at the FBI's Hazardous Devices School who can assist local bomb squads in render-safe procedures and provide training to state and local responders.[14] As of May 2009, ATF had 5 full-time SABTs and the FBI had 174 SABTs, of which 30 were dedicated full-time to this role. Explosive Enforcement Officers are generally former military explosives ordnance disposal specialists (not Special Agents) authorized to render-safe explosives or incendiary devices, conduct technical examinations to make destructive device determinations, and assist in training. Certified Explosive Specialists are ATF Special Agents trained in post-blast crime scene investigations and explosives handling, but they do not perform render-safe procedures.[15] ATF had approximately 241 CESs and 27 certified EEOs as of March 2009.

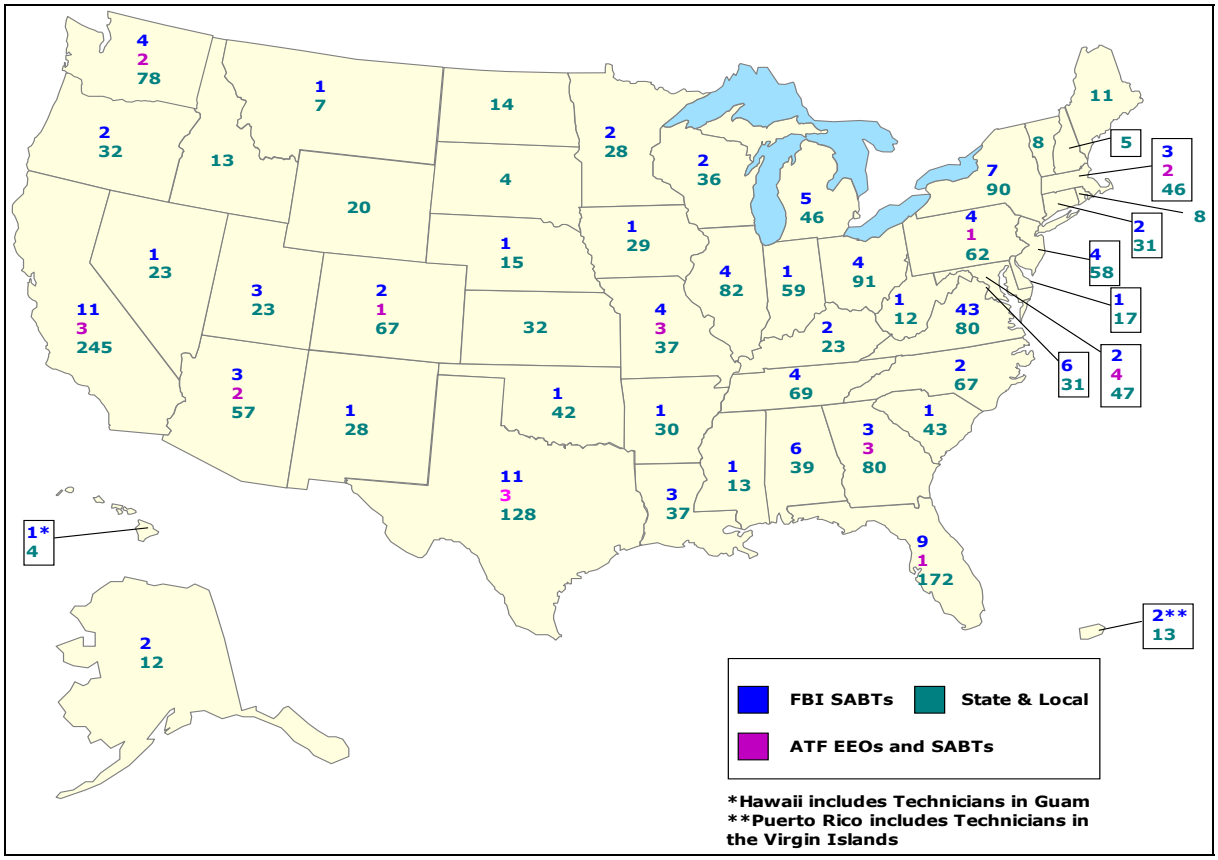
As shown in Exhibit 1-1, certified state and local bomb technicians are located in all 50 states, ATF EEOs in 11 states, and FBI SABTS in 42 states.

[13] Other specialists include explosives-detection canine handlers and forensic scientists such as chemists, metallurgists and technical experts who provide laboratory analysis of explosives, destructive devices, accelerants, and blast or arson debris submitted by investigators.

[14] The FBI manages the administration and funding for the Hazardous Devices School, the training academy for all civilian bomb technicians, which is operated by the U.S. Army Ordnance Munitions and Electronics Maintenance School at Redstone Arsenal in Huntsville, Alabama.

[15] In addition, each agency organizes special units, such as the FBI's Evidence Response Team and the ATF's National Response Team, which respond to major incidents.

Exhibit 1-1: Distribution of Civilian, ATF, and FBI Bomb Technicians as of May 1, 2009



Source: OIG analysis of FBI Hazardous Device School data

Since the 471 accredited state and local bomb squads throughout the country are the primary first responders to explosives incidents, much of the federal role assisting in post-blast evidence collection or evidence analysis does not require render-safe certification, except perhaps where local bomb squads are scarce.

OIG Audit Approach

This OIG audit reviewed the DOJ oversight and ATF and FBI coordination of explosives investigations and associated support activities including information technology, training, and laboratory analysis from October 2002 to April 2009. The objective of this audit was to evaluate the level of coordination between the FBI and ATF in explosives investigations and related activities, including:

1. the effectiveness of current protocols to determine lead agency jurisdiction on investigations;

2. the extent of database consolidation and information sharing;

3. the degree of coordinated training; and

4. the use of laboratory resources for explosives analysis.

To conduct this audit, we reviewed explosives case data from the FBI and ATF's case management systems from fiscal year (FY) 2003 through March 2008. We also reviewed relevant Special Agent training records, explosives-related course curricula, and policies or procedures regarding explosives investigations and interagency interaction. We conducted interviews of personnel in the Office of Deputy Attorney General and Office of the Chief Information Officer and with more than 100 ATF and FBI employees located at each agency's headquarters and selected field divisions.

As part of this audit, we sent surveys to all ATF and FBI field division Special Agents-in-Charge, FBI SABTs, ATF CESs, ATF EEOs, and the commanders of each accredited state and local bomb squad in the country.[16] As presented in Exhibit 1-2, we received responses to our survey questionnaire from over 60 percent of all DOJ personnel and over 50 percent of the state and local bomb squad commanders.

Exhibit 1-2: Response Rates to OIG Survey Questionnaire

Surveys	Number Surveyed	Number of Respondents	Response Rate
ATF Management	25	18	72%
FBI Management	69	47	68%
FBI Special Agent Bomb Technicians	194	121	62%
ATF Special Agent Bomb Technicians, Certified Explosives Specialists and Explosives Enforcement Officers	285	180	63%
State and Local Bomb Squad Commanders	470	239	51%

Source: Analysis of OIG survey data

[16] The FBI supplied the names and addresses for FBI management, SABTs, and state and local bomb commanders. ATF provided the names and addresses for ATF management and its CES and EEO personnel.

Appendix I contains a more detailed description of our audit objective, scope, and methodology. The following chapters provide our findings, conclusions, and recommendations.

CHAPTER II: DETERMINING LEAD AGENCY JURISDICTION

Since ATF's merger into DOJ in January 2003, the FBI and ATF have continued to carry out criminal explosives investigations independently of each other. DOJ issued in 2004 ambiguous directives regarding the division of labor for explosives and related activities without establishing a framework for resolving issues at the scene of the incident. Additionally, both ATF and the FBI have not conceded their initial positions of seeking lead authority in all explosives investigations, and consequently disputes between the components over leading investigations and different render-safe procedures continue to occur throughout the country. These disputes adversely affect the agencies' working relationships and can confuse local agency first responders. The absence of a coordinated federal approach can also hinder DOJ's ability to effectively respond, investigate, and prevent explosives crimes.

2004 Attorney General Memorandum Not Implemented

On November 14, 2006, more than 2 years after the 2004 Memorandum was issued, Deputy Attorney General Paul McNulty reconstituted the Explosives Review Group (ERG) to assess the need to establish or clarify operational protocols for improving the coordination of explosives incident investigations. The ERG reported to Deputy Attorney General McNulty on January 12, 2007, that three of the seven directives within the 2004 Memorandum – information sharing, training, and explosives canines – either had not been implemented or remained highly contested between the two components. In addition, the FBI and ATF developed white papers that they attached to the ERG report describing each component's position on these three issues.[17]

Our audit found that the FBI and ATF are still not coordinating explosives-related operations and activities for the three areas identified by the ERG report. In addition, as identified in Exhibit 2-1, we determined that issues also remain unresolved for two additional directives in the 2004 Memorandum – investigative jurisdiction and laboratories.

[17] See Appendix V for the ERG's January 12, 2007, memorandum.

Exhibit 2-1: 2004 Memorandum Requirements Issues Identified as Unresolved and Summary of ATF and FBI White Paper Positions

Topic	Unresolved Issues		White Paper Positions	
	ERG Report	OIG Audit	FBI	ATF
Investigative Jurisdiction		√	Not discussed in white paper	Not discussed in white paper
Information Sharing (See Chapter III)	√	√	Due to the FBI's counterterrorism mission, FBI Bomb Data Center should represent the U.S. internationally, and ATF should not use Bomb Data Center name.	ATF should be the sole Bomb Data Center.
Training (See Chapter IV)	√	√	The FBI should continue to teach explosives and post-blast training with a domestic and international terrorism perspective. The language and directions related to post-blast training in the Attorney General Memo should be amended.	ATF should serve as the primary DOJ component to develop and provide comprehensive training programs for fire and explosives investigation. ATF should administer the explosives portion of the Hazardous Device School currently administered by FBI at Redstone Arsenal in Huntsville, Alabama.
Canines (See Chapter IV)	√	√	DOJ components should use only canines that have met *Scientific Working Group on Dogs and Orthogonal Detection Guidelines* Certification. The FBI should continue its joint training initiative on peroxide explosives scent training.	All DOJ explosives detection canines will be procured, trained, and certified by ATF. Any training related to explosives-detection canines sponsored, coordinated, or presented by DOJ components shall be coordinated through ATF.
Laboratories (See Chapter V)		√	Not discussed in white paper	Not discussed in white paper

Source: 2007 Explosives Review Group report, OIG audit, and ATF and FBI white papers

Some of the most significant language of the 2004 Memorandum involves the conflict resolution authority of the Deputy Attorney General. However, we determined that over a 4-year period and despite the ERG report noting significant unresolved issues, the Office of the Deputy Attorney General did not exercise its authority to resolve the conflict, particularly in the five areas we identified in Exhibit 2-1.[18]

While the 2007 ERG report made no recommendations regarding investigative jurisdiction, we believe the 2004 Memorandum is ambiguous as to investigative jurisdiction, which has contributed to conflict and continuing coordination issues. The 2004 Memorandum states that ATF controls the investigation of all explosives incidents, except for incidents related to terrorism and "traditional" FBI jurisdiction.[19] As a result, each component can logically claim a right to respond to almost every incident. The ERG report noted that jurisdictional disagreements arose due to the difficulty in establishing the motive when an incident occurred, but disputes were worked out in the field. We found the ambiguity has resulted in disagreements that required ATF and FBI field division management and agency headquarters involvement to resolve.

One example identified during our audit highlights how the language used in the 2004 Memorandum is unclear and open for interpretation. In September 2004, an FBI field division assumed it had the authority to lead explosives investigations until it determined whether there was a link to terrorism. When the ATF disagreed with this interpretation, the United States Attorney for that jurisdiction sought further clarification of the 2004 Memorandum from the Office of the Deputy Attorney General. According to the United States Attorney, the Office of the Deputy Attorney General responded:[20]

[18] Between 2004 and 2009, there have been four different confirmed Deputy Attorneys General. Several officials from the ATF and FBI stated that after Deputy Attorney General Comey left office in 2005, leadership from the Office of the Deputy Attorney General on ATF and FBI coordination diminished greatly.

[19] As discussed in Appendix III, the FBI has broad authority over many crimes that could involve explosives.

[20] See Appendix VII for the memorandum from the United States Attorney.

> It is more accurate to say that this [the 2004 Memorandum] means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism . . . that "default" jurisdiction is with the ATF.

This response from the Deputy Attorney General's office provides significant guidance as to which agency DOJ intended to exercise initial lead-investigative authority, at least in circumstances where jurisdiction is unclear. Such a clarification, however, was never formally incorporated into any policy, protocol, or other written direction provided by the Office of the Deputy Attorney General to other United States Attorneys, the FBI, or ATF.

We believe that clear and specific direction is needed from DOJ to eliminate the ambiguity in the 2004 Memorandum and the continuing conflicts and non-cooperative practices between the FBI and ATF in areas where the two agencies have exhibited an inability to reach agreement. DOJ must also oversee ATF and FBI explosives-related efforts to ensure these agencies put a clarified policy into practice.

Ambiguous 2008 Memorandum of Understanding

In an effort to clarify roles and responsibilities and to facilitate a more productive partnership, in July 2008 the FBI and ATF signed a Memorandum of Understanding issued by the Office of the Deputy Attorney General entitled Protocols for Response to Explosives Related Incidents.[21] The 2008 Memorandum was issued 18 months after the 2007 ERG report and more than 4 years after the Attorney General's 2004 Memorandum. The purpose of the 2008 Memorandum was to resolve any operational concerns at the outset of an explosives incident. However, this agreement did not address the areas that the 2007 ERG report identified as needing resolution, including information sharing, training, and canine matters.[22]

The 2008 Memorandum, as noted in Exhibit 2-2, also does not resolve the dispute between the FBI and ATF over lead-agency authority and does not clarify related language in the 2004 Memorandum. Instead, the 2008 Memorandum of Understanding requires that during the *initial response* phase to an incident, the FBI and ATF Special Agents-in-Charge will

[21] According to the 2008 Memorandum, the Attorney General, Deputy Attorney General, and key representatives from the ATF and FBI developed the memorandum regarding the DOJ response to explosives-related incidents.

[22] See Appendix VI for the July 8, 2008, ATF-FBI Memorandum of Understanding.

coordinate a *joint response* under the ambiguous standard that "the agency with the responsibility for the underlying felony will assume investigative lead, as coordinated by the [Special Agents-in-Charge]." The memorandum also notes jurisdiction may not be readily apparent at the outset and encourages joint investigations pending a definitive determination.

Exhibit 2-2: Jurisdiction Definitions

2004 Memorandum	2008 Memorandum
ATF shall control the investigation of all explosives events except: • where the incident is terrorism, JTTF is responsible • where FBI has traditionally exercised jurisdiction	Coordination of a joint response will be the responsibility of the respective Special Agents-in-Charge: • the agency with responsibility for the underlying felony will assume investigative lead • where the incident is terrorism, JTTF is responsible

Source: 2004 Memorandum and 2008 Memorandum

Both the 2004 and 2008 definitions of the components' lead authority are similar in that they define jurisdiction by the motive of the incident. However, in practice the motive underlying an explosives incident may not be readily apparent and it may take time to determine whether the incident is accidental or a criminal or terrorist act. Therefore, the 2008 Memorandum did not bring any clarity to the determination of jurisdiction; instead, by making Special Agents-in-Charge responsible for coordinating a joint response, the risk increased that DOJ will end up with different interpretations in many of the 25 ATF and 56 FBI field divisions rather than a unified DOJ position.

In fact, we found that the guidance in the 2008 Memorandum has been subject to wide differences in interpretation that undermine coordination between the FBI and ATF. As part of our survey of ATF and FBI explosives specialists and field management, we asked about their understanding of lead agency jurisdiction under the 2008 Memorandum. As shown in Exhibit 2-3, the ATF and FBI specialists and management interpret the memorandum differently. We found that 17 to 30 percent of field division managers and about 40 percent of the specialists in each agency responding to our survey have diametrically opposed interpretations, believing their agency has the initial, default jurisdiction.

Exhibit 2-3: Interpretations of 2008 Memorandum

2008 Memorandum Lead Agency Interpretation	Management		Specialists	
	ATF	FBI	ATF	FBI
FBI leads for all explosives incidents unless and until it is clear no nexus to terrorism exists.	5%	30%	4%	46%
FBI leads unless or until it is clear that only ATF has jurisdiction.	0%	0%	1%	6%
FBI and ATF jointly lead the investigation unless or until a clear nexus to terrorism or another traditional FBI jurisdiction is established.	61%	42%	31%	24%
FBI and ATF Special Agents-in-Charge will determine which agency leads on a case-by-case basis.	17%	21%	20%	16%
ATF leads unless or until a clear nexus to terrorism or other traditional FBI jurisdiction is established.	17%	7%	40%	2%
Don't know	0%	0%	3%	4%
Did not Answer	0%	0%	1%	2%

Source: DOJ Survey Analysis of survey questionnaire responses

Lack of a Coordinated Explosives Response Protocol

We also found that the FBI and ATF do not have investigative policies or a joint response protocol for coordinating responses to explosives threats and incidents as required by the 2008 Memorandum.[23]

The FBI Manual of Investigations Operations and Guidelines (MIOG) regarding bombing matters reiterates the jurisdiction language of the 1973 Memorandum of Understanding without mentioning the 2004 Memorandum or providing any standards for collaboration with ATF. Some examples of MIOG direction that may contribute to ineffective coordination with ATF are:[24]

- FBI MIOG recognizes that ATF has jurisdiction over the unlawful manufacture, possession, or transfer of destructive devices and the unlawful importation, manufacture, distribution, or storage of explosives, but it cautions that agents should be alert for such violations and investigative jurisdiction should be assumed by the FBI if they arise during any substantive FBI investigation.

[23] Although the components commissioned ATF and FBI Special Agents in Charge to draft more specific joint response protocols in 2000, called the Fair Oaks Accords, these procedures requiring joint management of certain explosives scenes were never adopted.

[24] The excerpts are from FBI MIOG; Part 1, 174-4,"Other Violations," and Part 1, Section 160-2, "Policy and Procedure," paragraph (5).

- According to DOJ investigative guidelines, ATF jurisdiction does not apply to instances where the FBI had investigative jurisdiction in a separate substantive area prior to the enactment of the Federal Bombing Statute.

- FBI policy requires notification to headquarters immediately by electronic communication of any attempts by ATF to infringe upon FBI jurisdiction under the Federal Train Wreck Statute.

The ATF's policy manual — the Order on Investigative Procedures — also does not address coordination of joint explosives investigations with the FBI. ATF is revising the order and plans to re-issue it in FY 2009.[25] The draft version of the new order specifies that the ATF investigative focus should be violations within ATF jurisdiction, but that "incidents in which ATF becomes involved initially may ultimately fall within the jurisdictional responsibility of other agencies." The new protocol will advise ATF personnel to "be alert to ATF jurisdictional responsibility" but seek to work jointly with agencies having primary jurisdiction following three guidelines:

- The primary ATF case agent must promptly report related violations to the duty agent for the agency having investigative jurisdiction and furnish all relevant information, "unless such action could or would jeopardize an ongoing investigation."

- Where the responsible agency wants to assume control of the investigation, ATF will offer assistance and cooperation.

- Special Agent-in-Charge approval is required before joint investigations.[26]

However, the revised ATF order does not provide specific guidance on situations where the issue of lead jurisdiction is initially unclear.

[25] As of July 1, 2009, the revised ATF order has not been issued.

[26] The revised ATF Order also states, "[i]n many instances, ATF is involved in investigations that have the potential to overlap with other components' jurisdictions (e.g., the investigation of armed narcotics dealers with the Drug Enforcement Administration, terrorism investigations with the Federal Bureau of Investigation). The resident agent in charge (RAC)/group supervisor (GS) should ensure that appropriate local task forces and other Federal agencies have been contacted."

Deputy Attorney General Removed From Dispute Resolution Process

Unlike the 2004 Attorney General Memorandum, the 2008 Memorandum contains no reference to the role of the Deputy Attorney General and no provision for resolving disputes outside the components involved. Instead, it requires disputes to be resolved in the field by the Special Agents-in-Charge and only if an agreement is not reached should the matter be raised to the components' headquarters. Without such a formalized dispute resolution process, the history of ATF and FBI relations on explosives matters suggests that the components will remain entrenched in their positions, and conflicts will persist unresolved.

HSPD-19 Implementation Plans at Risk

The 2007 HSPD-19 National Strategy asserted the need for an entity to coordinate federal efforts against terrorists' use of explosives. In a finding covering all national efforts, and which our audit found particularly salient for the FBI and ATF relationship, the National Strategy stated, "expert stakeholders, many with decades of experience in explosives threat related fields, revealed that the coordination of ongoing efforts is a fundamental shortfall." The strategy also stated:

> The numerous programs throughout the country that maintain specific roles in this effort tend to be based on individual analysis and initiative rather than a coordinated process working to reach similar strategic goals. The absence of such a strategic process creates disparity between various activities, causing confusion among stakeholders and, sometimes, divisive competition among providers.

Without resolution of ATF and FBI explosives coordination issues by DOJ leadership, history suggests that the components will not succeed in meeting the goals of the HSPD-19 process for forging an interagency approach against terrorist use of improvised explosive devices (IEDs).[27] The clarification of roles and responsibilities of federal response and for law

[27] The HSPD-19 National Strategy recommended designation of DOJ, specifically the FBI in partnership with other federal organizations, to be the entity responsible for determining national priorities and implementing HSPD-19 recommendations. The 12 DOJ-led tasks under the plan include: Task 2.2.2 to develop a comprehensive knowledge management process regarding explosives and IED incidents; Task 2.2.3 to create an overarching, federated IED information sharing architecture; Task 2.2.7 to improve ongoing efforts to regulate explosives commerce and investigate diversion; and Task 3.2.7 to enhance standards and improve delivery for post-blast investigation training to federal, state, and local authorities.

enforcement agencies under the leadership of the Attorney General is a key recommendation of the HSPD-19 National Strategy. However, the HSPD-19 Implementation Plan gives the Department of Homeland Security the lead responsibility to identify and document specific roles and responsibilities of departments and agencies relating to all phases of explosives incident management. This task includes drafting a Strategic Plan and Concept Plan, as well as department and agency-specific Operations Plans. The relationship between DOJ components affects the likelihood of coordinating the priorities of DOJ and the Department of Homeland Security, which already funds much of the equipment needs of state and local bomb squads through its Office of Bombing Prevention.

Further, the HSPD-19 Implementation Plan establishes an HSPD-19 Implementation Joint Program Office (JPO) led by the FBI in partnership with other agencies.[28] According to the FBI, the JPO was designed specifically to bring resolution to issues not previously resolved through other mechanisms. However, we note that the JPO was not designed to function as an ultimate decision maker on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to act as a formalized, interagency discussion forum. Unless there is consensus among the agencies involved the JPO cannot force settlement between feuding components. While the JPO and its members may be used to assess and reflect community opinion and advise on priorities, individual agencies will continue to make the programmatic and budgetary decisions independently. In our judgment, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in addressing terrorists' use of explosives, and by extension, all explosives investigation activities, competition between the components on fundamental roles will likely continue and impede the progress of the entire HSPD-19 implementation process.

Component Competition Rather Than Collaboration

Our audit found that FBI and ATF field divisions tend to deploy their employees to the larger, more sensational explosives incidents, sometimes racing each other to be the first federal agency on the scene and disputing upon arrival which agency should lead the investigation. Additionally, we found that other disputes arise on scene regarding which agency's procedures should be followed when handling or preserving explosives evidence.

[28] The JPO, which meets monthly, had its inaugural meeting on April 8, 2009.

State and local law enforcement agencies' bomb squads are the first responders in most explosives incidents. To assess whether a federal nexus exists, federal agencies initially must rely on their relationships with the local bomb squads to receive notification of an incident. Both the FBI and ATF seek to establish good working relationships with these bomb squads by providing free training, paying for overtime associated with federal investigations, and detailing local officers serving on task forces to special events and high-profile assignments. However, many ATF and FBI field division explosives specialist personnel we spoke with said it was common for local bomb squads to fail to notify them about explosives incidents. Additionally, in several locations we visited we learned that some local bomb squads would inform either the FBI or ATF about an incident but not the other agency.

We also discovered that in certain places where local squads did notify both the FBI and ATF of an explosives incident, the FBI and ATF would "race" each other to the scene. Some squad managers admitted that they operated under the assumption that possession is nine-tenths of the law, meaning their agency would have lead authority if they arrived first to the scene.

We found that while joint deployment to an explosives scene could occur, the FBI and ATF rarely performed joint investigations or transferred explosives cases to the other component. Our surveys of ATF and FBI field management and explosives specialists revealed that when both components deployed to an explosives incident, over 50 percent of the management respondents and over 60 percent of the explosive specialists replied that they rarely or never performed a joint investigation. Survey respondents also reported that 58 percent of FBI and 67 percent of ATF field divisions never transferred cases to the other agency.[29]

ATF case management system records support the rarity of explosives cases being transferred between the FBI and ATF. According to ATF data for FYs 2003 to 2008, FBI transferred lead agency authority to ATF an average of about 26 cases out of an annual average of 830 ATF bombing cases. Conversely, ATF records demonstrate that it referred lead agency authority to the FBI an average of 7 explosives cases annually out of an estimated an annual average of 590 FBI explosives-related cases.[30] The relatively few

[29] According to the ATF, for FYs 2003 through 2008 the FBI and ATF jointly investigated and recommended for prosecution 192 explosives-related cases.

[30] The FBI case management system does not record the total number of explosives incidents the FBI handles and could not account for the number of referrals the FBI made to or received from ATF.

joint investigations and explosives case transfers are another indication that coordination between the FBI and ATF occurs infrequently.

Conflicts Continue to Occur

Headquarters officials from both components stated to us that the FBI and ATF work well together and that significant conflicts no longer occur. Those officials stated that recent disputes were simply isolated incidents attributable to personality conflicts among the responding personnel and their supervisors. Several officials in both components cited a May 2008 bombing of a Federal Courthouse in San Diego as an example of good coordination. During this incident, the FBI took the undisputed lead because a federal building was targeted and ATF provided support. We confirmed that coordination between the components at this incident was exemplary, with ATF supporting the FBI's lead investigative role.

However, we determined that disputes between the FBI and ATF on explosives incidents continue to occur. We found explosives incident disputes between the FBI and ATF that were recent, significant, and attributable to more than personality conflicts.

In particular, at ATF and FBI field divisions that we visited and in responses to our survey, we were told of several recent explosives incident disputes. As detailed in Exhibit 2-4, ATF and FBI personnel described recent disputes occurring in six of the eight locations we visited that involved, jurisdictional questions and explosives-handling issues. Such conflicts can delay investigations, undermine federal and local relationships, and may project to local agency responders a disjointed federal response to explosives incidents in their area.

Exhibit 2-4: Summary of Identified Disputes

Location	Dispute Summary
Baltimore	July 2008 – Disputes arose over ATF explosives handling techniques in two separate Maryland incidents. During one render-safe operation of a pipe bomb cache, an ATF Explosives Enforcement Officer used disassembly tools to either cut apart or spin off the "end caps" of pipe bombs to preserve explosives evidence. The state bomb squad complained to the FBI and ATF that these techniques were not "approved" by the FBI's Hazardous Device School program. In a separate incident, the ATF bomb technician cut apart a pipe bomb. The FBI subsequently complained to the local bomb squad about validating such techniques by remaining on scene and later prohibited ATF bomb technicians from participating in FBI training.
New York City	March 2008 – The FBI JTTF and ATF deployed to the bombing near an armed forces recruiting station in Times Square. An FBI SABT deployed with the New York City Police Department (NYPD) Bomb Squad to the scene, and later an ATF Special Agent embedded within a different NYPD unit of detectives – the Arson and Explosives Unit – arrived on scene. In a "race to the courthouse," detectives in the NYPD Arson and Explosives Unit apparently pushed ATF to seek to have the likely suspect charged in federal court, while the FBI's JTTF was conducting a federal terrorism investigation of the incident and suspects. The U.S. Attorney decided to keep the case with the FBI.
Phoenix	November 2007 – A dispute over jurisdiction occurred at the Palo Verde Nuclear Facility in Palo Verde, Arizona, when an engineer with the facility had a pipe bomb in the bed of a truck. The FBI was notified first and deemed it a potential terrorist incident. ATF was notified several hours later and disputed the connection to terrorism. This dispute occurred publicly in front of state and local bomb squad personnel.
Seattle/Portland	December 2008 – A bombing occurred in Woodburn, Oregon, in which a local bomb technician and police chief were killed by a device found outside a bank. Local prosecutors specifically requested that the ATF Seattle Field Division perform the post-blast investigation. However, the FBI's Portland Field Division disputed ATF's investigative jurisdiction because the FBI had jurisdiction of the underlying federal violation and the technician killed had been trained by the HDS
Los Angeles	June 2007 – An explosives magazine blast occurred in the Mojave Desert and the FBI responded to the incident. ATF does not believe it was notified until it was too late for ATF to work the scene. The FBI, however, told us it merely assisted the local authorities and that ATF simply responded late and then wanted to take over the scene. Both characterized each other's scene processing as inadequate. The dispute occurred publicly in front of state and local bomb squad personnel.
San Diego	September 2007 – An explosives incident occurred at the Olive Lane Bridge in San Diego, California, where the FBI claimed an incendiary device was consistent with domestic terrorism. ATF disputed the terrorism assertion publicly in front of state and local bomb squad personnel. Agents from the FBI and ATF described their relationship as "strained and competitive."

Source: OIG analysis of interview testimony

To determine the extent of recent disputes between the FBI and ATF on explosives matters, we surveyed ATF and FBI management and explosives specialists. As shown in Exhibit 2-5, 31 percent of ATF and FBI management indicated that the relationship between their components was working well, 51 percent said they generally worked well together but with isolated problems, and 7 percent said they experienced significant problems.

Exhibit 2-5: Management Opinion on Working Relationship

ATF and FBI Management Opinion	Percentage	Number
We have worked very well together	31%	19
We generally have worked well together, but have had isolated problems	51%	31
We have experienced significant problems	7%	4
We generally do not work together	11%	7
Total Percentage and Respondents	100%	61

Source: OIG analysis of ATF and FBI management surveys

We solicited examples of ATF and FBI conflict occurring during FYs 2007 and 2008. Exhibit 2-6 shows that approximately 20 percent of ATF and FBI management were involved in resolving a dispute during this period. For ATF and FBI specialists — personnel more likely to come in contact with one another — more than 30 percent of ATF specialists and 40 percent of FBI specialists were involved in a dispute between the FBI and ATF.[31]

Exhibit 2-6: ATF and FBI Involved or Aware of a Dispute

Disputes in FY 2007-08	Management		Specialists	
	ATF	FBI	ATF	FBI
Yes, I was involved in or resolved the dispute(s)	22%	19%	33%	40%
Yes, I am aware of the dispute(s)	22%	16%	25%	27%
No	56%	65%	41%	32%
Did not answer	0%	0%	1%	1%

Source: OIG analysis of ATF and FBI management and explosives specialists surveys

For those specialists who indicated they were involved in or aware of a dispute, more than 75 percent indicated that they had between one and five disputes during FYs 2007 and 2008. Additionally, at least 8 percent had more than five disputes during this period.

[31] For this exhibit "involved" means respondents were a part of the dispute and "aware" means respondents heard about a dispute but were not personally involved.

Characteristics of Conflict

We interviewed 104 ATF and FBI management and explosives specialists in the 8 locations that we visited. We were generally told that the basis for disputes between the FBI and ATF was usually the absence of clear jurisdiction. According to explosives specialists and Supervisory Special Agents from both components, jurisdiction is often decided on scene, and state and local authorities are confused over whether the FBI or ATF should assume the lead in the investigation.

To determine the basis of the disputes, we surveyed explosives specialists from the FBI and ATF and made inquiries about the characteristics of the disputes. As shown in Exhibit 2-7, 80 to 90 percent of ATF and FBI specialists agreed that characteristics of disputes involved classifying an incident as terrorism-related and determining which agency should lead the investigation. Almost 60 percent of ATF specialists and nearly 40 percent of FBI specialists indicated personality conflict was a characteristic of disputes. Additionally, approximately 60 percent of FBI specialists noted that differences in evidence collection and handling techniques were characteristics of the disputes.

Exhibit 2-7: Explosive Specialists Characteristics of Disputes

Characteristics	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or Did Not Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Disagreement over classifying incident as terrorism-related	91%	82%	4%	4%	5%	14%
Conflict over which agency has investigative lead	93%	89%	4%	3%	3%	8%
Personality conflict among the federal agents involved	59%	38%	32%	45%	9%	17%
Differences in evidence collection standards	44%	68%	37%	17%	19%	15%
Conflict over the technique(s) used to handle explosives	54%	59%	28%	16%	18%	25%
Other	8%	8%	0%	0%	92%	92%

Source: OIG analysis of explosives specialists surveys

We also surveyed state and local bomb commanders on whether they had witnessed disputes between the FBI and ATF. In our survey, 34 of 239 (14 percent) bomb squad officials reported ATF and FBI disputes had occurred in explosives investigations during FYs 2007 and 2008. Of the 34 bomb squads reporting a dispute, 74 percent indicated that the number of disputes was between 1 and 2 incidents while 26 percent indicated between

3 and 10 incidents.[32] From our surveys, as shown in Exhibit 2-8, the state and local bomb squad commanders provided support for the proposition that the disputes were based largely on whether to classify an event as terrorism-related and on the conflict over which federal agency has the investigative lead authority. Additionally, the state and local officials indicated that in roughly one-third of the disputes the conflict centered on explosives-handling techniques.

Exhibit 2-8: State and Local Characteristics of Disputes

Characteristics	Strongly Agree or Agree	Strongly Disagree or Disagree	Not Applicable or Did Not Answer
Disagreement over classifying incident as terrorism-related	65%	15%	20%
Conflict over which agency has investigative lead	91%	0%	9%
Personality conflict among the federal agents involved	56%	29%	15%
Differences in evidence collection standards	21%	41%	38%
Conflict over the technique(s) used to handle explosives	35%	35%	30%
Other	6%	0%	94%

Source: DOJ OIG analysis of state and local bomb commander surveys

Explosives Handling Disputes

The techniques used to disarm or dispose of an explosive are critical to ensuring the safety of responding law enforcement personnel as well as the general public. Several FBI explosives specialists told us that conflicts sometimes involved explosives-handling techniques used by ATF personnel that the FBI believed were unsafe and not in accordance with procedures taught to all certified bomb technicians. When we asked ATF personnel about disputes over such techniques, an explosives specialist stated that the FBI's approach needlessly destroys a lot of evidence without meaningfully reducing the risk to the public. He also stated that he believed most of the

[32] In context, our survey indicated that state and local squad respondents reported deploying to 9,362 explosives incidents in 2008, whereas ATF specialist respondents indicated they covered 1,415 incidents (15 percent of the local agencies' total) and FBI respondents recorded deploying to 962 incidents (10 percent). However, neither component tracks joint deployments or numbers of disputes.

ATF's EEOs have more years of experience than FBI SABTs and therefore are not advocating unproven or reckless procedures.[33]

We surveyed state and local bomb commanders on how many times during FYs 2007 and 2008 their squads were on an explosives incident scene when ATF or FBI personnel proposed using techniques to handle explosives that were different from their training.[34] Only 6 percent of the bomb squads indicated that the FBI proposed using non-standard techniques, while 21 percent indicated that ATF proposed using what they deemed to be non-standard techniques. As shown in Exhibit 2-9, approximately 50 percent of the bomb squad commanders responded that the non-standard techniques raised concerns for the safety of on-scene personnel, and more than one third of the commanders indicated the techniques delayed the render-safe procedures. However, the commanders also indicated the intact evidence obtained by using the non-standard techniques benefitted the case.

Exhibit 2-9: Effect of Non-Standard Explosives Handling Technique

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Case benefitted from submitting intact evidence	54%	7%	30%	57%	16%	36%
Concern existed over the risk to the safety of on-scene personnel	54%	50%	32%	29%	14%	21%
Disagreement caused delays in render-safe procedures	38%	50%	44%	21%	18%	29%
Local bomb squad withdrew in protest	6%	7%	36%	21%	58%	72%
Other	12%	0%	2%	0%	86%	100%

Source: OIG analysis of state and local bomb commander surveys

[33] ATF identified an incident in Seattle where important evidence was preserved by advocating remote movement of a jar of possible peroxide explosive. By using this non-standard technique, the EEO was able to see paper that had the formula written on it which would otherwise have been destroyed.

[34] For example, from site visits we learned some disputes involve ATF specialists advocating spinning the end caps off pipe bombs rather than using a disrupter. In other cases ATF would advocate x-rays or photographs of devices before destruction to preserve evidence, and this step is contrary to the training of civilian bomb technicians.

Effects of Conflicts

Both ATF and FBI explosives specialists agree that disputes delay interviews, postpone the investigation, and confuse state and local partners, as shown in Exhibit 2-10.

Exhibit 2-10: Explosive Specialists Opinions on the Effect of Disputes

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or Did Not Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Delay in the conduct of interviews	64%	63%	25%	20%	11%	17%
Delay in the conduct of investigations	72%	70%	20%	20%	8%	10%
Confusion over which was the federal lead agency	83%	89%	10%	4%	7%	7%
Concern over what laboratory to send explosives-related evidence	71%	80%	17%	4%	12%	16%
Other	4%	15%	2%	0%	94%	85%

Source: OIG analysis of ATF and FBI explosives specialists surveys

During our interviews of ATF and FBI specialists in some locations, we found a continuing hostility between these personnel. The hostility was sometimes based on events that happened years earlier, and often did not involve the individuals we were interviewing. These events, although in the past, can adversely affect the working relationship between the FBI and ATF.[35] The following examples describe these events from various locations:

San Diego: From interviews of both ATF and FBI explosives specialists, we determined that relations between the components had been strained since August 2003 when an incendiary device caused $50 million in damage to a housing complex under construction. The FBI had asserted lead agency authority under its domestic terrorism jurisdiction because the fire was allegedly started by the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise. We were told that the FBI resisted ATF's assertion that it should lead the processing of the scene based on its arson expertise.

Kansas City: Agents from both components indicated there was little to no relationship between the FBI and ATF on explosives matters because of

[35] Explosive specialists from both components repeatedly brought up disputes that occurred with their counterparts at major incidents such as the first World Trade Center bombing, Oklahoma City, and the September 11, 2001, terrorist attacks on the Pentagon.

different jurisdictional interpretations exemplified by a 2004 incident in Dodge City, Kansas. ATF specialists reported that FBI agents arrived on scene of a domestic dispute first and continued to investigate the bombing for several hours without notifying ATF. The FBI conducted interviews, obtained a confession, and discovered several pipe bombs. When asked why ATF was not notified earlier given that the case clearly was not terrorism-related, the FBI Resident Agent-in-Charge stated that the FBI Counterterrorism Assistant Director mandated that field offices should aggressively respond to anything that could possibly be terrorism. The issue was raised to the U.S. Attorney for the District of Kansas and ultimately resulted in a clarification of roles from the Office of the Deputy Attorney General.[36]

Seattle: Management and agents from both components pointed to an April 2005 arson of houses under construction in Lake Sammamish, Washington, as the low point of their relationship. The ATF arrived at the scene first and began processing evidence, including a banner purporting to claim responsibility for the arson on behalf of the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise. ATF sent this evidence to its Walnut Creek Laboratory. When the FBI arrived, it asserted the banner clearly made the incident a case of domestic terrorism and a confrontation over investigative authority ensued. Although ATF contended it should maintain the investigative lead because the incident was an arson case, the FBI took over the investigation because of the potential domestic terrorism nexus. The FBI then flew a Special Agent to California to retrieve the banner. ATF remained on the scene and provided assistance in determining the cause and origin of the arson. However, ATF and FBI personnel stated that this confrontation severely damaged the relationship between the two agencies.

Washington, D.C.: Within the national capital region, the FBI and ATF have come to a jurisdictional accommodation given the greater likelihood of terrorist targeting. Before asserting jurisdiction, ATF will defer investigative authority to the FBI until terrorism is ruled out as the motive. Therefore, ATF does not deploy alongside the FBI frequently for explosives incidents inside the metropolitan area. Outside the metropolitan core, however, this practice is not followed and conflicts arise. For example, a 2008 conflict occurred over a suburban Virginia townhouse fire where the local fire department discovered a basement full of explosives precursor chemicals. The absent owners were active duty military and the FBI insisted on treating the case as potential militia or white supremacists' terrorist infiltration of the

[36] This guidance, however, was not published or distributed to other U.S. Attorneys' Offices, the FBI, or ATF.

military. However, ATF protested that the case was not terrorism. The ATF subsequently confirmed with the townhouse owners that they were constructing homemade fireworks, but FBI agents viewed the incident as emblematic of a rush to judgment by ATF that the incident had no link to terrorism.

Survey respondents from three additional locations disclosed significant conflicts had recently occurred between the FBI and ATF, as shown in Exhibit 2-11.

Exhibit 2-11: Summary of Disputes Identified in Surveys

Location	Dispute Summary
Southwest	October 2008 – A dispute arose over explosives handling techniques. The local bomb squad discovered a cache of explosives in a rural setting and decided to destroy the explosives on scene so as not to place undue risk to personnel. However, the ATF supervisor intervened, advocating retaining some components for evidence. The local squad protested to the local FBI SABT and then appealed to the National Bomb Squad Advisory Board that such techniques were not consistent with its training. ATF sent EEOs to assess the cache, who recommended destroying all but three bombs. The local bomb squad continued to have concerns for the safety of its officers.
Atlanta	October 2008 – A bombing occurred at a law firm in Dalton, Georgia. Although the FBI recognized that no terrorism was involved and that ATF would be the lead federal component if the bomber was not killed, the Georgia Bureau of Investigation supported the local police chief's request that the FBI, and not ATF, handle the post-blast evidence analysis. The ATF was insistent that the 2008 Memorandum meant its laboratory should be used. The Georgia Bureau of Investigation asked the United States Attorney to intercede, and the FBI continued to provide laboratory assistance.
Houston	July 2006 – A peroxide explosives incident led to a dispute in Texas City, Texas, when the FBI and ATF had a disagreement on whether an explosion was terrorism-related. ATF claimed that the FBI tried to exclude it from the investigation, even threatening to arrest an ATF explosives specialist for attempting to conduct an additional sweep of the crime scene. The local bomb squad sided with ATF against the FBI's assertion of potential terrorism. The dispute was escalated to ATF and FBI field division management, and each component's specialists remained uncooperative. The case later was determined not to be terrorism.

Source: OIG analysis of survey questionnaires

In addition, as shown in Exhibit 2-12, a majority of state and local respondents indicated that a dispute between the FBI and ATF delayed the conduct of an investigation and confused state and local responders as to which federal agency was responsible for leading the incident response or investigation. This result is in line with the results of the survey of ATF and

FBI explosives specialists and supports the importance of DOJ clearly defining jurisdictional authority for explosives matters.

Exhibit 2-12: Impact of ATF and FBI Disputes on Explosives Investigations

Effect	Strongly Agree or Agree	Strongly Disagree or Disagree	Not Applicable or Did Not Answer
Delay in conduct of interviews	35%	32%	33%
Delay in conduct of investigations	56%	23%	21%
Confusion over who was the federal lead agency	79%	6%	15%
Concern over what laboratory to send explosives-related evidence	44%	35%	21%
Other	3%	0%	97%

Source: OIG analysis of state and local bomb commander surveys

Opinion of Counterparts

Previous conflicts between the FBI and ATF appear to have fostered lingering negative attitudes regarding the other component's abilities. Results from our survey of ATF and FBI Special Agents-in-Charge, as shown in Exhibit 2-13, show that field division managers generally have a poor opinion of the other agency's explosives capabilities.

Exhibit 2-13: Opinions of FBI and ATF Management

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	6%	47%	89%	44%	5%	9%
Counterpart adds needed resources for obtaining evidence	22%	35%	78%	60%	0%	5%
Counterpart neither helps nor hinders	44%	49%	33%	30%	23%	21%
Counterpart duplicates capabilities already on scene	89%	79%	11%	16%	0%	5%
Counterpart differs in scene investigation methods	78%	58%	11%	30%	11%	12%
Counterpart delays decision-making on scene	67%	49%	33%	35%	0%	16%
Other	0%	2%	0%	0%	100%	98%

Source: OIG analysis of ATF and FBI management and explosives specialists surveys

In addition, as shown in Exhibit 2-14, the survey responses of ATF and FBI explosives specialists mirror management opinions.

Exhibit 2-14: Opinions of FBI and ATF Explosive Specialists

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	9%	13%	82%	77%	9%	10%
Counterpart adds needed resources for obtaining evidence	18%	9%	72%	84%	10%	7%
Counterpart neither helps nor hinders	37%	28%	45%	50%	18%	22%
Counterpart duplicates capabilities already on scene	80%	89%	10%	5%	10%	6%
Counterpart differs in scene investigation methods	65%	76%	15%	14%	20%	10%
Counterpart delays decision-making on scene	74%	80%	9%	8%	17%	12%
Other	2%	8%	0%	0%	98%	92%

Source: DOJ OIG analysis of ATF and FBI management and explosives specialists surveys

We also surveyed state and local bomb commanders to obtain their opinions of the assistance they received from the FBI and ATF. Contrary to ATF and FBI overall assessments of each other, the state and local bomb squads favorably assess the contributions of both components, as shown in Exhibit 2-15.

Exhibit 2-15: State and Local Assessment of FBI and ATF Assistance

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Provides important explosives and post-blast expertise	77%	72%	9%	13%	14%	15%
Adds needed resources for obtaining evidence	75%	67%	10%	16%	15%	17%
Neither helps nor hinders	23%	27%	41%	43%	36%	30%
Duplicates capabilities already on scene	19%	25%	60%	55%	21%	20%
Differs in scene investigation methods	20%	14%	58%	62%	22%	24%
Delays decision-making on scene	10%	13%	67%	65%	23%	22%
Other	2%	3%	0%	0%	98%	97%

Source: DOJ OIG analysis of state and local bomb commander surveys

However, we learned from our surveys and interviews with state and local bomb squads that some squads have become strongly anti-FBI and others anti-ATF because of prior negative experiences with these components. We were told by state and local bomb squad commanders that, in some instances, the FBI is perceived as the only federal presence in some larger, urban areas while ATF is perceived as more accessible in more rural areas. Some states have few bomb technicians and therefore rely on federal assistance. Other locations, such as New York City or Los Angeles, have adequate bomb technician resources on the state and local levels and therefore do not necessarily need federal assistance to address explosives incidents. State and local bomb squad commanders also commented about ATF's and FBI's working relationship and disparaging comments each component voiced to them about the other, raising the specter that one DOJ component's poor opinion of the other has negatively affected local law enforcement.

Conclusion

The overlap of jurisdiction and a lack of direction in the coordination of explosives investigations have promoted competition between the FBI and ATF, delayed render-safe operations and crime scene processing, confused local law enforcement partners, and may delay DOJ's implementation of its HSPD-19 responsibilities. We believe that a lack of supervision and mediation by DOJ officials, in particular the Office of the Deputy Attorney General, allows unhealthy component competition, unnecessary duplication of efforts, and problematic explosives incident responses.

Although we found ATF and FBI disputes over lead agency jurisdiction are relatively infrequent, these conflicts continue to occur throughout the country, with more than 30 percent of ATF specialists and 40 percent of FBI specialists responding to our survey that such disputes had occurred in their areas over the last 2 years. These disputes often adversely affect the working relationship of the components, as demonstrated by the low opinions each agency's explosives specialists have of their counterparts. Such negative opinions can make coordination between the FBI and ATF more difficult. Further, such strongly held opinions by federal agents may affect the opinions and actions of the state and local partners with whom they work.

Our surveys indicate local bomb squads may already prefer one agency – the FBI or ATF – over the other, potentially resulting in explosives investigations lacking important expertise from whichever federal agency is not included in the incident response. Additionally, state and local partners

told us that they are confused about which federal agency they should work with in explosives cases.

Since ATF and FBI exercise concurrent jurisdiction on certain explosives matters, we believe the DOJ should issue and enforce new guidance that delineates how the components will interact in explosives-related matters. This direction should replace prior agreements and MOUs and address the following issues: explosives program coordination and consolidation, whether to divide jurisdictions by device type (incendiary versus explosive), geography (rural versus urban), or by technical specialization (technical evidence collection and analysis versus render-safe authority). Further, DOJ should also consider whether to reassign explosives-related and domestic terrorism functions and personnel under the provisions of 28 U.S.C. § 599A.

Recommendations

We recommend that DOJ:

1. Implement new directives delineating lead authority for explosives investigations between the FBI and ATF. At a minimum, this guidance should: (1) assign responsibility to either the FBI or ATF to serve as the overall investigational "lead agency" for each specific type of explosives crime; (2) supersede all prior guidance on FBI-ATF explosives coordination; (3) detail actions required to coordinate jointly in circumstances when the motive is unclear. Consideration should be given to whether to divide jurisdiction between the components by device type, defined territories, technical specialization, or reassigning explosives functions and personnel under the provisions of 28 U.S.C. § 599A; and (4) establish a formal procedure for components to seek resolution of jurisdictional conflicts from the Department.

We recommend that the FBI and ATF:

2. Develop protocols on joint investigations for explosives incidents consistent with any new DOJ directives.

CHAPTER III: INFORMATION SHARING

The FBI and ATF separately maintain multiple explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. Contrary to the directive in the 2004 Attorney General Memorandum, ATF did not consolidate and maintain a distinct explosives-incident database. In addition, FBI and ATF conflict creates challenges for meeting HSPD-19 Implementation Plan goals of information sharing such as single search database compatibility and task force participation.

Incident Reporting not Consolidated

The 2004 Attorney General Memorandum directed the consolidation of all DOJ arson and explosives incident databases, including the FBI's Automated Incident Reporting System (AIRS) and ATF's Bombing and Arson Tracking System (BATS), into a single ATF-maintained database.[37] The 2004 Memorandum also required that no other DOJ component be permitted to maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database. A consolidated explosives incident database would provide investigators with a single source to obtain comprehensive statistics and incident trends. On the other hand, separate databases result in duplication of effort, possible duplicate reporting of incidents by state and local agencies, a lack of uniformity in the reporting process, and the inability to accurately determine trends in explosives incidents.

In 2004, the FBI discontinued using AIRS and transferred the data in that system to ATF's BATS database. However, since the transfer of explosives incident information, the FBI has not reported any additional explosives incident information to BATS. Moreover, ATF has not consistently reported all its explosives incidents in BATS. Rather, both components have continued separate efforts to collect and disseminate explosives information.

We determined that ATF's effort to promote BATS as DOJ's single explosives incident database has suffered due to inconsistent reporting and ineffective efforts to encourage participation by the explosives community.

[37] BATS is ATF's automated incident reporting system developed to streamline the gathering, retrieving, reporting, and archiving of investigative information of fires and the criminal misuse of explosives. After the consolidation of FBI AIRS data into BATS, ATF designated BATS as DOJ's single source for the reporting and sharing of explosives incident information.

As a result, BATS is not the comprehensive resource envisioned for reliably determining trends and providing useful explosives-related statistics.[38]

Inconsistent Reporting

18 U.S.C. § 846 (b) mandates all federal agencies to report information concerning explosives incidents to the Attorney General. Reporting is voluntary for state and local agencies. The FBI and ATF generally rely on state and local bomb squads to report incidents to BATS for explosives matters in which the FBI and ATF are involved. However, the FBI and ATF do not have processes to ensure that state and local agencies actually report explosives incidents. In fact, officials from both components told us they were aware of significant under-reporting by state and local bomb squads of their involvement in explosives incidents. By not reporting explosives incidents to BATS, and not ensuring that state and local responders reported to BATS, the FBI and ATF have not complied with their reporting requirements and have reduced the utility of BATS.

In examining the BATS data, we requested from ATF a listing of agencies that have reported explosives incidents to BATS. As shown in Exhibit 3-1, state and local agencies provided the bulk of explosives incident information from FYs 2003 through 2008.

Exhibit 3-1: Number of Reported Incidents by Agency (FYs 2003 – 2008)

Agency	Number of Reported Incidents
ATF	4,713
FBI	0
U.S. Army Criminal Investigation Command	7
U.S. Capitol Police	7
U.S. Secret Service	1
State and Local Organizations	21,132
Total	25,860

Source: ATF U.S. Bomb Data Center as of September 2008

[38] Officials from the National Association of Bomb Squad Commanders, FBI Hazardous Devices Operations Center, and ATF U.S. Bomb Data Center explained that comprehensive reporting by federal, state, and local authorities would improve BATS' abilities to accurately generate incident reports.

Other than the one-time transfer of explosives-incident data, the FBI reported no incidents to BATS during this period, and ATF inconsistently reported incidents in which it was involved. In addition, we noted that ATF has not implemented data validation procedures to ensure the accuracy of data entered into BATS. Each of these issues is discussed below.

FBI Not Reporting Explosives Incidents

We verified that in 2004 the FBI transferred explosives-incident information from AIRS to ATF's BATS and that ATF incorporated this data into BATS. However, the FBI did not subsequently report to BATS any explosives-incident information collected after its initial transfer of incident information in 2004. We surveyed FBI explosives specialists on the frequency of their reporting to BATS and found that more than 95 percent indicated that they never entered information into BATS. Sixty percent of the specialists stated that they relied on the state and local bomb squads to report incident information.[39]

While the FBI does not require its explosives specialists to report explosives incidents to BATS, it requires them to provide the FBI's Hazardous Devices Operation Center – formally the FBI Bomb Data Center – incident statistics and details related to various explosives-related activities on a data sheet known as FD-542. This data collection is used in determining SABT field office funding and evaluating SABT performance.[40] Even though the FD-542 database keeps track of explosives incidents responded to by FBI explosives specialists, FBI managers contend that it is not used for statistical or data mining purposes and that the FBI is not required to report the information in FD-542 to BATS.[41] According to FD-542 information, the FBI deployed to 4,454 explosives incidents from 2004 through 2008. However, because the FBI did not report any incident information to BATS during this 4-year period, BATS may be missing

[39] According to ATF, the FBI only has 13 active BATS user accounts. A majority of these accounts were maintained by FBI Headquarters personnel rather than agents in the field who actually perform investigations.

[40] In September 2001, the FBI instituted a policy to monitor and record individual SABTs activity by utilizing a point system that awards points to SABTs based on the types of activities a SABT performs.

[41] Unlike the specific data fields in BATS, FD-542 does not have a uniform reporting format and the level of detail in each entry may vary.

important information on many of these 4,454 explosives incidents unless they were reported by the state and local first responders involved.[42]

Regardless of the FBI's objective in maintaining the FD-542 database, the FBI is not reporting explosives incidents to a single, consolidated database maintained by ATF – BATS – as required by the 2004 Attorney General Memorandum. Moreover, we found that the FBI was relying on the state and local agencies to report explosives incidents, and we determined that state and local agencies did not consistently report to BATS. As a result, the information in BATS is significantly incomplete, thereby undermining its utility.

Unreported explosives incident information prevents accurate and reliable trend analysis and may affect the effective allocation of federal funding and resources. For example, the FBI uses statistics and trends generated from the FD-542 database for its explosives programs' needs assessments. However, by relying only on FBI data, the FBI does not capture all of the information from state, local, and other federal responders that could provide a more complete assessment of where its resources are actually needed. Likewise, ATF and other BATS users do not have access to the FBI's incident data and consequently have less than a complete picture of explosives incident activity. We believe the FBI must develop and implement processes to ensure explosives incident information is entered into BATS in a timely fashion.

ATF Inconsistently Reporting Explosives Incidents

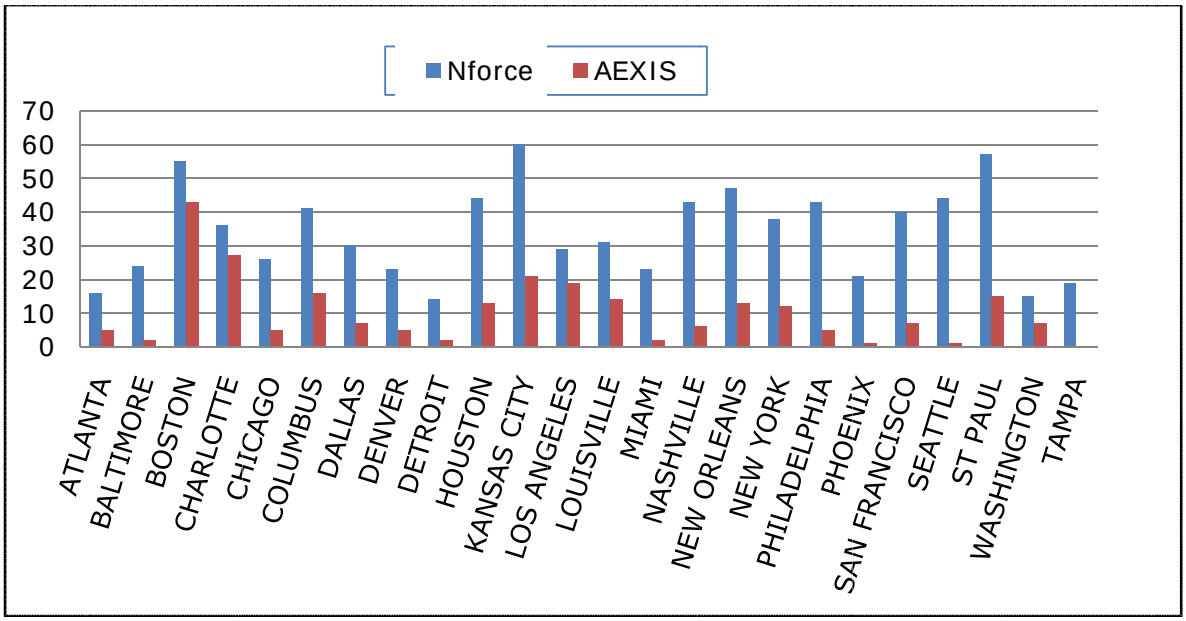
Officials from the ATF U.S. Bomb Data Center stated that prior to February 2009 ATF personnel generally reported explosives incident data to another of its databases called the Arson and Explosives Incident System (AEXIS) rather than to BATS. While the data was not originally entered into BATS, the data in AEXIS is accessible to BATS users through a software program that bridges the two databases. However, the bridge does not provide the capabilities to search or display images within AEXIS. Because ATF is responsible for maintaining BATS, it is troubling that ATF did not directly enter all its explosives incident information into BATS until early 2009. By continuing to maintain and report explosives incident information to AEXIS, for at least 5 years the ATF did not comply with the 2004

[42] We were unable to determine the number of explosives cases in which the FBI was involved because the FBI's case management system does not track this data. While the FBI case management system has a specific case classification code for explosives incidents, that code does not account for cases opened as domestic terrorism, international terrorism, or violent crime violations that involve explosives.

Memorandum requirement to consolidate all DOJ's arson and explosives incident databases.

Further, we determined that BATS, regardless of the link to AEXIS, does not contain all ATF explosives incidents and ATF does not have a reliable process for ensuring that all explosives incidents are reported. In FY 2008, prior to our audit, ATF attempted to reconcile AEXIS data to explosives incidents opened within Nforce – ATF's case management system. ATF concluded that the majority of its field divisions were not reporting explosives incidents to AEXIS as required by internal guidelines. The ATF reconciliation determined that from March through June 2008, 819 explosives incidents were opened in Nforce, but only 248 cases were reported through AEXIS to BATS (see Exhibit 3-2 for results by field division).

EXHIBIT 3-2: Explosives Cases in Nforce vs. AEXIS (March-June 2008)



Source: ATF U.S. Bomb Data Center

To determine the extent of ATF's reporting to BATS, we requested that ATF perform a more extensive reconciliation of explosives incidents recorded in Nforce to incidents reported in BATS during FYs 2003 through 2008. The ATF U.S. Bomb Data Center identified 5,870 unique explosives cases reported in Nforce for which 363 were not in BATS. However, we determined that ATF does not have an adequate process to reconcile cases in Nforce to incidents in BATS because: (1) ATF searched Nforce using explosives terms in case titles to determine if those cases should be reported

to BATS; however, not every explosives case was classified as an explosives incident; (2) ATF omitted several explosives-incident case categories, such as bomb threats, that should be reported to BATS; and (3) 846 cases were excluded from the reconciliation because their status as an explosives case could not be readily determined.[43] Overall, we found that the process ATF used to reconcile explosives cases between Nforce and BATS was incomplete and unreliable. Therefore, we could not verify the number of explosives cases in Nforce that were not reported to BATS.

We surveyed ATF management and explosives specialists to gauge their understanding of explosives-incident reporting requirements. Based on our survey results, ATF personnel are uncertain who is responsible for reporting explosives incidents. A majority of ATF managers (72 percent) responding to our survey indicated that staff report explosives incidents to BATS almost or most of the time, but 27 percent reported that staff sometimes, rarely, or never reported explosives incidents to BATS. Additionally, only 44 percent of ATF explosives specialists responding to our survey indicated that they report explosives incident information to BATS most or all of the time. Similar to the FBI, of the ATF explosives specialist respondents who indicated that they rarely or never input incidents into BATS, 30 percent responded that they relied on the state and local bomb squads to satisfy federal reporting guidelines. However, ATF has no process to verify whether state and local agencies input the information into BATS.

Our audit found that ATF revised its internal reporting protocols three times since 2004, each time changing the party responsible for reporting incidents. Originally, personnel from the U.S. Bomb Data Center performed a weekly reconciliation of explosives incidents reported between Nforce and AEXIS and entered the information into BATS. Then in January 2008 explosives specialists were directed to send a data form to a technician in each field division who would enter the information into BATS. As of February 2009, each agent is now required to directly input incident data into BATS.

Although BATS is intended to be the centralized source for sharing explosives incident information, we found ATF's own reporting inconsistent. We believe that ATF must reinforce guidance to their agents to ensure that data for all explosives incidents and cases is timely and accurately entered into BATS.

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[43] BATS should contain information on the following types of explosives incidents: Accidental Explosion; Bombing (Actual, Actual Incendiary, Attempted, Attempted Incendiary, and Premature Explosion); Fire Investigation (Accidental, Incendiary, Undetermined, and Under Investigation); Hoax Device; Recovered Explosives (Other, Search Warrant); Disposal or Destruct; and Threat (Arson, Bomb).

Data Validation

In October 2004, the OIG reviewed the explosives incident databases maintained by the FBI and ATF.[44] The review found data entry errors, and concluded that much of the data entered into BATS was unrelated to bombing and arson incidents, and therefore contrary to the purpose of BATS. Despite this finding and ATF's guidance requiring only arson and explosives information to be entered into BATS, ATF did not establish protocols to verify the accuracy of reported explosives incidents and prevent the entry of either duplicative or erroneous reports of explosives incidents.

ATF officials explained that quality control and data verification is performed by, and is the responsibility of, BATS users. However, the BATS operator's manual does not define any protocols for the verification of information reported to the system. Further, ATF told us that to prevent duplicative data entry, users are instructed during training to perform various queries using incident details to determine whether an incident had already been reported to the system. After reviewing BATS training documentation as well as ATF online BATS resources, we found no reference to procedures that specifically address entry of duplicative incidents or the verification of incident details.

Given that ATF has no protocols to verify explosives information entered in BATS and relies solely on the user to query for duplicative incidents, ATF cannot ensure the accuracy and reliability of BATS data or any analysis performed using the data. Consequently, we recommend that the ATF implement procedures to periodically test and verify explosives and arson information reported to BATS.

Ineffective BATS Implementation

As previously noted, state and local bomb squads are not required to report to BATS; however, the National Bomb Squad Commanders Advisory Board (NBSCAB) – the governing body which represents all certified state and local bomb squads – actively encourages state and local participation. However, NBSCAB representatives expressed concern that because BATS is

[44] U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases,* Report Number 05-01 (October 2004), pages 25 and 34.

not widely used, the statistical summaries of explosives incidents generated from the system are highly inaccurate.[45]

Our survey of 470 state and local bomb squad commanders revealed that only a minority of squads consistently report explosives incidents to BATS, and more than one-half of the responders indicated that they rarely or never query information in BATS, as shown in Exhibit 3-3.

Exhibit 3-3: Frequency of Input or Use of BATS Information By State and Local Bomb Squads

Task	Almost All the time	Most of the time	Sometimes	Rarely	Never or Did Not Answer
Report Incidents to BATS	29%	7%	8%	26%	30%
Query BATS for Information	7%	9%	25%	24%	35%

Source: OIG analysis of state and local bomb squad commanders survey responses

We interviewed three bomb squad commanders who told us that within larger metropolitan areas, bomb squads are often required to report information on explosives incidents to local databases. When such a reporting requirement exists, commanders commented that reporting to BATS is burdensome and duplicative. Of the 239 local bomb squad commanders responding to our survey, 133 reported that their squads rarely or never entered information into BATS, and 10 percent responded that they already entered explosives information into a state database, as shown in Exhibit 3-4.

Exhibit 3-4: State and Local Bomb Squads Reasons For Not Using BATS

Reason	Number of Respondents	Percentage
BATS is difficult to use	55	41%
ATF has not provided any training	32	24%
Already reporting incident information to state database	13	10%
BATS requires too much detail and is time consuming	36	27%
Not aware of BATS	3	2%
Other	62	47%

Source: OIG analysis of state and local bomb squad commanders survey responses

[45] The NBSCAB recognized that the bomb squads need for explosives incident reporting was so important that they recommended to the FBI that reporting be mandated for a bomb squad to receive accreditation. However, the FBI rejected this advice stating that 18 U.S.C. § 846(b) only requires federal, not state and local, reporting.

When asked about the reasons for not using BATS, 41 percent of the state and local bomb squad commanders who responded to our survey indicated that their lack of participation was due to the difficulty of using BATS and 24 percent indicated a lack of training. In addition, half of the 62 survey respondents who selected the choice "other," indicated that access issues such as difficulty in obtaining passwords or getting assistance prevented them from using BATS. Local bomb commanders we interviewed complained that BATS reports required too much information for each incident and took too much time to complete. For example, while reports to FBI AIRS required only a facsimile with basic incident information, the BATS process includes 12 separate web page screens with multiple menus and data fields.

Access Issues

To gain access to BATS and begin reporting explosives incidents, state and local bomb squads must sign a Memorandum of Understanding between their agency and ATF. The agreement outlines the operation and administration of BATS to ensure information within the system is kept secure. However, we were told by NBSCAB representatives that the extensive, nine-page agreement discourages reporting by some state and local bomb squads. For example, the agreement provides the granting to ATF of access to local systems, waivers of ATF responsibility for local system repairs required by subsequent ATF software enhancements, and local responsibility for ensuring access restrictions to BATS data.

In addition to issues related to the Memorandum of Understanding, state and local bomb squad commanders also commented that difficulties related to usernames and passwords have discouraged their reporting. According to the ATF U.S. Bomb Data Center, BATS passwords are only active if they are used every 60 days and thereafter must be reset by the BATS "help desk." We were told by state and local bomb squad commanders that due to the sometimes sporadic occurrence of explosives incidents, users often must go through a lengthy process of having their passwords reset when they expire. Our survey of state and local bomb squad commanders revealed that 18 of 62 bomb commanders who rarely or never use BATS reported lengthy wait times for obtaining BATS usernames and passwords. Further, the resetting of inactive passwords prevented them from logging into the system and reporting their explosives investigations.

Training

A lack of training by ATF has also hindered state and local bomb squads from using BATS. The BATS user manual and Memorandum of Understanding make user agencies ultimately responsible for the training of both current and any replacement personnel. In May 2008 ATF began hosting training seminars for state and local bomb squads. The presentation walks users through specific steps to document and enter example incidents into the system using a terminal connected to BATS. As of March 2009, ATF had provided BATS training to approximately 1,132 bomb technicians and investigators at 39 training seminars.

Based on our state and local bomb squad commander interviews and survey results, we determined that the extent of future BATS use by local first responders depends on ATF's ability to make BATS more user-friendly and to provide effective training. Several commanders indicated that ATF had already made revisions to BATS that improved its ease of use, although they said that the extent of the information required remains a hindrance.[46] To help enhance state and local bomb squads use of BATS, we recommend that ATF prioritize remedial and new user BATS training for federal, state, and local users. We also recommend that ATF review ways to more efficiently provide user names and passwords, and reassess the need to require the current extent of incident information.

DOJ Review of Explosives Databases

The 2004 Memorandum required the DOJ Office of the Chief Information Officer (OCIO) to examine and report to the Deputy Attorney General on the feasibility of consolidating DOJ's arson and explosives databases. DOJ's OCIO conducted a feasibility study in November 2004 and concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technologies. However, DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF.

Competing Databases and Bomb Data Centers

The FBI and ATF maintain Bomb Data Centers that provide technical information to the domestic and international bomb technician community on explosives devices. Additionally, these centers maintain separate international explosives incident databases. The FBI Bomb Data Center

[46] Bomb Commanders indicated that revisions made it easier to enter incidents into BATS.

established the International Bomb Data Center Sub-Special Interest Group (IBDC) in 2006 as a clearinghouse for information on international bombing incidents and new render-safe technologies. Likewise, ATF's Bomb Data Center maintains an international explosives incident database called DFuze to collect, analyze, report, and share explosives device and explosives incident data with its international partners. But we found that operation of separate international databases can cause confusion. For example, a recent request by a foreign government for information on components typically used in certain types of IEDs resulted in the FBI and ATF sending separate and uncoordinated responses.

The 2007 ERG report to Deputy Attorney General McNulty highlighted the dispute between the FBI and ATF over the roles of their Bomb Data Centers and included white papers outlining each agency's position. ATF contended that its U.S. Bomb Data Center had all relevant bomb incident data and merited full DOJ support as the only Bomb Data Center maintained by the federal government. The FBI contended that its counterterrorism mission would be adversely affected if its explosives information-sharing responsibilities were transferred or diluted and argued that only the FBI should use the Bomb Data Center name and interact internationally on explosives matters. The Office of the Deputy Attorney General never resolved this dispute.

Moreover, in 2006 the ATF Laboratory began using an IED Component Database (IED DB) designed to assist laboratory technicians and investigators in the description, storage, and retrieval of IED components. However, other databases could potentially perform this function, including the FBI's Expert Reference Tool (EXPeRT) forensic laboratory database and possibly ATF's BATS.[47] As shown in Exhibit 3-5, the FBI and ATF each maintain disparate databases for managing laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence.

[47] Using the IED-DB, investigators can perform queries of specific explosives incidents using descriptive attributes of the components within an IED. However, we note that BATS already provides a forum for the description of simple components of an IED as well as events surrounding explosives incidents.

EXHIBIT 3-5: ATF and FBI Explosives Databases

EXPLOSIVES DATABASE	AGENCY	PURPOSE
BATS	ATF	Domestic Incident Reporting
Improvised Explosives Device Database (IED-DB)	ATF	Forensic reports and IED component information
Expert Reference Tool (EXPeRT)	FBI	Forensic reports and IED component information
Arson and Explosives Incident System (AEXIS)	ATF	Domestic incident reporting
FD-542 Database	FBI	SABT activity reporting, including incident reporting
DFuze	ATF	International incident reports
International Bomb Data Center Sub Special Interest Group Portal (IBDC)	FBI	International incident reports

Source: ATF and FBI

Challenges to HSPD-19 Implementation

The information-sharing practices of the FBI and ATF challenge DOJ's ability to meet the information-sharing goals of the HSPD-19 Implementation Plan. To combat the terrorist use of explosives, the Implementation Plan encourages two major types of information sharing – single search database compatibility and task force participation. Our audit found that the incompatibility between FBI and ATF databases and the ATF's low participation on counterterrorism task forces affects the DOJ's ability to meet these goals.

Database Search Compatibility

The HSPD-19 Implementation Plan requires that DOJ databases have a single sign-on for user authentication that could simultaneously access and query all DOJ explosives databases. This would eliminate the difficultly of maintaining multiple passwords and performing multiple queries for the same search and would substantially improve the overall flow of explosives-related information. However, the lack of a study for consolidating DOJ's multiple databases limits DOJ's ability to meet this requirement.

Despite an attempt to implement the "OneDOJ" data environment, the FBI and ATF have maintained separate databases (DFuze, EXPeRT, BATS, IED-DB, and IBDC) that require separate sign-ons and passwords. Further, a representative from the DOJ's OCIO characterized the proposed database consolidation and search capability recommended by HSPD-19 as "a fabulous idea that will never work," because the components will not want to lose physical control over their information. To overcome parochial attitudes and position DOJ to comply with HSPD-19 requirements, we recommend

that the Office of the Deputy Attorney General direct the OCIO to conduct a follow-up study examining the feasibility of consolidating all current DOJ arson and explosives databases, and to make specific recommendations to overcome the hurdles to implementing the "OneDOJ" data environment.

Joint Terrorism Task Forces

ATF is not participating in a majority of the Joint Terrorism Task Forces (JTTFs) run by the FBI, and the Memorandum of Understanding that governs its participation on JTTFs emphasizes only ATF's regulatory functions and not its explosives enforcement abilities. The HSPD-19 Implementation Plan specifically calls for increased participation by federal agencies on JTTFs. In particular, HSPD-19 Task 2.2.5 of the Implementation Plan is to encourage and expand interagency and intergovernmental participation on JTTFs, to include explosives and IED subject matter experts from federal, state, and local agencies.

As shown in Exhibit 3-6, as of April 2009 ATF detailed only 30 full-time and 14 part-time Special Agents to the 106 JTTFs.[48]

EXHIBIT 3-6: JTTF Staffing Contributions by Agency

Status	FBI	ATF	Other Federal	State & Local
Full-time	2,530	30	619	963
Part-time	73	14	249	206

Source: FBI

ATF management stated that it does not participate full-time on various JTTFs throughout the nation because ATF does not have the available resources. Additionally, several ATF Special Agents assigned to JTTFs stated that the overall communication between the FBI and ATF task force officers was deficient and they felt disconnected from JTTF investigations and from facilitating information flow between the components. The FBI, on the other hand, does not fully participate in local Arson and Explosives Task Forces supported by ATF. FBI officials indicated that so few of the cases these Task Forces handled were of interest to the

[48] The FBI classifies full-time JTTF members as those who work in FBI office space on terrorism investigations under the supervision of an FBI Supervisory Special Agent. The FBI accepts some part-time JTTF members if an agency cannot commit a representative on a full-time basis. ATF indicates they had approximately 50 JTTF liaisons. A liaison is a point of contact for an agency to the JTTF to share information and may attend JTTF meetings, but does not participate on a part-time or full-time basis on the JTTF.

FBI that the field divisions would not allocate a full-time representative to the ATF task force.

In addition to encouraging greater participation on the JTTFs, the HSPD-19 Implementation Plan also seeks to expand explosives and IED subject-matter expertise. ATF officials stated they have the capability to provide expertise for JTTF activities by supplying explosives detection canines to help with special events, hosting post-blast training courses, collecting and disbursing information from BATS, and responding to explosives incidents across the country. However, none of the seven ATF JTTF representatives we spoke to were currently assigned to explosives-related work, and six of the seven were not explosives specialists.[49]

One factor in the low level of ATF explosives expertise on JTTFs stems from an outdated Memorandum of Understanding between the two agencies. ATF and FBI signed a June 15, 2000, Joint Terrorism Task Forces Memorandum of Understanding to outline the nature and extent of ATF participation on the JTTFs. The memorandum was signed before the September 11 terrorist attacks made counterterrorism the highest law enforcement priority and before ATF was part of DOJ. The June 2000 MOU only references ATF's regulatory functions. According to the agreement, to the extent possible an ATF Special Agent would be assigned to or liaise with each JTTF. However, the memorandum does not specify that ATF will provide any explosives specialist personnel to JTTFs.

Given the emphasis by HSPD-19 on an interagency approach to preventing terrorist use of explosives, we recommend that the ATF and FBI revise the JTTF Memorandum of Understanding outlining ATF participation within the JTTFs to add language emphasizing ATF capabilities and jurisdiction within non-regulatory explosives investigations. We believe that JTTFs would benefit from an increased presence of ATF personnel, particularly Certified Explosives Specialists, who could share their explosives expertise and provide a conduit for ATF explosives-related information.

Conclusions

The FBI, ATF, and state and local bomb squads do not consistently report explosives incidents to BATS - the database that ATF identified as DOJ's consolidated explosives incident database. While the FBI and ATF are required by law to report explosives incidents, state and local bomb squads

[49] The ATF personnel assigned to JTTFs that we interviewed were generally assigned to obtain firearms-related information. An FBI supervisor stated that ATF personnel assigned to his particular JTTF are not assigned explosives-related cases because the ATF representatives are not at the JTTF office enough to warrant assigning them cases.

are encouraged but not required to report explosives incidents. Moreover, although the FBI transferred historical explosives information into BATS in November 2004, the FBI has not reported any explosives incident information to BATS since then. Additionally, until February 2009 ATF personnel reported incidents to AEXIS instead of BATS. Both the FBI, and to a lesser extent ATF, relied on state and local bomb squads to satisfy their federal requirement to report incidents without having any assurance that the state and local squads were submitting the incident reports.

For state and local bomb squads, a significant number are not reporting their incidents to BATS due to access issues and a lack of BATS training. As a result, ATF's efforts to maintain and promote BATS as DOJ's single explosives incident database suffered due to ineffective efforts to encourage participation by the state and local explosives enforcement community and this lack of consistent incident reporting has resulted in inaccurate and unreliable explosives-incident data.

Further, despite a feasibility study for consolidating DOJ's multiple databases, the FBI and ATF separately maintain multiple explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. The HSPD-19 Implementation Plan requires that DOJ databases have a single sign-on for user authentication that could simultaneously access and query all DOJ explosives databases.

The HSPD-19 Implementation Plan encourages increased federal, state, and local participation on JTTFs as well as the inclusion of explosives and IED subject matter experts. We found that ATF does not participate on the majority of JTTFs and that the current MOU between ATF and FBI regarding JTTF participation does not recognize ATF's explosives enforcement abilities. Likewise the FBI is not fully participating in ATF-led Arson and Explosives Taskforces. The FBI and ATF should increase their efforts to participate in task forces that respond to explosives crimes. Improving ATF's level of JTTF participation and updating operating protocols to recognize the contributions of ATF explosives specialists would help achieve the information sharing goals of the HSPD-19 Implementation Plan.

Recommendations

We recommend that DOJ:

3. Direct the OCIO to conduct a follow-up study examining the feasibility of consolidating all current DOJ arson and explosives databases, and making specific recommendations to overcome the hurdles to implementing the "OneDOJ" data environment.

We recommend that the FBI and ATF:

4. Develop and implement new guidance to ensure uniform, timely, and accurate data entry of explosives incidents and cases into BATS as required by the 2004 Memorandum and 18 U.S.C. § 846(b).

5. Update the Memorandum of Understanding outlining ATF participation on the JTTFs to contain language emphasizing ATF capabilities and jurisdiction within non-regulatory type investigations.

We recommend that ATF:

6. Reassess staffing requirements to prioritize increased participation by explosive experts on task forces that respond to explosives crimes.

7. Prioritize remedial and new-user BATS training for federal, state, and local users.

8. Review BATS for ways to make it more user-friendly, including ways for users to more efficiently obtain user names and passwords and reassess the extent of required incident information.

CHAPTER IV: EXPLOSIVES TRAINING AND CANINES

One of the central functions provided by the FBI and ATF explosives programs is training to federal, state and local explosives personnel. The 2004 Memorandum directed that all DOJ post-blast explosives training be consolidated under ATF, mandated that all DOJ components use ATF-certified canines, and required an Explosive Training Review Board (Training Board) to review consolidating all explosives training programs and facilities across DOJ's components. However, the DOJ never convened the Training Board, and therefore the Training Board did not examine the feasibility of consolidating all DOJ explosives programs and facilities. In addition, we saw no evidence that the FBI and ATF worked together to establish DOJ explosives training priorities, and the two agencies reached no consensus on the use of explosives detection canines. The FBI and ATF continue to expand their respective training facilities, run uncoordinated post-blast training programs, and disagree on the guidelines for training explosives-detection canines.

Explosives Training Facilities

Part of the intent of the 2004 Memorandum was to review the feasibility for consolidating DOJ explosives training facilities. However, that never occurred, and since issuance of the memorandum both components have expended or are proposing over $110 million in explosives-training facilities, as shown in Exhibit 4-1.

EXHIBIT 4-1: ATF and FBI Explosives Training Facilities

Facility[50]	Cost (in millions)
FBI Hazardous Devices School	$ 23.0
ATF National Center for Explosives Training and Research Construction Costs	28.5
ATF National Center for Explosives Training and Research Non-Personnel Costs (proposed)	41.6
FBI Secure Training Facility	4.8
FBI Vehicle Borne IED Training Facility and Non-Personnel Costs (proposed)	13.1
Total	$111.0

Source: FBI Bomb Data Center and ATF Explosive Training Branch

FBI Hazardous Devices School

In 2004, the FBI opened a $23 million Hazardous Devices School (HDS) at the Redstone Arsenal in Huntsville, Alabama. HDS provides federal, state and local personnel a 6-week basic bomb technician program, re-certification training, and a specialized course in executive management training for bomb squad managers. The basic bomb technician course includes bomb threats, demolition procedures, hazardous material operations, render-safe procedures, removal techniques, robotics deployment, weapons of mass destruction response devices, and x-ray equipment. HDS is the only training program nationally recognized to certify bomb technicians and to accredit civilian bomb squads. Although the FBI maintains an administrative role over the facility, a majority of the training is conducted by U.S. Army Ordnance Munitions and Electronics Maintenance School instructors.

In October 2008, the FBI opened a $4.8 million Secure Training Facility located at HDS and has sought an additional $13.1 million for a vehicle-borne IED training facility and non-personnel costs. The FBI stated that these facilities are needed to: (1) conduct sensitive emerging threat training for the public safety bomb squad community; (2) comply with the HSPD-19 requirement to conduct vehicle borne IED training course; and (3) allow for simultaneous training so that the HDS basic and re-certification courses are not in competition with existing classrooms and work space.

[50] The costs listed in Exhibit 4-1 include construction costs and non-personnel costs, such as equipment and vehicles. The figures do not include the costs of personnel.

ATF's Training Facilities

ATF currently maintains the National Center for Explosives Training and Research (NCETR) in Fort A.P. Hill, Virginia, and the Canine Training and Operations Support Branch (National Canine Training and Operations Center) located in Front Royal, Virginia. In addition, ATF is constructing a new NCETR facility at Redstone Arsenal in Huntsville, Alabama – the same location that currently houses HDS.[51] Congress provided $23.5 million for Phase One of the project (basic building construction), and ATF has furnished an additional $5 million.[52] For FY 2010 ATF sought an additional $41.6 million in non-personnel expenditures for explosives range construction, facility and classroom infrastructure, and research and development costs.

At these facilities, ATF teaches explosives courses to its own employees as well as state and local personnel. While NCETR offers advanced explosives training to specialists, the Front Royal facility develops explosives detection canines for federal, state and local agencies. NCETR also hosts courses required for training CESs, but it does not provide training on render-safe procedures. Instead, ATF EEOs and ATF and FBI SABTs are trained at HDS.

According to ATF, when its new NCETR facility is completed in FY 2010 it will promote efficiency by consolidating other DOJ and Department of Defense explosives training and research centers at one location. However, physical co-location of facilities does not constitute consolidation, and in fact ATF is not consolidating its own operations. Rather, it intends to continue classes at its Fort A. P. Hill location even after the Redstone location is fully operational. Rather than consolidating ATF training in a single location, the new facility expands ATF's existing training facilities.[53]

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[51] In 2006, the conference committee report of Public Law 109-108 directed ATF to plan for the construction of a permanent facility co-located with other law enforcement and federal government entities that provide similar training and research. Plans to construct the new NCETR facility at Redstone were approved by Congress and ground was broken for the main building of the new facility in November 2008.

[52] The construction plan calls for expected completion in FY 2010.

[53] The ATF Chief of the Explosive Training Branch said it was necessary to keep A.P. Hill for several reasons including: (1) A.P. Hill is an important resource for the ATF and other federal, state and local entities due to the limited availability of explosives ranges on the East Coast; (2) the ATF laboratory does evidentiary explosives work (the re-creation of devices) at the A.P. Hill site; (2) ATF will continue to use A.P. Hill for contracted training for the Department of State and Marine Corps personnel; and (4) Congressional officials might want to observe ATF explosives capabilities, and the A.P. Hill site would be more convenient and closer to Washington, D.C.

Explosives Training Programs

The 2004 Memorandum required the establishment of a Training Board to review consolidating all explosives-related training across DOJ's components. According to the ATF, it met with the FBI to discuss explosives training issues in the months following issuance of the 2004 memorandum and, in December 2006 and May 2008. However, the DOJ did not convene the Training Board and has not established a comprehensive approach for providing explosives-related training.

During our audit, we did not find evidence that the FBI and ATF had worked together to establish DOJ explosives training priorities, identify what training is needed, who has the most pressing need for the training, and who can best provide that training. Additionally, in January 2007 the ERG reported to the Deputy Attorney General that training related to post-blast, canines, and render-safe procedures either had not been implemented or remained highly contested.

We believe that coordinated training would be more efficient and help promote consistent, DOJ-wide investigation practices. As long as the FBI and ATF continue to independently operate their respective explosives training facilities without proper coordination, DOJ's ability to meet the recommendations of the HSPD-19 Implementation Plan are unlikely.[54]

Training Priorities

Both ATF and FBI have training requirements for their explosives specialists and require explosives specialists to re-certify at regular intervals. For ATF CES re-certification, candidates must attend a course hosted at NCETR every 2 years, while ATF EEOs and ATF and FBI SABT personnel must re-certify every 3 years at the HDS. As shown in Exhibit 4-2, the FBI and ATF are behind in the re-certification of their explosives specialists.

[54] HSPD-19 requires enhanced standards and improved delivery of post-blast training and uniform explosives-detection canine-team training and performance standards.

Exhibit 4-2: Explosives Specialists - Not Current Re-certification

Specialist	Total Number	Percent Not Current
ATF CES	241	57%
ATF EEO	26	12%
ATF SABT	5	0%
FBI SABT	174	12%

Source: ATF NCETR and FBI HDS as of March 2009

According to ATF, funding for NCETR training has been declining since FY 2004. In FY 2008, the NCETR was able to provide only limited explosives training, including only one CES re-certification course, far less than the five or six courses necessary to keep all personnel up-to-date. Therefore, an ATF official said the CES re-certification process has fallen behind schedule. ATF noted that those individuals who had not been re-certified due to the funding problems were granted an extension.

With respect to the re-certification status of those explosives specialists trained at the HDS, the FBI stated that the FBI SABTs not current on their re-certification have been precluded from training due to scheduling conflicts (such as deployment overseas, medical reasons, or involvement in a major case), or may no longer be active or eligible for the SABT program. Furthermore, the FBI stated that all ATF candidates for re-certification are processed similar to all other bomb technicians. As CESs, EEOs, and SABTs are responsible for all of the explosives missions within their respective agencies, the need to keep up-to-date on re-certification is critical.

We believe that to effectively and efficiently provide coordinated explosives training, the Training Board should meet to not only consider consolidation of training programs, but also to develop a training plan for all DOJ explosives-related efforts. The plan also needs to assess the training needs of federal, state, and local explosives specialists and assign priorities to those programs that most effectively meet those needs. In addition, the components must identify funding requirements and focus their training efforts in those priority areas.

Explosives Training Disputes

The 2007 ERG report included ATF and FBI white papers that outlined unresolved issues for resolution. Exhibit 4-3 summarizes the FBI and ATF positions on a variety of training issues:

Exhibit 4-3: Summaries of ATF and FBI Training Disputes

ATF White Paper	FBI White Paper
Post-Blast	**Post-Blast**
1) ATF should serve as the primary DOJ component to develop and provide comprehensive training programs for fire and explosives investigations.	1) The FBI should continue to teach explosives and post-blast training with a domestic and international terrorism perspective. ATF should only teach explosives and post-blast training from a non-terrorism explosives perspective.
2) FBI should develop and provide comprehensive training programs for nuclear, biological, chemical, and radiological investigations.	2) The language and directions related to post-blast training provided in the Attorney General Memo should be amended with language to be drafted by the ERG Training Working Group.
Canine	**Canine**
3) ATF recommends the language regarding canines be rewritten to require that all explosives-detection canines possessed or maintained by DOJ components be procured, trained, and certified by ATF.	3) FBI recommends the language regarding canines be rewritten to state that as soon as practicable, all DOJ components shall use only canines that have been certified using the Scientific Working Group on Dog and detector Orthogonal Guidelines (SWIGDOG).
4) DOJ components shall make every effort to use an ATF-trained and certified canine. If an ATF-certified canine is not available, the component may, in the interim, use a canine that has been trained and certified to Scientific Working Group on Dog and Orthogonal detector Guidelines.	4) The FBI should continue its joint training - the National Canine Peroxide Training Initiative - with the Department of Homeland Security.
Render-safe	**Render-safe**
5) ATF should administer the explosives portion of the Hazardous Devices School at Redstone Arsenal in Huntsville, Alabama.	5) The FBI identifies the Special Agent Bomb Technician program as components in its terrorism mission and does not specify that they would relinquish administration of the Hazardous Devices School.

Source: 2007 ERG Report, ATF and FBI White papers

According to the 2007 ERG report, ATF believed the language in the 2004 Memorandum was clear, while the FBI believed the text was ambiguous and in need of clarification. Although the ERG reported these disputes in 2007, DOJ did not resolve any of the issues. As a result, ATF and the FBI have not consolidated delivery of post-blast training, agreed on a standard for canine explosives detection certification, or standardized any explosives-related training programs.

Post-Blast Training Programs

The FBI and ATF conduct separate post-blast training courses that are offered locally to federal, state, and local explosives personnel. Post-blast training teaches methods and processes for investigating explosives scenes. Post-blast analysis of actual or suspected explosives attacks can help local law enforcement identify the components and functions of explosive devices, which can provide indicators and warnings of terrorist or criminal behavior. HSPD-19 specifies the need for uniform standards for post-blast training to improve joint response operations among bomb squads.

The 2004 ERG report indicated that both ATF and the FBI curricula are essentially the same. Our review of these curricula confirmed that they share common topics, including an introduction to explosives, lessons on IEDs, laboratory services, and bombing investigations. Furthermore, in our interviews with explosives personnel from both agencies, they noted no differences between the curricula. Considering the similarities, the two components could easily consolidate the post-blast curricula. However, our survey showed that 92 percent of FBI explosives specialists and 83 percent of ATF explosives specialists rarely or never coordinated their post-blast curricula.

We recommend the FBI and ATF standardize a DOJ-wide post-blast training curriculums. Further, we recommend that DOJ resolve any differences between the two components regarding post-blast curricula.

Canine Program and Peroxide Training

We found that DOJ has not provided clear direction regarding canine certification tests, and ATF and the FBI are currently providing independent, uncoordinated explosives detection canine training. The 2004 Memorandum required all DOJ components to use canines certified by ATF. However, explosives specialists from both ATF and FBI are providing peroxide-based explosives detection training to state and local bomb squad canine teams and both components disagree about the standards that should be used to certify explosives-detection canines. When the ERG reported the certification dispute in 2007, DOJ never resolved the issue.

Canine Certification. The 2004 Memorandum directed all DOJ components to use ATF-certified canines, but it did not preclude any component from procuring or training explosives detection canines independently. Our audit revealed that the FBI generally uses non-ATF

certified canines.[55] Our survey of FBI explosives specialists also revealed that more than 80 percent of respondents rarely or never use ATF-certified canines. Instead, FBI explosives specialists rely mainly on explosives-detection canines provided by state and local agencies that are often not ATF-certified.

Although the FBI and ATF agree that DOJ should have a single certification standard for canines, they disagree on the how the standard should be established. ATF developed the National Odor Recognition Training and Testing (NORT) program as a standardized method for assessing a canine's ability to recognize explosives odors. NORT is a test administered by ATF forensic chemists to federal, state, and local canine teams.

The FBI believes NORT may not actually assess the operational capabilities of the canine and that the certification standards should be determined by the Scientific Working Group on Dog and Orthogonal detector Guidelines (SWGDOG). SWGDOG is composed of members from federal, state, and local agencies, including both ATF and the FBI. While SWGDOG is a non-certifying body that provides best practice guidelines, it anticipates that these best practices will be incorporated into participating organizations' certification standards.

As shown in Exhibit 4-4, the FBI and National Institute of Justice (NIJ) have provided funding to SWGDOG during the past 5 years.

EXHIBIT 4-4: DOJ Funding of SWGDOG FYs 2004-2008

Component	2004	2005	2006	2007	2008	Total
NIJ	$ 0	$97,020	$95,134	$92,998	$85,672	$370,824
FBI	8,196	62,547	39,160	28,592	0	138,495
Total	$8,196	$159,567	$134,294	$121,590	$85,672	$509,319

Source: Office of Justice Program Grant Management System and FBI Forensic Canine Program

We believe that DOJ has not adequately communicated its policy for canine certification to its components, and instead has sent conflicting signals on what certification standard should be used. Although DOJ directed one standard to be administered through ATF, DOJ also funded a process to adopt another standard through the NIJ and FBI. Without a single standard for canine certification, deployments to special events or

[55] The FBI's uniformed police use ATF–certified canines; however, FBI field divisions generally rely on state and local canines or the four explosive detection canines owned by the FBI.

bombing scenes with multiple canine units may lack standard operating procedures and can impact the efficiency of bomb sweeps.

As part of the JPO, the Department of Homeland Security (DHS) and DOJ are co-leading an interagency advisory board responsible for developing uniform standards for explosives-detection canine teams, including annual certification and recurring proficiency training. DHS and DOJ, building on the previous ATF National Canine Advisory Board, created the National Explosives Detection Canine Advisory Board, which includes participants from the four major professional canine associations. The FBI believes that as a result of the creation of this advisory board for the first time, there is consensus across the explosives-detection canine community that national training and performance standards are needed. We recommend that DOJ select and enforce a single standard for the use of certified canines for DOJ components, consistent with the requirements of HSPD-19.

Peroxide-Based Explosives Training. According to ATF, it began training explosives detection canines on peroxide-based explosives in 2002 after the ATF Laboratory worked with British authorities to develop an effective method of producing explosives used for training purposes. In 2006, the National Explosives Detection Canine Training Program, which is part of the Transportation Security Administration of the Department of Homeland Security, worked with the FBI to train canine teams to detect various peroxide explosives.

FBI explosives specialists told us they provide bulk (15-30 grams) samples of peroxide-based explosives to state and local canine handlers to sensitize their animals to the peroxide scent. ATF also conducts similar training for state and local canine handlers with trace (5 milligrams) amounts of peroxide-based explosives. ATF officials argued that the FBI should not be providing such training, saying that ATF's method is superior because training with trace amounts of peroxides enhances the canines' ability to detect explosives. For example, because these explosives would generally be sealed in containers, the canine must be able to alert based on recognizing a trace amount of explosives left on a container lid or its scent on the potential bomber.

An FBI Explosives Unit official noted in a published FBI Bomb Data Center Investigators Bulletin that trace amounts, like those used by ATF, can be utilized to conduct training if suitable precautions are taken.[56] However, the official noted that any time trace amounts of material are utilized, they

[56] FBI Bomb Data Center Investigators Bulletin 2006-3 entitled *K-9 Detection of Peroxides*.

are susceptible to contamination. For example, if the handler using these aids handles any other type of explosive or has an explosive residue near these aids, it is possible to introduce interfering odors. In addition, the FBI official contended that trace amounts of peroxides dissipate rapidly, and once exposed, have a very short shelf life.

Despite these differing opinions, the differences between the FBI and ATF's peroxide-based explosives training programs do not appear to be irreconcilable, and consolidation of the training standards should be possible. Therefore, we recommend the FBI and ATF consolidate the training for peroxide-based explosives.

Render-safe Procedures

The Hazardous Devices School (HDS) has developed standardized protocols for disarming or destroying explosives and component parts - render-safe procedures - which are taught to all bomb squads to maximize public safety. However, according to our interviews and surveys, ATF Explosives Enforcement Officers (EEOs) sometimes use render-safe procedures that are not in compliance with those specified at HDS. The differing render-safe techniques and standards between the FBI and ATF can lead to confusion among FBI and some state and local responders, and present possible public safety problems. For example, first responders may disagree about the techniques that should be used to handle explosives or render-safe explosives on scene. In particular, during our site visits to both components we were told ATF uses two techniques that have caused concern among FBI and state and local personnel – the spinning of pipe bomb end caps and the use of "King County Cutters."[57]

These disputes may delay the render-safe procedures or endanger first responders. During our interviews, FBI explosives specialists told us of several incidents that created controversy at explosives scenes when the FBI believed that the techniques used by ATF, such as the spinning of pipe bomb end caps, were unsafe and not in accordance with HDS procedures. When we asked ATF explosives specialists about these disagreements, they told us that almost all of the ATF's EEOs have more years of experience than FBI's

[57] According to ATF, there are specially-designed instruments for safely spinning off the end caps of pipe bombs in order to disarm them while also preserving the evidence for use in court. King County Cutters are instruments used to 'slice' open and disarm a device.

SABTs and that they are not advocating unproven or reckless procedures.[58] One ATF EEO stated that the FBI's approach needlessly destroys considerable amounts of evidence without meaningfully reducing the risk to the public.

However, these ATF techniques conflict with HDS training, and FBI personnel stated that the ATF's technique of spinning off end caps caused unnecessary risk to bomb technicians on site and the general public. We surveyed state and local bomb squad commanders on how many times in FYs 2007 and 2008 their squads had been on an explosives incident scene when ATF or FBI personnel proposed techniques to handle explosives that were different from HDS training. Of the 239 bomb squad commanders that responded, 21 percent indicated ATF proposed non-standard techniques, while 6 percent indicated FBI proposed non-standard techniques. Approximately one-half of the bomb squad commanders also responded that the non-standard techniques raised concerns about the safety of on-scene personnel, and more than one-third of the commanders indicated the techniques delayed the render-safe procedures. However, as shown in Exhibit 4-5, 54 percent of bomb squad commanders responding also indicated the intact evidence obtained by using ATF techniques benefitted their cases.

Exhibit 4-5: State and Local Bomb Commander Perceptions of the Effect of Different Explosive Handling Techniques

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Case benefitted from submitting intact evidence	54%	7%	30%	57%	16%	36%
Concern existed over the risk to the safety of on-scene personnel	54%	50%	32%	29%	14%	21%
Disagreement caused delays in render-safe procedures	38%	50%	44%	21%	18%	29%
Local bomb squad withdrew in protest	6%	7%	36%	21%	58%	72%
Other	12%	0%	2%	0%	86%	100%

Source: DOJ OIG Survey Analysis

[58] The ATF identified an incident in Seattle where important evidence was preserved by using a non-standard technique. By advocating remote movement of a jar of possible peroxide-based explosives, the ATF EEO was able to see that paper underneath the jar had the formula written on it that would otherwise have been destroyed.

The National Bomb Squad Commanders Advisory Board also believes that standardized and coordinated training will enable ATF and FBI bomb technicians to work safely and effectively together under a general operational philosophy that is compatible across the profession. Therefore, we recommend ATF and the FBI agree on standardized render-safe procedures. The curriculum taught at the HDS should include input from ATF EEOs and result in one set of render-safe procedures that are used by the FBI, ATF, and other public safety bomb technicians.

Conclusion

We found ATF and the FBI have not established a joint training plan, consolidated training facilities, or standardized post-blast, canine or render-safe curricula. Despite the requirement of the 2004 Attorney General Memorandum, the DOJ's Training Board has not been convened, and ATF and the FBI did not establish priorities for providing explosives-related training or for developing a comprehensive training plan. In addition, although ATF recently built a new explosives training headquarters adjacent to HDS, it has not consolidated operations or scheduling with the FBI.

Without coordination of schedules, curricula, and instruction, both ATF and the FBI will continue to provide inconsistent local training to bomb squads throughout the country, including locally conducted post-blast training, and peroxide-based explosives detection canine training. In addition, differing render-safe techniques and concerns over different explosives detection canine standards used by the FBI and ATF could endanger the safety of bomb squad personnel and the public.

Recommendations

We recommend that DOJ:

9. Resolve any differences between the FBI and ATF regarding post-blast curricula.

10. Select a single standard to certify canines for DOJ components, consistent with the requirements of HSPD-19.

11. Convene the Explosives Training Review Board to consider consolidation of training programs and to develop a training plan for all DOJ explosives-related efforts. The plan should assess the training needs of federal, state, and local explosives specialists and prioritize the provision of the training programs to most effectively meet those needs.

We recommend that both ATF and the FBI:

12. Consolidate and standardize a DOJ-wide curriculum for post-blast training.

13. Agree on standardized render-safe procedures for use in the HDS bomb technician curriculum.

14. Coordinate and consolidate canine training for peroxide-based explosives.

CHAPTER V: LABORATORY RESOURCES

The FBI and ATF each have laboratories that perform explosives-related analysis. The 2004 Memorandum directed that a Laboratory Review Board (Lab Board) be established to examine DOJ laboratory resources and workloads to make recommendations for the most productive allocation of DOJ laboratory resources. Although a Lab Board was formed in September 2004, it never provided a report or recommendations to the Deputy Attorney General.

DOJ Explosives Laboratories

The FBI and ATF each have laboratories that perform forensic analyses on various types of evidence, including explosives evidence. Additionally, the FBI and ATF are part of the multi-agency Terrorist Explosive Device Analytical Center (TEDAC) that runs its own forensic laboratory for explosives.

ATF Laboratories

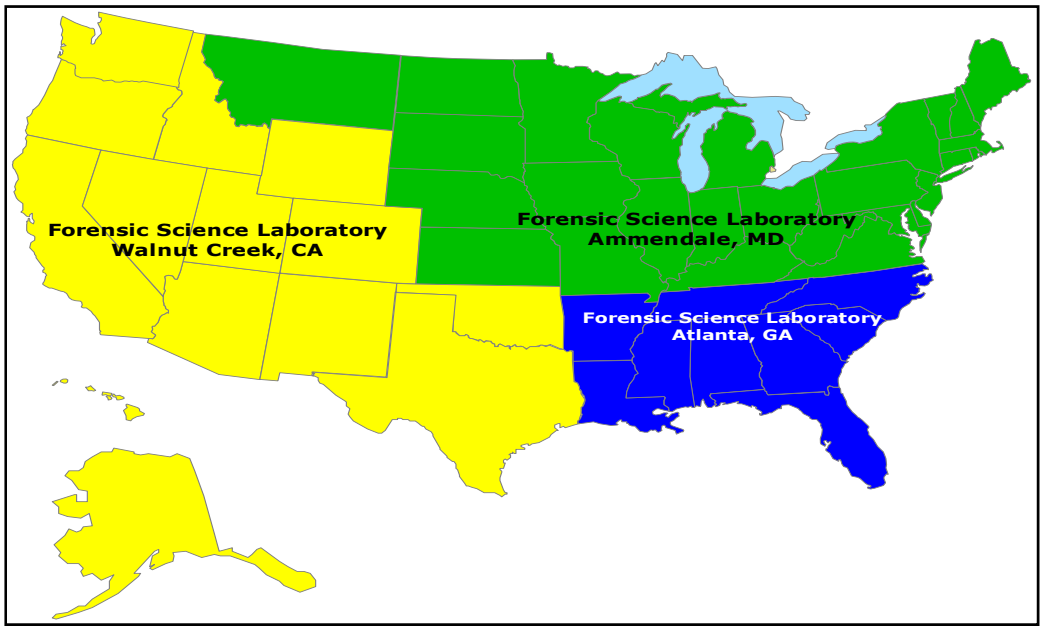
The ATF's Office of Laboratory Services conducts forensic analysis of explosives, accelerants, destructive devices, and explosives debris. It also provides laboratory support to ATF's regulatory functions over the firearms and explosives industries, training and crime scene assistance to federal and local law enforcement, and expert witness testimony.[59] ATF laboratory personnel consist of forensic chemists, firearm and toolmark examiners, fingerprint specialists, and document examiners. Evidence collected at an explosives scene is sent to one of ATF's three regional laboratories for examination.

ATF's three forensic laboratories are located in Ammendale, Maryland; Walnut Creek, California; and Atlanta, Georgia. Each laboratory supports a specified geographic area, as shown in Exhibit 5-1.[60]

[59] The ATF's National Laboratory Center and the Treasury Department's Scientific Services Division are co-located in suburban Washington, D.C. The Scientific Services Division performs primarily regulatory functions related to alcohol and tobacco.

[60] The ATF's National Laboratory Center moved from Rockville, Maryland, to a new a $135 million facility in Ammendale, Maryland, that was dedicated on June 16, 2003.

Exhibit 5-1: ATF Laboratory Territories



Source: ATF Office of Laboratory Services

The FBI Laboratory

The FBI Laboratory, located in Quantico, Virginia, provides forensic and chemical analysis, technical support, expert witness testimony, and training for federal, state, and local law enforcement agencies on all types of cases. Explosive evidence is sent to the Explosives Unit, part of the Forensic Analysis Section. The Explosives Unit provides direct field support in explosives matters and investigations, including forensic examinations of explosives devices and evidence, searches of bomb factories and facilities or locations in which explosives may be encountered, and outreach with domestic and foreign manufacturers of explosives.[61] The Explosive Unit also maintains the Explosives Reference Tool (EXPeRT) database to support its forensic examinations.[62]

[61] These examinations involve the identification and intended function of the components used to construct explosives devices, including detonators, initiators, explosives, wires, tapes, containers, electronic components, timing mechanisms, and power sources.

[62] EXPeRT is primarily a document management system that serves as a central repository for reports and images associated with terrorist IEDs. EXPeRT, developed by the FBI Laboratory in 2003, is based on the FBI Explosives Unit's database for reports, devices and components, and reference material. The TEDAC implemented EXPeRT in 2004.

Terrorist Explosive Device Analytical Center (TEDAC)

An FBI-led initiative organized in response to requests from the Department of Defense, TEDAC was created in December 2003 and expanded in 2004 to coordinate and manage interagency efforts for gathering and forensically analyzing terrorist IEDs from war zones in Iraq and Afghanistan. Although TEDAC performs explosives analysis, its main purpose is to gather and disseminate intelligence on IEDs being used in Iraq and Afghanistan. TEDAC-produced intelligence and analysis is shared throughout the law enforcement, intelligence, and military communities.

TEDAC is located within the FBI Laboratory in Quantico, Virginia. The FBI provides the TEDAC Director and approximately 30 percent of federal personnel assigned to the TEDAC laboratory. ATF staffs the TEDAC Deputy Director position and provides several technical experts. Although TEDAC has a dedicated staff and forensic equipment, because they are housed within the FBI Laboratory dedicated FBI Laboratory personnel and equipment have been used to conduct TEDAC analyses.

Explosives Forensic Analysis

The forensic capabilities of the FBI and ATF laboratories are similar, as shown in Exhibit 5-2.

Exhibit 5-2: Laboratory Capabilities

Capabilities	FBI	ATF
Latent Fingerprints	✓	✓
Trace Evidence	✓	✓
Document Examination	✓	✓
Toolmarks	✓	✓
Nuclear DNA	✓	✓
Mitochondrial DNA	✓	
Metallurgy	✓	

Source: ATF and FBI

Although both laboratories share similar capabilities and are accredited by the American Society of Crime Laboratory Directors, ATF and FBI employees strongly prefer to submit evidence to their own laboratories. According to our surveys, only 9 percent of FBI managers and 2 percent of FBI bomb technicians that responded reported that their field divisions had submitted evidence to ATF laboratories. No ATF managers and only 4 percent of ATF explosives specialists reported that they had submitted evidence to the FBI's laboratory.

Explosive Review Board Report

The 2004 Memorandum stated that a Lab Board should be established and chaired by the Deputy Attorney General (or his designee) with participation from the FBI, ATF, and Drug Enforcement Administration laboratories. The Lab Board was supposed to examine DOJ's available laboratory resources and workloads, analyze laboratory demands imposed by TEDAC, and make recommendations to the Deputy Attorney General on the most productive allocation of DOJ laboratory resources.

The 2007 ERG report indicated that a Lab Board had been established and had: (1) exchanged laboratory organization charts, (2) documented the need for each forensic discipline, (3) developed a standard special agent-to-lab employee staffing chart, and (4) investigated the possibility of sharing FBI research funding with ATF and the Drug Enforcement Administration. However, DOJ was unable to locate for us a copy of the required Lab Board report or any other evidence that the Lab Board reviewed laboratory resources and workloads, as required by the 2004 Attorney General Memorandum.

The volume of submissions received by TEDAC far exceeds the submissions received by the FBI and ATF laboratories, as shown in Exhibit 5-3.[63]

[63] The number of submissions requested is not the same as the number of cases requested. One case may contain multiple submissions (pieces of evidence), each requiring different examinations.

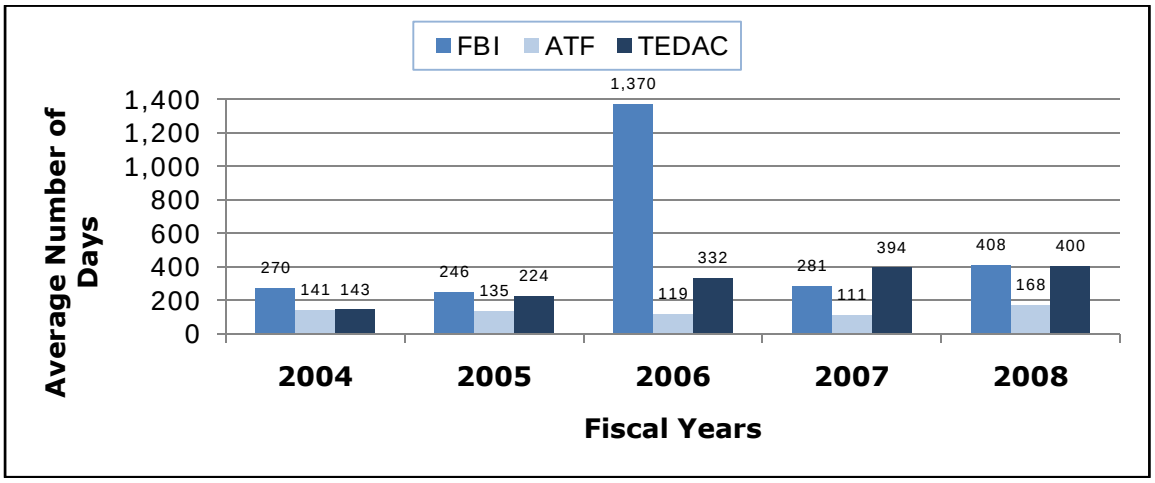
Exhibit 5-3: Status of Explosives Submissions at DOJ Laboratories

Submissions Status	2004	2005	2006	2007	2008*
ATF					
Received	564	486	493	453	301
Completed	557	510	507	435	313
Pending	195	171	157	175	163
FBI Explosives Unit					
Received	335	183	219	203	259
Completed	257	224	932	166	182
Pending	1,249	1,200	493	529	606
TEDAC					
Received	1,452	8,434	16,486	15,032	4,161
Completed	347	1,457	3,929	2,814	2,723
Pending	1,809	9,761	21,027	34,246	35,773

Source: ATF, FBI and TEDAC laboratories
* Only partial FY 2008 data available

In addition, we found that the average number of days for DOJ laboratories to process explosives submissions varies significantly, as shown in Exhibit 5-4. On average, the FBI Laboratory took over 2 years and TEDAC took almost 1 year to process explosives evidence submissions.

Exhibit 5-4: Laboratory Explosives Submission Turnaround Times for Fiscal Years 2004 through 2008[64]



Source: FBI Laboratory and ATF Laboratory data

[64] According to the FBI, FY 2006 average number of days significantly varied from the prior and following fiscal years due to the closure of the Pentagon bombing submissions.

Given the wide variation in the average number of days required to conduct analysis by ATF, FBI, and TEDAC laboratories and the large number of submissions left pending each year, DOJ needs to consider options for improving explosives submission turnaround times. Additionally, since TEDAC uses FBI Laboratory equipment and personnel, the large number of TEDAC submissions may adversely affect the timeliness of the FBI Laboratory's analyses. We recommend that DOJ require the Lab Board to report on all DOJ laboratory capabilities, including an assessment of TEDAC's effect on overall DOJ laboratory functions, and recommend options to improve productivity within all DOJ laboratories.

Conclusion

The FBI and ATF each have laboratories that perform forensic analyses of collected evidence, including explosives evidence. Additionally, the FBI and ATF are part of TEDAC, which operates its own forensic laboratory for explosives. The 2004 Memorandum required that a Lab Board be established to examine available DOJ laboratory resources and workloads in order to provide recommendations for the most productive allocation of DOJ laboratory resources. However, the Lab Board provided neither a report nor recommendations to the Deputy Attorney General.

We determined that in FYs 2004-2008, on average, it took the ATF laboratories more than 4 months to process explosives-evidence submissions and the FBI Laboratory took over 2 years and TEDAC almost 1 year. We recommend that DOJ review how to best use available resources to effectively and efficiently manage the workload of DOJ's laboratories.

Recommendation

We recommend that DOJ:

15. Direct the Lab Board to report on laboratory capabilities, including the effect of TEDAC and recommendations as to the allocation and use of DOJ's laboratory resources.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that ATF's and FBI's management complied with federal laws and regulations, and DOJ memoranda for which noncompliance, in our judgment, could have a material effect on the results of our audit. ATF's and FBI's management is responsible for ensuring compliance with federal laws and regulations and with DOJ memoranda applicable to explosives incidents and related activities. In planning our audit, we identified the following laws and regulations and requirements related to the operations of the auditees that were significant within the context of the audit objectives:

- 18 U.S.C. § 846 (b)
- Homeland Security Presidential Directive – 19 entitled *Combating Terrorist Use of Explosives in the United States*

Our audit included examining, on a test basis, ATF and FBI's compliance with the aforementioned laws and regulations that could have a material effect on ATF's and FBI's operations. Our testing included: interviewing ATF, FBI, Office of the Deputy Attorney General, and State and Local Bomb Commander personnel; reviewing reports, manuals, curricula, position papers; surveying personnel in ATF, FBI, and state and local bomb commanders; and analyzing ATF and FBI explosives case information. Neither the FBI nor ATF are in compliance with 18 U.S.C. § 846 (b), which requires all federal agencies to report their arson and explosives incidents to ATF. We determined that neither ATF nor the FBI explosives personnel are consistently reporting explosives incidents to BATS. In addition, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in investigating terrorists' use of explosives, competition between the FBI and ATF in this area will likely continue and impede the progress of HSPD-19 implementation.

STATEMENT ON INTERNAL CONTROLS

As required by *Government Auditing Standards* we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the FBI's and ATF's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. ATF and FBI management is responsible for the establishment and maintenance of internal controls.

As noted in the Chapter III of this report, we identified deficiencies in the FBI's and ATF's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect DOJ's ability to accurately report the number of explosives incidents in the United States. 18 U.S.C. § 846 (b) mandates all federal agencies report information concerning explosives incidents to the Attorney General. Despite the federal mandate, ATF and FBI do not have a process in place to ensure that explosives incidents are reported to BATS. By not reporting explosives incidents to BATS, the FBI and ATF have not complied with their reporting requirements, marginalized the utility of BATS, and potentially misaligned limited resources.

Because we are not expressing an opinion on the FBI and ATF's internal control structure as a whole, this statement is intended solely for the information and use of the auditees. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

APPENDIX I

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to assess how the FBI and ATF coordinate explosives investigations and related activities, including:

- the effectiveness of protocols employed to determine the lead agency jurisdiction over explosives incidents;
- the extent of database consolidation and information sharing;
- the level of coordination in post-blast, render-safe and canine training; and
- the use of laboratory resources by explosives units.

Scope and Methodology Section

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit generally covers, but is not limited to, DOJ oversight and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Federal Bureau of Investigation (FBI) programs and activities relating to explosives investigations in FY 2003 - April 2009. We reviewed explosives case data from both components' case management systems from FY 2003 to March 2008, relevant Special Agent training records, explosives-related course curricula, documented policies or procedures regarding explosives

investigations or interagency interaction, and a prior OIG audit report.[83] We also conducted interviews with the Office of Deputy Attorney General, the Office of the Chief Information Officer, and more than 100 ATF and FBI employees, from each component's headquarters and 8 field divisions. We performed audit work at eight field sites: Baltimore, Maryland; Kansas City, Missouri; Los Angeles, California; New York, New York; Phoenix, Arizona; San Diego, California; Seattle, Washington; and the District of Columbia.[84] For our pilot sites we selected a smaller division (Baltimore) and a large division (New York); for the remaining six sites we judgmentally selected the field divisions based on the number of explosives incidents reported.

To assess the FBI's involvement in explosives investigations, we interviewed responsible headquarters officials at the Domestic Terrorism Operations Unit of the Counterterrorism Division, the Violent Crime Section of the Criminal Investigative Division, the Technical Operations Section, the Hazardous Devices Operations Center, and the Hazardous Devices School all from the Critical Incident Response Group, the Explosives Unit of the FBI Laboratory and the Terrorist Explosive Device Analytical Center, to determine: (1) their roles and responsibilities; (2) their units' participation in explosives investigation - related activities; and (3) interactions with ATF, if any.

To assess ATF's involvement in explosives investigations, we: interviewed responsible headquarter officials in the Office of the Director, the Office of Field Operations, the Office of Strategic Intelligence and Information including the U.S. Bomb Data Center, the Office of Laboratory Services, the Explosive Enforcement Division, and the National Center for Explosives Training, including the Explosives Detection Canine Training Center, to determine: (1) their roles and responsibilities; (2) their units' participation in explosives investigation related activities; and (3) interactions with the FBI, if any.

At each field division selected, we interviewed Special Agents-in-Charge, Assistant Special-Agents-in-Charge, FBI Special Agent Bomb

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[83] A DOJ OIG audit found that DOJ had not efficiently and effectively collected and made available to the federal, state, and local law enforcement community information relating to arson and the criminal misuse of explosives. Specifically, the similar responsibilities of the ATF and the FBI in compiling data have resulted in duplication of effort, duplicate reporting of incidents by state and local agencies, and a lack of uniformity in the reporting process. See U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases, Report Number 05-01 (October 2004)*.

[84] During our audit, we also attended a BATS new-user training seminar in Boston Massachusetts, and reviewed BATS resources available at www.atf.gov.

Technicians, FBI Domestic Terrorism-Joint Terrorism Task Force Supervisory Special Agents, ATF Certified Explosive Specialists and Explosive Enforcement Officers (where available), and the Arson and Supervisory Special Agents for Arson and Explosive Groups and Field Intelligence Groups in each Field Division selected.

As part of our methodology, we sent written surveys to all ATF and FBI Field Division Special Agents-in-Charge, and every FBI Special Agent Bomb Technician, ATF Certified Explosive Specialist, and ATF Explosives Enforcement Officer, as well as to the commander of each accredited bomb squad in the country. We developed our survey and received input from our Applied Audit Techniques group, ATF and FBI Management, and select members of the bomb squad community. Additionally we pilot tested our survey at the Washington Field Office for the FBI and ATF.

We identified the survey recipients based on listings provided by ATF and FBI management. ATF provided us a listing of names and addresses for the Certified Explosive Specialists, Explosive Enforcement Officers, and ATF management personnel and the FBI provided us a listing of names, address for the Special Agent Bomb Technicians, FBI management, and the state and local bomb commander personnel. Our response rate was:

Survey Response Rate

Surveys	Number Surveyed	Number of Respondents	Response Rate
ATF Management	25	18	72%
FBI Management	69	47	68%
FBI Special Agent Bomb Technicians	194	121	62%
ATF Special Agent Bomb Technicians, Certified Explosives Specialists and Explosives Enforcement Officers	285	180	63%
State and Local Bomb Squad Commanders	470	239	51%

Source: OIG

APPENDIX II

ACRONYMS

AEXIS	Arson and Explosives Incident System
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BATS	Bomb Arson Tracking System
CES	Certified Explosives Specialist
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EEO	Explosives Enforcement Officer
ERG	Explosives Review Group
EXPeRT	Explosives Reference Tool
FBI	Federal Bureau of Investigation
HDS	Hazardous Devices School
HSPD	Homeland Security Presidential Directive
IBDC	International Bomb Data Center Sub-Special Interest Group
IED	Improvised Explosive Device
JTTF	Joint Terrorism Task Force
MIOG	Manual of Investigations Operations Guidelines
NBSCAB	National Bomb Squad Commanders Advisory Board
NCETR	National Center for Explosives Training and Research
NIJ	National Institute of Justice
NORT	National Odor Recognition Training and Testing
OCIO	Office of the Chief Information Officer
OIG	Office of the Inspector General
SABT	Special Agent Bomb Technician
SWGDOG	Scientific Working Group on Dog and Orthogonal detector Guidelines
TEDAC	Terrorist Explosive Device Analytical Center
U.S.C.	United States Code
USBDC	United States Bomb Data Center

APPENDIX III

EXPLOSIVES AUTHORITIES

The FBI traditionally has investigated several types of federal crimes that may be committed with explosives, such as bank robbery and terrorism. However, ATF has primary jurisdiction under specific statutes to regulate the alcohol, tobacco, firearms and explosives industries, and enforce associated criminal violations. Recognizing their shared jurisdiction, 18 U.S.C. § 846 grants both ATF and the FBI concurrent authority to conduct investigations with respect to an extensive list of explosives incidents at 18 U.S.C. § 844(d)-(i).

Federal Bureau of Investigation

Congress gave the Attorney General broad authority to enforce the federal criminal laws and to appoint officials to detect and prosecute federal crimes under 28 U.S.C. § 533. The role and general functions of the FBI, as directed by the Attorney General, are set forth at 28 C.F.R. § 0.85. The Attorney General delegated to the FBI the conduct of much of the federal law enforcement mandate, except for those areas Congress specifically granted primary jurisdiction to different agencies.[85] Specifically, the FBI had enforced several federal criminal statutes that could be committed with explosives such as bank robbery, civil rights violations, and "injurious devices" on federal lands.[86]

The FBI obtained the formal responsibility for investigating terrorist groups in the United States and acts of terrorism directed against Americans through a series of Acts and Presidential Directives. In 1982, National Security Decision Directive-30 gave the FBI the responsibility of investigating terrorism in the United States. Several other statutes expanded the FBI's jurisdiction to include investigations of acts of terrorism directed against Americans overseas and to expand counterterrorism

[85] For example, 18 U.S.C. § 3056 (counterfeiting crimes enforced by Secret Service) and 26 U.S.C. §§ 7801-7803 (internal revenue laws enforced by Internal Revenue Service).

[86] See 18 U.S.C. § 2113(d) (bank robbery, use of "dangerous device"); 18 U.S.C. § 242 (civil rights deprivation, use of explosives); 18 U.S.C. § 245(b)(5) (hate crimes, explosives enhancement); 18 U.S.C. § 247(d)(2)-(3) (damage to religious property, explosive enhancement); and 18 U.S.C. § 1864 (use of hazardous devices on federal lands).

operations.[87] Additional Presidential Directives reiterating and expanding FBI's terrorism responsibility includes but is not limited to:

- Presidential Decision Directive-39, entitled *U.S. Policy on Counterterrorism*, defined the roles of several U.S. counterterrorism agencies, including the FBI;

- Presidential Decision Directive-62 assigned lead agency responsibility to the FBI for countering overseas terrorism against American interests and for domestic terrorism crisis management, intelligence and hostage rescue;

- Homeland Security Presidential Directive-5 reaffirmed that the Attorney General has lead responsibility for criminal investigations of terrorist acts or threats as well as related intelligence collection activities within the United States. Additionally, it provided the FBI with the lead role for coordinating the activities of the other members of the law enforcement community to detect, prevent, preempt and disrupt terrorist attacks against the United States; and

- National Security Presidential Directive-46 / Homeland Security Presidential Directive-15 provides that the Attorney General, acting through the FBI and in cooperation with other federal departments and agencies engaged in activities to protect our national security, shall coordinate the activities of the law enforcement activities to detect, prevent, preempt, and disrupt terrorist attacks against the United States. In addition this directive rescinds Presidential Decision Directives 39 and 62.

Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF has jurisdiction over several areas of federal law relative to explosives. Specifically, ATF is authorized to monitor and regulate

[87] See 18 U.S.C. §§ 1119 (murder and terrorist acts against U.S. Nationals overseas); the Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 2339A, (providing material support to terrorists abroad) and 28 U.S.C. § 538, specifically directs the FBI to investigate crimes and actions that threaten aircraft security in or entering the United States.

possession, storage, and transport of commercial explosives.[88] ATF's explosives jurisdiction also includes provisions of the National Firearms Act and Federal Firearms Act, which incorporate "destructive devices" as types of firearms subject to regulation.[89] Because accelerants used in arsons often cause incendiary explosions, ATF is also responsible for investigating commercial arson nationwide.[90]

The Homeland Security Act of 2002 and the associated Safe Explosives Act of 2002 transferred most enforcement functions of ATF to DOJ.[91] The Act at 28 U.S.C. § 599A, directs that, subject to the direction of the Attorney General, the ATF is responsible for investigating criminal and regulatory violations of the federal firearms, explosives, arson, alcohol, and tobacco smuggling laws and any other function related to the investigation of violent crime or domestic terrorism that is delegated to ATF by the Attorney General. The Attorney General's discretion under 28 U.S.C. § 599A includes the right to authorize the performance by any officer, employee, or agency of DOJ of any function of ATF. However, the law also requires that ATF be maintained as a distinct entity within DOJ.

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[88] The Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §§ 921 et seq. as amended in the Gun Control Act of 1968, 26 U.S.C. §§ 5841 et seq., prohibited unlicensed trade in firearms and explosives. The Organized Crime Act of 1970, at 18 U.S.C. §§ 842 and 844, covers unlawful acts and penalties. 18 U.S.C. § 843 regulates the explosives industry. 18 U.S.C. § 846(b) authorizes the establishment of a national repository of information on incidents involving arson and suspected criminal misuse of explosives. The National Firearms Act, Title 26 U.S.C. Chapter 53, includes criminal provisions for the unlawful manufacture, transfer, and possession of destructive devices, including explosives or incendiary bombs, grenades, and mines.

[89] 26 U.S.C. §§ 5801, et seq., *Machine Guns, Destructive Devices, and Certain Other Firearms* (reenacting the *National Firearms Act of 1934* that required "firearms" sellers to register with the Treasury Department, pay a special tax on firearms sales, and keep written order forms for sales); 18 U.S.C. §§ 921, et seq. (reincorporating the *Federal Firearms Act of 1938* that required firearms' manufacturers and dealers to obtain federal licenses and regulated interstate shipments).

[90] *Anti-Arson Act of 1982*, Pub. L. No. 97-298, § 2(c), amended 18 U.S.C. § 844, by specifically including arson as a federal crime, based in part on ATF determinations that accelerants met the definition of explosives.

[91] Pub. L. 107-296, the *Safe Explosives Act* amended 18 U.S.C. § 841 to require explosives license applicants to submit identifying information of all employees who will handle or transport explosives, expand the categories of prohibited persons and required manufacturers and importers to furnish samples of their explosives to ATF.

Federal Mandate to Share Information

In addition to specific statutory authorization to enforce particular laws, these components also have a statutory mandate outlined in the Homeland Security Act of 2002 to work together to share information. The Act defines Homeland Security Information as any information possessed by a federal, state, or local agency that (1) relates to the threat of terrorist activity; (2) relates to the ability to prevent, interdict or disrupt terrorist activity; (3) would improve the identification or investigation of a suspected terrorist or terrorist organization; or (4) would improve the response to a terrorist act.[92]

Although agencies should share information, some components are directly responsible for centralizing information on certain topics. In 1988, Congress passed the Uniform Federal Crime Reporting Act of 1988 that required law enforcement agencies to automatically report to the FBI monthly crime statistics under prescribed standardized specifications. The law also provides that the Attorney General shall acquire, collect, classify, and preserve national data on federal criminal offenses as part of the Uniform Crime Reports authorized under 28 U.S.C. § 534.[93]

However, on September 30, 1996, the Omnibus Consolidated Appropriations Act of 1997 was enacted. The Act amended the federal explosives laws in Title 18 U.S.C. § 846(b) and authorized the Secretary of the Treasury to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. This section also required all federal agencies having information concerning such incidents to report the information to the Secretary. This included information regarding arson and explosives incidents investigated by any federal agency, as well as state or local agencies and criminal dispositions, if any. The Secretary gave ATF the responsibility to establish the repository.

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[92] 6 U.S.C. § 482(f)(1).

[93] The Act further specifies that the Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and requires that all departments and agencies within the federal government (including the Department of Defense) that routinely investigate complaints of criminal activity shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General.

APPENDIX IV

2004 ATTORNEY GENERAL MEMORANDUM

Office of the Attorney General
Washington, D.C. 20530

August 11, 2004

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

FROM: THE ATTORNEY GENERAL

SUBJECT: Coordination of Explosives Investigations and Related Matters

To ensure effective coordination of explosives investigations by law enforcement components of the Department of Justice (the Department), I hereby direct as follows:

Jurisdiction

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) shall control the investigation of all explosives incidents, except as follows:

    a. In cases where a Joint Terrorism Task Force (JTTF) determines that the explosives incident is related to terrorism, then the JTTF shall control the investigation; and
    b. In cases where the Federal Bureau of Investigation (FBI) traditionally has exercised jurisdiction (including but not limited to bank robberies, civil rights violations, and organized crime), then the FBI shall control the investigation.

2. The Deputy Attorney General shall resolve all issues relating to jurisdiction over explosives investigations.

Information Sharing

3. The Department's Chief Information Officer (CIO) shall consolidate all of the Department's arson and explosives incident databases including, but not limited to, the FBI's Automated Incident Reporting System and ATF's Bomb and Arson Tracking System, into a single database.

4. All consolidated arson and explosives incident databases shall be maintained by ATF and shall be accessible to all Department law enforcement components. No Department component may maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database.

5. Within 90 days, the CIO shall examine and report to the Deputy Attorney General on the feasibility of consolidating all of the Department's remaining arson and explosives databases.

6. The Deputy Attorney General shall resolve all issues relating to the consolidation of arson and explosives databases.

TEDAC

7. The CIO shall coordinate the development of a database for the Terrorist Explosives Device Analytical Center (TEDAC).

8. A senior FBI representative shall serve as Director of TEDAC; a senior ATF representative shall serve as a Deputy Director of TEDAC.

Laboratories

9. There shall be established a Laboratories Review Board (Lab Board). The Deputy Attorney General (or his designee) shall chair the Lab Board; representatives of ATF, the Drug Enforcement Administration, and the FBI shall serve as members of the Lab Board.

10. The Lab Board shall examine the Department's available resources and workloads and make recommendations to the Deputy Attorney General. Such recommendations shall include an analysis of laboratory demands imposed by TEDAC.

11. The Deputy Attorney General (or his designee) shall, as appropriate, direct the allocation and use of the Department's laboratory resources.

Training

12. All budget, curricula, teaching and scheduling functions relating to post-blast explosives training within the Department shall be consolidated under ATF.

13. All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation.

14. The Deputy Attorney General shall resolve all issues relating to the consolidation of post-blast explosives training.

15. All explosives training provided by Department components shall be made available, when appropriate, to all federal law enforcement agencies.

16. There shall be established an Explosives Training Review Board (Explosives Board). The Deputy Attorney General (or his designee) shall chair the Explosives Board; representatives of ATF and the FBI shall serve as members of the Explosives Board.

17. Within 90 days, the Explosives Board shall examine and report to the Deputy Attorney General on the feasibility of consolidating the Department's remaining explosives training programs and facilities.

Special Events

18. The recommendations of the Explosives Review Group (ERG) regarding Special Events, as set forth in the Memorandum for the Deputy Attorney General of May 3, 2004, Attachment 2, shall be adopted and implemented.

19. No later than December 1, 2004, the ERG Chair shall report to the Deputy Attorney General in writing on the implementation of the ERG's recommendations regarding Special Events.

Canines

20. As soon as practicable, all Department components that use explosives detection canines shall use only canines certified by ATF.

APPENDIX V

2007 EXPLOSIVES REVIEW GROUP MEMORANDUM

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

JAN 12 2007

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3200

MEMORANDUM TO: DEPUTY ATTORNEY GENERAL

THRU: Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

FROM: Chair, Explosives Review Group

SUBJECT: Improving Coordination of Explosives Investigations, and Related Matters

In August 2004, Attorney General Ashcroft issued a memorandum designed to foster the effective coordination of explosives investigations between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI). Additionally, the memorandum provided direction on the optimal use of DOJ's explosives resources. Among the additional topics covered by the Attorney General's directive were information sharing, the Terrorist Explosive Device Analytical Center (TEDAC), laboratories, explosives training, special events, and explosives-detection canines.

On November 14, 2006, you directed ATF and the FBI to "conduct a comprehensive evaluation of current efforts to implement the Attorney General's (AG's) directive, assess the need to establish or clarify operational protocol in order to give effect to the AG's directive, and identify specific ways to improve coordination of the Department's investigations of and preparation for explosives-related incidents."

On November 30, 2006, ATF, FBI, and various representatives from other DOJ components met to discuss the directive you issued. Subgroups were formed to discuss the issues, and each group reported to FBI Executive Assistant Director Michael Mason and me. EAD Mason and I discussed the matters after the subgroups met. This memorandum provides, for each topic in the Attorney General's August 2004 directive, a summary of the subgroup discussion, a list of unresolved issues, and recommended actions.

Jurisdiction

In the area of investigative jurisdiction, the Attorney General's memorandum directed that:

- ATF shall control the investigation of all explosives incidents, except:

  -When a Joint Terrorism Task Force (JTTF) determines that the explosives incident is related to terrorism, then the JTTF shall control the investigation.

  -In cases where the FBI has traditionally exercised jurisdiction (e.g. bank robberies, civil rights violations, and organized crime), the FBI shall control the investigation.

- The Deputy Attorney General shall resolve all issues relating to jurisdiction over explosives investigations.

Neither the FBI nor ATF are aware of jurisdictional issues relating to international terrorist incidents. There have been periodic disagreements between ATF and the FBI regarding incidents that may have "domestic terrorist" ties. Because it is difficult to establish motive when an incident occurs, disagreements continue to take place. However, Special Agents in Charge at ATF and FBI have worked out differences in each incident.

The subgroup will continue to meet quarterly to ensure that each agency continues to address issues as they arise. Also, the ATF Assistant Director of Field Operations and several FBI Executive Assistant Directors and Assistant Directors meet on a monthly basis to discuss ongoing issues.

Recommended Action: None. There are no issues requiring resolution by the ODAG.

Information Sharing

On information sharing, the Attorney General's memorandum directed that:

- The Department's Chief Information Officer (CIO) would consolidate all of the Department's arson and explosives incident databases into a single database. This consolidation would include the FBI's Automated Incident Reporting System and ATF's Bomb and Arson Tracking System.

- All consolidated arson and explosives incident databases are to be maintained by ATF and shall be accessible to all DOJ law enforcement components. No DOJ component may maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database.

- Within 90 days, the CIO was to examine and report to the Deputy Attorney General on the feasibility of consolidating all of DOJ's remaining arson and explosives databases.

- The Deputy Attorney General is to resolve all issues relating to the consolidation of arson and explosives databases.

Following issuance of the Attorney General's memorandum, the Department's CIO undertook an assessment of ATF's and FBI's incident databases and, in a report issued in November 2004, recommended that the FBI's Automated Incident Reporting System (AIRS) and ATF's Bomb and Arson Tracking System (BATS) be consolidated, with AIRS data to be integrated into BATS. Accordingly, BATS is DOJ's Department-wide arson and explosives incident database, and it will be accessible to all DOJ law enforcement components, as well as to State, local, and tribal law enforcement agencies.

ATF subsequently combined the data and formed the United States Bomb Data Center, which exchanges information with 19 other bomb data centers around the world. Nine additional countries are finalizing an agreement to participate in the information exchange. All of this is done through the International Bomb Data Center Working Group. ATF and the FBI are partners in this Working Group, and all Working Group members openly exchange information through a common system. The United States Bomb Data Center data is available to Federal, State, and local agencies.

There is agreement that DOJ should maintain a single source for bomb data. ATF believes that the Attorney General's August 2004 directive made it clear that ATF would collect and manage this data. The FBI believes that the Attorney General's directive should be clarified and that the FBI should be the manager of the bomb data because of other issues relating to their mission.

The FBI has expressed concern that because the term "Bomb Data Center" was coined by their agency in 1972, their partners are confused as to whom they should send bomb data information. The FBI also stated that the term "arson or explosives incident information," as used in the Attorney General's 2004 directive, should be clarified.

Each agency has issued a white paper outlining why each should manage bomb data information as the single DOJ source. Both are attached for your review.

Recommended Action: DOJ should review the position papers of each agency and hold a meeting with both agencies to discuss and resolve the outstanding issues.

Terrorist Explosives Device Analytical Center (TEDAC)

At your direction, the Explosives Review Group did not address any issues relating to TEDAC

Laboratories

With regard to laboratories, the Attorney General's memorandum directed that:

- There shall be established a Laboratories Review Board chaired by the Deputy Attorney General (or his designee) with participation by representatives from ATF, DEA, and the FBI.

- The Laboratories Review Board is to examine the Department's available resources and workloads and make recommendations to the Deputy Attorney General. Such recommendations are to include an analysis of laboratory demands imposed by the Terrorist Explosives Device Analytical Center.

- The Deputy Attorney General (or his designee) shall, as appropriate, direct the allocation and use of the Department's laboratory resources.

Following issuance of the Attorney General's memorandum, in September 2004 the DOJ Laboratories Review Board held its first meeting, chaired by Science Advisor Vahid Majidi. The Directors of the ATF, FBI, and DEA laboratories attended, and the following were identified as action items:

1. Exchange laboratory organization charts.
2. Document the need for each forensic discipline in each laboratory.
3. Develop a standard special agent-to-lab employee-staffing chart.
4. Investigate possibilities for sharing FBI research funding with ATF and DEA.

The Laboratories Review Board subsequently formed the "Council of Federal Crime Laboratory Directors" which consists of directors of all DOJ labs and 12 other laboratories as founding entities. They meet three times per year to discuss ongoing issues.

Recommended Action: None. There are no pending issues that require resolution by the ODAG.

Training

The training portion of the Attorney General's memorandum directed that:

- All budgets, curricula, teaching, and scheduling functions relating to post-blast explosives training with the Department will be consolidated under ATF.

- All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation.

- The Deputy Attorney General shall resolve all issues relating to the consolidation of post-blast explosives training.

- All explosives training provided by DOJ components shall be made available, when appropriate, to all Federal law enforcement agencies.

- There shall be established an Explosives Training Review Board (Explosives Board). The Deputy Attorney General (or his designee) shall chair the Explosives Board, and representatives of ATF and the FBI shall serve as members of the Explosives Board.

- Within 90 days, the Explosives Board shall examine and report to the Deputy Attorney General on the feasibility of consolidating the Department's remaining explosives training programs and facilities.

The subgroup met and agreed that:

- Both agencies have valuable post-blast and explosives related training.

- Both agencies will meet to discuss ongoing issues. They suggest forming an "Explosives Training Working Group" instead of the "Explosives Training Review Board." This group will meet quarterly and consider ways to exchange course schedules to reduce redundancy.

- Both agencies will strive to ensure that positions remain open in their training courses for other agency representatives.

There is, however, disagreement about the meaning of the following language in the Attorney General's directive:

> "All budgets, curricula, teaching, and scheduling functions relating to post-blast explosives training with the Department will be consolidated under ATF. All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation."

ATF believes that the language in paragraph twelve is clear. The FBI believes it is ambiguous and needs clarification.

The group believes the issue is complex and requires discussion, negotiation, and collaboration. They also believe paragraphs twelve and thirteen conflict. One indicates all of the efforts should be consolidated under ATF, the other indicates they should stay with their respective agencies. The group believes that the language of the Attorney General's directive may need to be specified the specific items that should be

consolidated. If the language is clarified, the group believes a resolution may be possible with respect to consolidating curricula, training, and scheduling functions.

Recommended Action: Each agency prepared a white paper for your review. After reviewing the white papers, the ODAG should determine whether the language of the Attorney General's directive should be clarified.

Special Events

Regarding special events, the Attorney General's memorandum stated that:

- The recommendations of the Explosives Review Group regarding Special Events, as set forth in the memorandum for the Deputy Attorney General of May 3, 2004, Attachment 2, shall be adopted and implemented.

- No later than December 1, 2004, the Explosives Review Group Chair shall report to the Deputy Attorney General in writing on the implementation of the Group's recommendations regarding special events.

The Attorney General's memorandum directs ATF and the FBI to exchange copies of their special events policies and directs the FBI to add ATF email addresses to its special events databases. Additionally, it states that ATF will direct its field offices to coordinate requests from State and local law enforcement agencies for special events support with the FBI prior to committing resources. These tasks have been accomplished.

The subgroup met and agreed to continue this practice to ensure agency resources are used effectively. Although the agencies have had some differences about special events protocols at some venues, all such differences were resolved by the Special Agents in Charge.

Recommend Action: None. Because the issues have been resolved locally, and the subgroup has agreed to meet periodically to address any outstanding issues, there is no need for the ODAG to resolve any issues.

Canines

Regarding canines, the Attorney General's memorandum directed that:

- As soon as practicable, all Department components that use explosives-detection canines are to use only canines certified by ATF.

In response to this portion of the directive, ATF surveyed other DOJ components to determine their explosive-detection canine needs and has provided explosives detection canines and canine training to the FBI's Uniform Division and to the U.S. Marshals Service. Additionally, ATF's canine program has established protocols, policies, and

certifications, including the Odor Recognition Proficiency Standard, commonly known as the National Odor Recognition Test (NORT).

The subgroup met but was unable to agree on all aspects of the use of explosives-detection canines. ATF's position is that the language mentioned above is advantageous to DOJ and continues to provide this training when it is requested. The FBI believes the language is unclear and creates a liability for them because ATF-certified canines are not available to the FBI in every city. The FBI has acquired and deployed explosives-detection canines from outside sources. The FBI prefers to use dogs trained under the "Scientific Working Group on Dog and Orthogonal Detector Guidelines," a government-sponsored working group to enhance the performance of detector canines of all disciplines.

Recommended Action: Each agency has prepared a "white paper" outlining their position for DOJ review.

Conclusion

The Attorney General's August 2004 directive served to clarify some issues related to explosives cases. The directive opened the door for ongoing dialogue between the FBI and ATF and resulted in substantial progress and improved communication between the two agencies. However, as noted above, some issues remain unresolved. This memorandum and the accompanying position papers serve to outline those unresolved issues so that the Department can make a decision on them. The ATF and FBI agree that it is in the Department's and their agencies' best interests to bring resolution to these issues.

Michael R. Bouchard

APPENDIX VI

2008 ATF-FBI MEMORANDUM OF UNDERSTANDING

U.S. Department of Justice

Office of the Deputy Attorney General

July 8, 2008

Washington, D.C. 20530

MEMORANDUM TO: Attorney General
Deputy Attorney General

FROM: Director, Federal Bureau of Investigation
Acting Director, Bureau of Alcohol, Tobacco,
Firearms and Explosives

SUBJECT: Memorandum of Understanding on ATF/FBI Protocols for Response to Explosives-related Incidents

On December 20, 2007, the President of the United States approved the National Strategy, submitted by the Attorney General, to combat terrorist use of explosives in the United States. In support of the requirements of the National Strategy to clarify roles and responsibilities and to facilitate a more productive partnership in the best interest of the American people, with the guidance and advice of the Attorney General and the Deputy Attorney General, key management representatives from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives developed the following protocols regarding the Department's response to explosives related incidents.

Recognizing that terrorism is the Department of Justice's top national priority and that the majority of explosives incidents are criminal in nature, these protocols are the product of a larger coordination process undertaken by the agencies to align the capabilities of the Department of Justice, including explosives databases, explosive detection canine training, and post -blast training. As part of that process, the Deputy Directors of each respective agency have engaged in detailed discussions to optimize the explosives response capability of the Department of Justice. The attached protocols are the product of this relationship and will be implemented forthwith. While the protocols specifically address explosives and bombing incidents, they also reflect our joint belief that partnership is better than competition and that mutual respect and teamwork should govern our approach to all incidents. *The purpose of the protocols is to memorialize and implement our joint determination to resolve any operational concerns at the outset of an incident. Our agencies will continue to move forward as a team in the best interest of the American people.* All agency personnel will be directed to adhere to these protocols and to respect their underlying intent in all matters in which both agencies are involved. A copy of the protocols is attached.

Robert S. Mueller III
Director
Federal Bureau of Investigation

Date: 7/8/08

Michael J. Sullivan
Acting Director
Bureau of Alcohol, Tobacco,
Firearms and Explosives

Date: 7/8/08

CC: All Executive Staff and Special Agents in Charge,
Federal Bureau of Investigation
All Executive Staff and Special Agents in Charge,
Bureau of Alcohol, Tobacco, Firearms and Explosives

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

PURPOSE: This Memorandum of Understanding (MOU) delineates the roles and responsibilities of the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) when responding to bombings and explosives-related incidents.

AUTHORITIES: Authority to enter into this agreement can be found at 28 U.S.C. § 533; 42 U.S.C. § 3771; 28 U.S.C. § 599; 28 C.F.R. § 0.85; 28 C.F.R. §0.130 – 0.131; and applicable United States Attorney General Guidelines. All applicable Attorney General Guidelines for investigations will be strictly adhered to by both parties to this agreement.

NATIONAL PRIORITIES: In recognition of the increased capabilities of accredited public safety bomb squads positioned throughout the United States whose technicians are trained and certified to national standards, and the enhanced capabilities of investigative personnel assigned to those agencies, U. S. policy prioritizes the jurisdiction of federal agencies in bombing events as follows:

1) Terrorism
2) Violent crime
3) Other Federal crimes
4) Assistance to State and local authorities, upon request

Timely communication and firmly-established cooperative relationships are essential to protect public safety. The need also exists to develop joint protocols to ensure the optimal use of resources.

This memorandum will address the following areas of conduct:

1) INITIAL RESPONSE

A. First Responders
B. Joint Immediate Notification
C. Crime Scene Processing
D. Laboratory/Forensic Capabilities

2) INCIDENT MANAGEMENT

A. Jurisdiction
B. Investigation/Leads
C. Resources
D. Special Events Management

3) PROSECUTION

1) INITIAL RESPONSE

A. First Responders

Coordination of a joint response by ATF and FBI personnel to an explosive-related or bombing incident will be the responsibility of the respective Special Agents in Charge (SAC). In all cases, that joint response shall be closely coordinated based on prior established protocols. It is recognized that state/local/tribal or territorial law enforcement officers will likely be the first responders to bombing or explosives incidents. The Federal response should focus on the nexus to the federal priorities of terrorism, violent crime, and other federal crimes. If the event has a federal nexus, the agency with responsibility for the underlying felony will assume investigative lead, as coordinated by the SACs. In those cases where there is a terrorism nexus, the Joint Terrorism Task Forces (JTTFs), comprised of ATF and FBI personnel, as well as State and local authorities, will be responsible for the overall investigation. Whether the lead falls to the ATF or the FBI, the other agency will provide whatever assistance it can in support of the lead agency. (1973 MOU; AG Memo, 8/11/2004).

B. Joint Immediate Notification

Each ATF and FBI SAC will formally identify executive and investigative points of contact (POC) at the field office and resident agency level to facilitate the exchange of all information relative to explosives incidents immediately with the other agency and to appropriately disseminate the information within their respective agencies.

C. Crime Scene Processing

As part of the joint response protocol to an incident, the ATF and FBI SACs will have in place protocols for the initial joint management of the crime scene. Close coordination of the management of the scene will be required. The agency with jurisdiction for the primary violation will be designated as the lead agency, and will be responsible for overall processing of the crime scene. In furtherance of this objective, the FBI and ATF are in the process of developing a common training curriculum for processing post-blast crime scenes. As these procedures are developed and implemented, they will further reinforce the intent and capability to allow Department assets to work in a collaborative and consistent manner.

D. Laboratory/Forensic Capabilities

Any and all evidence collected will be sent to the laboratory of the agency having jurisdiction over the investigation. This does not, however, preclude the SAC from either agency from sending evidence to the other agency's laboratory to perform examinations unavailable at their own laboratory and/or reaching agreement on a division of the crime scene evidence in a manner that is effective and efficient. For example, the FBI could utilize the ATF Laboratory for terrorism related arson cases and the ATF could utilize the FBI Laboratory for metallurgical examinations. In such cases, the SACs will appoint an executive POC for coordination between laboratories. Absent any other agreements, and in the spirit of collaboration, the Special Agents in Charge (SAC) will be empowered to consult and reach a consensus as to where the evidence will be sent. Criteria for consideration are: resource availability and workload, issues affecting the timeliness of processing, examination capabilities, chain of custody, inter-association of cases, laboratory proximity to the crime scene and whether jurisdiction is clear or not at the point in which the evidence is ready for examination. In the rare instances where the field fails to reach an agreement it will be referred to, and promptly resolved by, ATF and FBI senior management, based on prior designation. No evidence, once examined by one laboratory, will be re-examined by another laboratory. In the unlikely event that the lead for the investigation changes, any evidence already examined, along with the examination reports will be transferred to the other agency. Success in enhancing national capabilities to defeat explosive attacks can best be achieved through cohesive, sound, and timely decisions that involve all agencies who have relevant authorities and responsibilities. The ATF and FBI will work together, utilizing the optimal forensic resources within the Department, to provide the each agency with the best quality of analysis possible. ATF and FBI will continue to participate in "Fellowship Exchange" programs and encourage the exchange of laboratory personnel.

2) INCIDENT MANAGEMENT

A. Jurisdiction

All of the key points discussed under the Initial Response above are applicable throughout the management of the incident. Jurisdiction may or may not be readily apparent at the immediate outset. There should be a reasonable amount of time to determine whether or not the incident is accidental, a criminal act or a terrorist incident. Notwithstanding, the investigation must proceed jointly and vigorously with key decisions being made in a timely and collaborative manner. These protocols establish a framework built upon the mutual benefit that each agency has experienced as a direct result of this historically collaborative partnership.

In the case that an explosives incident does not have a readily apparent motive, e.g. criminal act or terrorist incident, the SACs will coordinate regarding a

decision as to jurisdiction that is in the best interest of the public safety and law enforcement. Factors such as claims of responsibility, current intelligence information, patterns of criminal activity, and similarities to other cases should be considered as part of the decision making process.

B. Investigation/Leads

Investigations will be conducted in accordance with applicable AG Guidelines and managed in accordance with the policies and procedures of the agency having jurisdiction for the priority violation. Should there be a determination it is not a terrorist incident, but has a federal nexus, the agency with jurisdiction over the underlying felony will assume the lead agency status. (1973 MOU; AG Memo, 8/11/2004) Recognizing the need for joint investigative support, where applicable and agreed upon, SACs will designate joint co-case agents from the respective agencies. No parallel investigations will be undertaken, no duplicative witness interviews will be conducted and there will be no independent investigative follow-up by an agency without concurrence from the lead agency. In recognition of the unique requirements of 28 C.F.R. § 0.130 (a), explosives investigations that involve individuals or organizations licensed by the federal government will be coordinated with the co-case agent from ATF.

C. Resources

ATF and FBI will ensure adequate resources are made available for all aspects of this protocol document. SACs will ensure that joint participation in response exercises occurs. At both the field and headquarters levels, each agency will actively seek out opportunities for exchange of investigative, forensic, technical, and analytical personnel.

D. Special Events Management

The Special Events Management process was created to address those significant events that represent a potential terrorist target and to plan appropriate precautionary measures to prevent terrorism attacks or to ensure a proper Federal response if such an attack occurs. Many special events possess a national significance that provides a unique and highly symbolic target for terrorism. During a National Special Security Events (NSSE), the FBI will identify and coordinate as appropriate with other federal government components, to include ATF, to mitigate the consequences of an incident occurring at an NSSE. Consistent with the 2004 AG Memo concerning Special Events, both agencies agreed that advanced coordination of federal bomb management assets in response to local law enforcement requests will benefit all involved. The FBI will coordinate with the ATF during the early planning stages of a Special Event (both in the field and at Headquarters) to ensure the full capabilities of the Department are utilized during an event. Where possible, an exchange of personnel for events

will maximize efficiencies. Where an event is an NSSE, ATF has agreed to direct its field offices to coordinate requests from state and local law enforcement agencies for special events support with the FBI prior to committing any resources.

3) **PROSECUTION**

Criteria for prosecution should be whatever is in the best interest of the community. In joint investigations, one agency shall not move forward on prosecution without consulting the partner agency. In all federal cases, where joint, the co-case agents, in coordination with their executive management, will be responsible for making the determination to submit for prosecution. In the event there is a single lead agency, that agency will present the case to the AUSA for a prosecutive decision.

Robert S. Mueller III
Director
Federal Bureau of Investigation

Date: 7/8/08

Michael J. Sullivan
Acting Director
Bureau of Alcohol, Tobacco,
Firearms and Explosives

Date: 7/8/08

APPENDIX VII

MEMORANDUM FROM A UNITED STATES ATTORNEY

Memorandum

U.S. DEPARTMENT OF JUSTICE

Eric F. Melgren
United States Attorney
District of Kansas

Subject	Date
Attorney General's Memorandum on Explosives Investigations	September 10, 2004

To

S.A.C. Mark James
S.A.C. Kevin Stafford
cc: Shawn Stroud
Tom Atteberry

From

Eric F. Melgren

Because my meeting with Stroud and Attebury was less than successful in resolving misunderstandings between the agencies, pursuant to paragraph 6 of the memorandum I contacted Deputy Attorney General James Comey for guidance. Uttam Dhillon of his office, who had principal responsibility for implementing this memorandum, visited with me about these issues. His direction was as follows:

1. Pursuant to the memorandum, the ATF has jurisdiction over explosives issues unless one of the stated exceptions applies. It is more accurate to say that this means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism. As Mr. Dhillon expressed it to me, the FBI must assert itself in order to acquire jurisdiction over the incident. My understanding, with which he agreed, is that "default" jurisdiction is with the ATF.

2. I inquired about the language in paragraph 1.a. stating that the "JTTF determines" the incident is related to terrorism. Practically speaking, I asked, doesn't this mean the FBI; since the FBI is the lead agency for the JTTFs? He responded that the JTTFs were selected to ensure that the decision was made by a joint task force with primary responsibility for investigation terrorism cases.

Prior to circulating this memo to you, I vetted it by Mr. Dhillon, who has agreed that it accurately represents his direction.

APPENDIX VIII

CONSOLIDATED DOJ RESPONSE TO AUDIT REPORT RECOMMENDATIONS

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

October 9, 2009

MEMORANDUM

TO: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Edward N. Siskel
Associate Deputy Attorney General
Office of the Deputy Attorney General

SUBJECT: Joint Response to the OIG's Draft Report: "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives"

The Office of the Deputy Attorney General (ODAG) very much appreciates the opportunity to review and respond to the Office of Inspector General's draft audit report entitled, "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives" (hereinafter, "Report"). As per your office's request, this memorandum will serve as a joint response to the Report on behalf of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), the Office of the Chief Information Officer (OCIO), and the ODAG.

The Department of Justice recognizes the critical importance of a well-coordinated and effective response to explosives incidents. Equally important is the need to adequately train our personnel and ensure effective information sharing with all appropriate components and law enforcement partners.

The Report documents the Department's challenges concerning the most efficient application and balance of its explosives enforcement assets and responsibilities and offers some remedies to those challenges. The Department agrees with the concept of the recommendations that are reflected in the body of the Report and is taking steps to address each of those recommendations. At the same time, we recognize, and have discussed with your staff, that we may have modifications to how we go about implementing those recommendations in order to achieve the most successful and efficient resolution to the matters under review.

While the Report addresses coordination challenges, it is important to recognize some of the successes and joint efforts between the ATF and FBI. From 2003 through 2008, ATF and FBI jointly investigated and recommended for prosecution 192 explosives related cases involving 397 defendants. In addition, prior to the audit period, the ATF recognized on its own some of the highlighted issues and began a process to improve the use and function of the Bombing and Arson Tracking System (BATS). In the past year, over 3,000 bomb technicians and investigators have received in person BATS training, and the numbers of agencies and individual users registered in BATS have increased significantly thus facilitating greater information sharing.

It is also important to note that the Joint Program Office (JPO), which is comprised of both the FBI and ATF, has been successful in resolving the types of issues raised in this Report. For example, the JPO coordinated the development of community-wide consensus standards for uniform training of explosive-detection canine teams, which will be published in a guidelines document for implementation nationwide. Another example of joint coordination is the Terrorist Explosive Device Analytical Center (TEDAC). Through TEDAC, the leadership of the FBI and ATF laboratories meets regularly to address inter-component issues. Although the FBI and ATF laboratories each use their own platforms to manage their laboratory's forensic reports and explosives reference material, the systems have been adapted so that both FBI and ATF laboratory information is available to TEDAC partners.

The Report suggests that the Department should create, or at least study further, the creation of a single "One DOJ" data environment to serve as the repository of all automated information about explosives. With regard to the issue of consolidated databases, it is important to point out that a "one size fits all" approach is not necessarily the best utilization of resources when it comes to how the Department carries out its explosives responsibilities. The decision to consolidate any database should be a business decision driven by the value such a consolidation will provide to the user community at large. If DOJ senior leadership, agents, analysts and other related users believe their law enforcement work is better supported by separate databases, improvements should be evaluated to make the existing databases accessible to all users and the information therein comprehensive.

In conclusion, based upon a review of the Report, the ODAG agrees in concept with all 15 recommendations directed to the ATF, FBI, ODAG and OCIO and is in the process of formulating measures to resolve many of the identified issues. The ODAG appreciated the professionalism exhibited by your staff in working jointly with our combined representatives to complete this audit.

Please feel free to contact me should you have any questions.

APPENDIX IX

OFFICE OF THE INSPECTOR GENERAL SUMMARY AND ANALYSIS OF ACTIONS NECESSARY TO CLOSE REPORT

The OIG provided a draft of this audit report to the Office of the Deputy Attorney General (ODAG), ATF, and FBI. The consolidated DOJ response prepared by the ODAG is incorporated in Appendix VIII. DOJ stated in its response that it agrees *in concept* with all 15 recommendations in the report. However, because the response did not contain any specific corrective actions that DOJ, ATF, or the FBI plan to take to address the recommendations, this report is issued "unresolved."

The DOJ response to our draft audit report also highlighted examples of successes and joint coordination efforts in explosives investigations between ATF and the FBI. We agree that it is important to recognize successes and acknowledged in the report such joint investigative efforts, the increase in BATS training, the Joint Program Office (JPO) consensus standards for uniform training of explosive-detection canine teams, and the Terrorist Explosive Devise Analytical Center (TEDAC).

However, it is important to put these actions in context. In its response, the DOJ stated that from 2003 through 2008 the FBI and ATF "jointly investigated and recommended for prosecution 192 explosives related cases involving 397 defendants." While, the OIG does not dispute that joint investigations occurred, 200 cases represents a small fraction of the several thousand explosives cases handled by the FBI and ATF between 2003 and 2008.

Moreover, overall the FBI and ATF lack a coordinated approach to jointly address explosives-related matters. The report provides descriptions of numerous disputes between the FBI and ATF during explosives investigations, and the results from our survey of FBI and ATF personnel demonstrate conflicting interpretations of DOJ directives and widespread discontent for the other agency's contributions to explosives investigations.

The Department's response stated that "prior to the audit period, the ATF recognized on its own some of the highlighted issues and began a process to improve the use and function of the Bomb and Arson Tracking System (BATS)." On page 44 of our report, the OIG discussed ATF's expanded BATS training for state and local personnel. However, we found through our survey of state and local bomb squad commanders and

interviews with local bomb technicians that this expansion of training had little effect on BATS usage. The results of our survey of state and local bomb squad commanders also demonstrated that only a minority of squads consistently reported explosives incidents to BATS, and more than one-half of the local responders (133 out of 239 respondents) indicated that they rarely or never query information in BATS. Further, over 40 percent of respondents complained that the system was too difficult to use; about 25 percent received no training; and others indicated difficulty in obtaining passwords or getting end-user assistance, which prevented them from using BATS.

The DOJ also stated in its response that the Joint Program Office (JPO) has had success in resolving issues identified in our report, specifically citing a consensus among JPO participants on standards for uniform training for explosive-detection canines. Our report notes that the JPO recently established a board that agreed to a single canine standard. However, we believe it is premature to describe the outcome of the JPO's work on canine standards as successfully completed. Although the JPO may have achieved a consensus that uniform training standards should be adopted, these standards have yet to be implemented.

The OIG also recognizes that the JPO set up under the Homeland Security Presidential Directive-19 (HSPD-19) process was designed to help clarify roles and responsibilities of agencies involved in preventing or responding to terrorist use of explosives. However, as we noted in the report, the JPO has yet to adopt a draft charter proposed at its first meeting in April 2009. Moreover, the JPO cannot impose consensus on components with opposing policy positions. Absent strong leadership from DOJ to resolve differences between the FBI and ATF, we believe the long history of ATF and FBI competition over explosives-investigation activities is likely to persist.

Further, in its response, DOJ identified the coordination efforts of the Terrorist Explosive Devise Analytical Center (TEDAC) as an example of joint coordination. We discuss TEDAC and contributions of the FBI and ATF to TEDAC operations in Chapter V of the report, although the OIG questions the applicability of the TEDAC experience because it has a unique, interdepartmental intelligence mission rather than a law enforcement role.

DOJ's response also stated that the "One DOJ" data environment is not necessarily the best use of resources when it comes to consolidating explosives databases. The OIG recognizes the opinions of the relevant user community are important to consider in a decision on whether to consolidate databases. However, we believe without evaluating the utility and feasibility

of consolidating explosives databases, DOJ cannot make an informed decision as to the best use of its resources. The HSPD-19 Implementation Plan has the specific goal of making all explosives information systems available on-line, including "developing the capability to share information across DOJ and DHS systems to make the greatest possible amount of information seamlessly available to users." The OIG views database consolidation as one possible outcome of the adoption of the "OneDOJ" data environment, which we were told during our audit was DOJ's response to the information-sharing requirements of HSPD-19. We also believe that DOJ should consider consolidation to the extent that it can improve the availability of database information.

Summary of Necessary Actions to Resolve the Report

As stated previously, we consider the 15 recommendations to be unresolved until we receive specific information from DOJ (and ATF and the FBI) of the specific measures that will be taken to address each recommendation. The following describes the actions necessary to resolve each recommendation.

1. **Unresolved.** This recommendation can be resolved when DOJ specifies how and when it intends to implement new directives delineating lead authority for explosives investigations between the FBI and ATF.

2. **Unresolved.** This recommendation can be resolved when the FBI and ATF confirm how and when they will issue protocols on joint investigations of explosives incidents consistent with any new DOJ directives.

3. **Unresolved.** This recommendation can be resolved when DOJ identifies when the Office of the Chief Information Officer will conduct a follow-up study of database consolidation and "OneDOJ" data environment challenges relevant to explosives-information sharing.

4. **Unresolved.** This recommendation can be resolved when the FBI and ATF specify when they will issue new guidance to appropriate personnel to help ensure uniform, timely, and accurate data entry of explosives incidents and cases into BATS.

5. **Unresolved.** This recommendation can be resolved when the FBI and ATF identify how and when they will update the Memorandum of Understanding outlining ATF participation, capabilities, and jurisdiction for non-regulatory-type investigations on Joint Terrorism Task Forces.

6. **Unresolved.** This recommendation can be resolved when ATF specifies how and when it will reassess its staffing requirements to prioritize increased participation of explosives experts on task forces that respond to explosive crimes.

7. **Unresolved**. This recommendation can be resolved when ATF identifies how and when it will prioritize remedial and new-user BATS training for federal, state, and local users.

8. **Unresolved**. This recommendation can be resolved when ATF identifies how it will reassess BATS and make BATS more user-friendly (including requirements for usernames and passwords as well as the extent of required explosives-incident information).

9. **Unresolved**. This recommendation can be resolved when DOJ identifies how and when it will resolve any differences in curricula for post-blast training provided by DOJ components.

10. **Unresolved**. This recommendation can be resolved when DOJ has selected a single Department standard to certify canines, which should be consistent with HSPD-19 requirements.

11. **Unresolved**. This recommendation can be resolved when DOJ identifies and confirms that the Explosives Training Review Board, or an equivalent group, will review the feasibility of consolidating ATF and FBI explosives-training programs; develop a coordinated training plan for all DOJ explosives-related efforts; assess the explosives-related training needs of federal, state, and local explosives specialists; and prioritize the provision of explosives training accordingly.

12. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify when and how they will implement a consolidated and standardized DOJ-wide curriculum for post-blast training.

13. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify how and when they will develop standardized render-safe procedures for use in the Hazardous Device School (HDS) bomb technician curriculum.

14. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify how and when they will coordinate and consolidate canine training efforts for peroxide-based explosives.

15. **Unresolved**. This recommendation can be resolved when DOJ identifies when the Explosives Laboratory Review Board, or an equivalent group, will report on DOJ laboratory capabilities, including the effect of TEDAC, and recommend the best allocation and use of those resources.