

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 55**

[Notice No. 968]

RIN 1512-AB48

Commerce in Explosives (2000R-9P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of proposed rulemaking, in part, pursuant to the Regulatory Flexibility Act (RFA) which requires an agency to review within ten years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. Based on comments we have received in response to the RFA analysis, this document proposes amendments to the explosives regulations relating to fireworks. In addition, this document proposes to incorporate into the regulations the provisions of an ATF Ruling 76-18, concerning alternate construction standards for storage facilities for explosive materials. This document also proposes amendments to the regulations that have been initiated by ATF, as well as amendments that have been proposed by members of the explosives industry.

DATES: Comments must be received on or before April 29, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; *ATTN: Notice No. 968*. Written comments must be signed and may be of any length.

E-mail comments may be submitted to: *nprm@atf.gov*. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on paper that is 8½" x 11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Firearms, Explosives, and Arson, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts

Avenue, NW., Washington, DC 20226, telephone (202) 927-8210.

SUPPLEMENTARY INFORMATION:**I. Background***A. T.D. ATF-293*

On February 5, 1990, ATF published a final rule in the **Federal Register** amending certain regulations contained in 27 CFR part 55 (T.D. ATF-293, 55 FR 3717). The final rule, which became effective on March 7, 1990, implemented storage and recordkeeping requirements for industry members engaged in manufacturing, importing, dealing in, or using fireworks and implemented the provisions of Public Law 99-308, 100 Stat. 449 (1986) relating to black powder. Some of the major provisions of the amendments were:

1. Extending the definition of high explosives to cover, for storage purposes, flash powder and bulk salutes, since these materials can be made to detonate by means of a blasting cap when unconfined (ATF has subsequently held that flash powder and bulk salutes are high explosives for all purposes of part 55);

2. Limiting to no more than 10 pounds the amount of flash powder used in special (display) fireworks that can be kept outside an approved magazine and in any one processing building during a day's assembling operations;

3. Limiting to no more than 500 pounds the amount of other explosive materials that can be kept outside an approved magazine and in any processing building or area during a day's assembling operations;

4. Requiring that, under certain conditions, processing buildings or areas holding no more than 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks be located in accordance with the table of distances in section 55.218;

5. Establishing new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines;

6. Amending the recordkeeping requirements to include information regarding quantity and description of special fireworks; and

7. Eliminating the recordkeeping requirements for licensees and permittees selling or disposing of exempt quantities of black powder for sporting, recreational, or cultural purposes in antique firearms or antique devices.

B. Regulatory Flexibility Act— Periodic Review of Rules

Section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 610, requires an agency to review within 10 years of publication rules for which the agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. In that regard, ATF prepared a final regulatory flexibility analysis with respect to T.D. ATF-293. (See 55 FR 3719.)

The periodic review of regulations under section 610(b) of RFA requires agencies to consider the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

C. Notice No. 845

To comply with section 610 of RFA, on January 10, 1997, we published a General Notice in the **Federal Register** (Notice No. 845, 62 FR 1386) initiating the review of T.D. ATF-293. In the notice we requested comments from members of the explosives industry and other interested persons as to the effectiveness of the regulations issued in that final rule. We also reviewed the regulations issued in T.D. ATF-293 addressing the factors specified in section 610(b) of RFA, which include the continued need for the rule, the nature of the complaints received, the complexity of the rule, the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and changes in the area affected by the rule.

The comment period for Notice No. 845 closed on April 10, 1997.

II. Notice No. 845—Analysis of Comments

We received six comments in response to Notice No. 845. Two commenters recommended amendments to the marking requirements for fireworks as set forth in section 55.109.

One commenter suggested that this section require only a part number and size of shell. We are not proposing this suggestion since it would negatively affect the traceability of fireworks. Generally, licensees and permittees must record the manufacturer's marks of

identification on all explosives they receive. These requirements help ensure that explosive materials can be effectively traced for criminal enforcement purposes, *i.e.*, the explosives can be tracked through the records kept by licensees and permittees. This process often provides valuable information in explosion and bombing investigations and is useful for inspection purposes in verifying inventory and proper conduct of business practices.

The other commenter suggested that this section be amended to require the size and type of shell and a date of production, omitting the shift code. ATF believes that the additional burden of requiring each shell to be marked with the size and type of shell is not warranted because it would provide no additional information useful to ATF in tracing the origin of explosives used in crime. Therefore, we are not proposing this portion of the suggestion. However, we agree that amending the date code to omit the shift of manufacture would not significantly affect traceability in instances where fireworks manufacturers are operating only a single shift. This issue is being addressed in a separate rulemaking proceeding. Accordingly, we are not now proposing this suggestion.

Two comments addressed the recordkeeping requirements for display fireworks aerial shells under sections 55.123 and 55.124. The commenters stated that the current requirement that all manufacturer's marks of identification be recorded for acquisitions and dispositions is burdensome to proprietors due to large numbers of shells manufactured, acquired, and disposed of in most fireworks businesses. The commenters suggested that recordkeeping requirements for manufacture, acquisition, and distribution of aerial fireworks shells be amended to require that the number and size of shells be recorded in lieu of the current requirement that all manufacturer's marks be recorded. We believe that adoption of this suggestion would have a significant negative effect on our ability to trace fireworks. To trace fireworks, ATF must have access to markings reflecting the name of the manufacturer, as well as the location and date of manufacture. Without these markings, tracing is impossible. In consideration of ATF's mission to reduce violent crime and protect public safety, we are not proposing this suggestion.

We received four comments regarding the classification of flash powder as a high explosive. As specified in section

55.202(a), "high explosives" are explosive materials that can be caused to detonate by means of a blasting cap when unconfined (*e.g.*, dynamite, flash powders, and bulk salutes).

Two commenters contended that this classification was not appropriate and they questioned the validity of past tests on flash powder. ATF may rely upon several sources for information and expertise regarding explosive materials, including ATF and industry experts, associations (*e.g.*, the National Fire Protection Association (NFPA)), publications, and scientific tests. According to ATF's explosives experts and others, flash powders can detonate when unconfined. Further, ATF's classification of flash powder as a high explosive is consistent with the NFPA 1124 ("Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles") recommendation that bulk flash powders be stored in accordance with the regulations governing storage for high explosives (section 55.218). In the interest of public safety, we are not proposing to change the classification of flash powder.

Another commenter suggested that ATF provide a better description of flash powder based on its chemical makeup. Due to the variety of combinations of fuels and oxidizers that can be used to make flash powder, we believe that basing a definition solely on the chemical makeup would prove cumbersome and may restrict ATF's discretion to accurately determine whether new explosive materials are flash powders. Furthermore, the definition that is being proposed in this notice is sufficient to enable ATF to accurately classify the various types of flash powders. Therefore, we are not proposing this suggestion.

The fourth commenter suggested that the regulations be revised to state that in addition to flash powder, "any specific quantity of pyrotechnic composition capable of detonation by means of a blasting cap when unconfined" is a high explosive. We believe that this is unnecessary because the definition of high explosives found at section 55.202(a) prescribes that all explosive compositions that can be caused to detonate when unconfined are to be classified as high explosives. Accordingly, we are not proposing this suggestion.

ATF received four comments regarding operations in fireworks process buildings as follows:

1. Current regulations at sections 55.221 and 55.222 mandate that no more than 10 pounds of flash powder be present in any fireworks process

building. Three commenters contended that the 10-pound limit is overly restrictive. They suggested increasing the maximum allowable quantity of flash powder in a fireworks process building to 50 pounds. Due to the volatile nature of flash powder, we believe that allowing more than 10 pounds of flash powder in a fireworks process building would pose an excessive and unnecessary risk of injury to employees in the fireworks plant and to the general public.

2. All of the commenters argued that the 500-pound limitation on pyrotechnic compositions used in a process building or area is too restrictive. One commenter suggested that in-process compositions and materials not be considered explosives for tables of distances purposes. ATF believes that, due to the possibility for accidental explosions of pyrotechnic compositions, it is in the interest of public safety to require that pyrotechnic compositions in assembly processes be subject to table of distances requirements. Therefore, we are not proposing to exempt in-process materials from the regulations.

3. Two commenters suggested that partially completed display fireworks be allowed to remain in process buildings overnight. They argued that the movement of explosives to and from magazines over the course of a business day may have an adverse effect on safety. They suggested that the buildings could be "securely locked" when unoccupied. ATF has adopted minimum security standards for the storage of explosives, including construction and locking requirements. Permanent magazines used for overnight storage of explosives must meet the prescribed minimum standards. Further, we believe that the employment of proper safety practices when handling or moving explosive materials used in the assembly of fireworks will minimize safety risks. The threat to public safety posed by leaving display fireworks components overnight in process buildings outweighs any risks associated with the movement of the materials to and from storage magazines. Therefore, we are not proposing this suggestion.

4. Two commenters suggested that ATF adopt by reference NFPA 1124 standards to establish limits for pyrotechnic materials in process buildings. That is, the commenters suggested that ATF's regulations be amended to require persons to comply with NFPA 1124 standards. ATF relies upon groups such as the American Pyrotechnics Association (APA) and the NFPA for guidance on certain

explosives issues. ATF often incorporates sections of NFPA guidelines into its regulations. However, adopting an outside organization's guidelines by reference may limit ATF's control over its own regulations because regulatory requirements could be changed based upon decisions made by NFPA to revise its code. Therefore, we are not proposing to adopt the NFPA standards by reference.

5. Finally, two commenters suggested that the 500-pound limitation (on the amount of pyrotechnic compositions allowed in fireworks process buildings) not apply to drying operations that are part of the manufacturing process and that these operations be subject to the table of distances in section 55.219. The tables at sections 55.222 and 55.223 currently require that process operations, including drying, be located specific distances from, among other things, fireworks process and nonprocess buildings, fireworks plant buildings, and fireworks shipping buildings. The table at section 55.219 applies to the storage of low explosives other than display fireworks. Although some drying operations may present less of a mass explosion hazard than others, we believe that the application of the low explosives table to display fireworks, which sometimes contain high explosives, would not be in the interest of public safety. Therefore, we are not proposing this suggestion.

ATF received four comments on the application of the table of distances in section 55.224. Those comments are discussed as follows:

1. Two commenters suggested modifying the table such that it would provide distance requirements specifically for display fireworks up to 200,000 pounds. Under the current table, persons are required to refer to section 55.218 for the storage of display fireworks in excess of 10,000 pounds to calculate separation distances of magazines from inhabited buildings, public highways, passenger railways, and other magazines. The problem presented is that the distance requirements change drastically when going from section 55.224 (for weights up to 10,000 pounds) to section 55.218 (for weights over 10,000 pounds). In comparing the two tables, there are also discrepancies in separation requirements for distances between magazines. The proposed table provides for more proportionate increases in distances for weights of materials above 10,000 pounds, and it provides for a smooth transition to the table at section 55.218 for weights above 200,000 pounds. ATF agrees that the adoption of this table will not jeopardize public

safety. Accordingly, we are proposing this suggestion. (*See* section IV ("Proposed Amendments to Part 55"), amendment of section 55.224.)

2. One commenter suggested that the table in section 55.219, rather than the table in section 55.218 (as currently required), be used for weights over 10,000 pounds. The transition from the distance requirements in the table in section 55.224 to those in the table in section 55.219 would not be consistent. In fact, the requirements for slightly over 10,000 pounds in the table in section 55.219 are less than those for up to 10,000 pounds in the table in section 55.224. We have determined that this does not further public safety. Therefore, we are not proposing this suggestion. However, as stated above, we are proposing a revision to the table in section 55.224 that remedies this problem by providing for more proportionate increases in distances for weights of materials above 10,000 pounds, and by providing for a smooth transition to the table at section 55.218 for weights above 200,000 pounds.

3. Finally, one commenter stated that the table in section 55.224 is unnecessarily restrictive for hobbyists storing less than 1,000 pounds of fireworks. The commenter suggested that the table be further broken down to account for smaller weight categories, with corresponding shorter distances than those currently required for up to 1,000 pounds. The commenter submitted a specific table of distances for consideration. We have determined through consultation with the APA that the suggested table would apply to certain shell sizes only. We believe that implementation of such a provision would result in confusion as to the applicability of the table in situations in which a variety of sizes and types of fireworks shells are stored together. Accordingly, in the interest of clarity and administration, we are not proposing this suggestion.

Two commenters proposed that ATF implement regulations relaxing the requirements for explosives storage at a display site. The commenters suggested that the language formerly contained on ATF Form 5400.21, "Application for Permit User Limited Display Fireworks," be incorporated into the regulations. The language formerly used in the instructions on Form 5400.21 has been changed specifically because it tended to cause a misconception that fireworks could be stored in a manner not in compliance with the regulations in part 55. ATF believes that adoption of this language would not be consistent with our mission to protect the public from unsafe storage of explosives.

Therefore, we are not proposing this suggestion.

ATF received three comments regarding shipping operations. Two commenters stated that ATF regulations should address "shipping buildings," in which articles commonly used to pack and prepare fireworks for shipping, such as empty cardboard boxes, chairs, telephones, and computers, could be used and kept. The commenters suggested that the regulations be amended to allow such items, as well as certain operations, such as unpacking and handling of fireworks, in separate shipping buildings. ATF regulations currently define the term "fireworks shipping building." The regulations do not prohibit the use or presence of the noted articles or the unpacking or handling of fireworks in a fireworks shipping building. Therefore, we are not proposing this suggestion.

One commenter suggested that ATF allow packing items, such as tape and empty containers to be stored in magazines. The housekeeping requirements in section 55.215 generally prohibit the presence of empty containers and certain other items in magazines, in the interest of reducing fire and explosion hazards in magazines. We believe that implementing provisions allowing for the storage of these items in magazines would be contrary to the regulations and ATF's goal of protecting the public. Therefore, we are not proposing this suggestion.

III. IME Correspondence

In addition to the comments regarding Notice No. 845, ATF received correspondence from the explosives industry concerning additional amendments to part 55. In a letter to ATF dated October 31, 2000, the Institute of Makers of Explosives (IME) submitted suggestions for amending the Federal explosives regulations in part 55. IME stated in its letter that it is the safety association of the commercial explosives industry and that its mission is to promote safety and the protection of employees, users, the public, and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other essential operations. In the following paragraphs, we will summarize IME's suggested amendments to the regulations, along with our evaluation of each proposal.

1. ATF regulations currently require that licensees and permittees maintain all required records in permanent form (*i.e.*, commercial invoices, record

books). The regulations do not currently provide for computer recordkeeping, although ATF has allowed computer recordkeeping on a case-by-case basis by variance. IME has suggested that ATF standardize the requirements for computer recordkeeping in order to eliminate the necessity for variances for such recordkeeping systems. In this notice, for reasons similar to those noted by IME, ATF is proposing guidelines for computer recordkeeping systems. (See section IV ("Proposed Amendments to Part 55"), amendment of section 55.121.)

2. IME has proposed that ATF eliminate the provisions requiring the use of non-sparking materials in the construction of magazines where spark-insensitive materials are stored. It stated that modern high explosives and blasting agents are not sensitive to frictional sparks. However, IME further proposed that the requirement should be retained for spark-sensitive materials such as powders and fireworks. ATF's magazine construction requirements are based upon the type of magazine (*e.g.*, type 1, type 2, etc.) in question, not the spark-sensitivity of the explosives to be stored. This is because magazines used for the storage of spark-insensitive explosives may also be used for the storage of spark-sensitive explosives such as black powder and flash powder. We believe that basing construction standards on the spark-sensitivity of the explosives stored, rather than on the type of magazine and class of explosives, may lead to confusion and ambiguity. Furthermore, there would be a burden on proprietors to determine whether the materials being stored are sensitive to sparks. Due to the potential for creating a public safety hazard, we are not proposing this suggestion.

3. IME has suggested that ATF accept Department of Defense (DOD) specifications for DOD magazines that are used to store explosives as an alternative to compliance with ATF requirements. IME has stated that companies sometimes lease DOD magazines for storage of commercial explosives and that companies storing commercial explosives in compliance with DOD requirements are sometimes not in compliance with ATF standards. Explosive materials manufactured under DOD contracts and subject to DOD requirements, however, often differ significantly from materials manufactured for commercial use and distribution and subject to ATF requirements. Additionally, DOD generally requires that a level of physical security be maintained (*e.g.*, armed guards) to reduce the threat of bullet penetration and thefts.

Conversely, ATF's magazine construction requirements contemplate a lack of physical security, which is common practice in commercial operations. Therefore, we believe that it is appropriate to ensure that any storage of commercial explosive materials be in compliance with these ATF regulations developed specifically for commercial explosive materials and operations. Accordingly, we are not proposing IME's suggestion.

4. IME has suggested that ATF convert to United Nations terminology for hazard classifications in determining the appropriate storage for explosive materials. It stated that ATF should accept for purposes of explosives storage, the hazard classifications assigned by the U.S. Department of Transportation (DOT), which uses United Nations terminology in classifying hazardous materials for transportation purposes. DOT assigns United Nations hazard classifications for transportation of explosives based, in part, upon the performance of the packaging of the explosives. For example, where packaging that will reduce the likelihood of mass detonation is used, DOT will assign a "lower" hazard classification (triggering less stringent transportation requirements) than would be assigned if the explosive materials were not packaged in such a manner. ATF often encounters instances in which explosives are removed from DOT-mandated packaging when placed in magazines, potentially changing the mass detonation/deflagration qualities of the explosives. Adoption of the UN hazard classification standards for storage of explosive materials could result in unpackaged high explosives being stored in magazines intended for storage of low explosives. Therefore, we are not proposing IME's suggestion.

5. IME has suggested that ATF adopt its standards for bullet-resistant magazine construction. IME states that the requirements in the regulations (sections 55.207 and 55.208) and the standards found in ATF Ruling 76-18 (1976-ATF C.B. 106) are inconsistent with respect to bullet-resistance standards. It suggested that ATF adopt the bullet-resistance standards found in IME's Safety Library Publication No. 1. These standards were derived from research and testing sponsored by IME and ATF. IME stated that most magazines used in the commercial industry already meet the 1/4-inch steel and 3-inch hardwood standard, so this amendment should not prove particularly burdensome to the industry. ATF agrees that bullet-resistance standards should be consistent

throughout part 55. Therefore, we are adopting IME's suggestion and we are proposing amendments to the regulations to reflect IME's standards. (See section IV ("Proposed Amendments to Part 55"), amendment of sections 55.207 and 55.208.) We are also proposing that the requirement be effective one year from the date of publication of the final rule. In addition, the provisions of ATF Ruling 76-18 are being incorporated into the proposed regulations. (See section IV ("Proposed Amendments to Part 55"), amendment of sections 55.207 and 55.208.) This ruling will become obsolete upon the effective date of the final rule.

6. IME has stated that outdoor type 2 magazines are often located on terrain that precludes a bullet from being fired through the roof. It proposed that ATF amend the regulations (section 55.208) to require bullet-resistant roofs on outdoor type 2 magazines only when it is possible for a bullet to be fired directly through the roof and at such an angle that the bullet would strike the explosives within. This is similar to language used for type 1 magazines in section 55.207. Type 2 magazines are mobile or portable magazines. As such, they are commonly relocated to suit the needs of companies engaged in construction and similar activities. Implementing this amendment could cause proprietors to unwittingly create a bullet-penetration risk by placing a magazine whose roof does not meet bullet-resistance standards in a location where bullet penetration is a potential problem. By requiring bullet-resistant roofs, ATF helps protect against this risk, regardless of how often type 2 magazines are relocated. Therefore, we are not proposing IME's suggestion.

7. Section 55.63 requires that proprietors notify ATF of newly acquired magazines and of certain changes to explosives magazines, with the exception of mobile or portable type 5 magazines. IME suggested that ATF amend the regulation to expand and clarify the exception to include all portable magazines. Type 4 portable magazines are occasionally relocated or added to maximize the amount of material that can be safely stored at fireworks premises. We believe that it is important for ATF to be notified of such changes in order to help the proprietor maintain compliance with the tables of distances. Furthermore, we believe that the public safety benefits of requiring this notification far outweigh the minimal burden to these proprietors. However, we recognize that type 3 and type 5 magazines are commonly used for transportation by construction, quarrying, and mining companies on a

daily basis. The requirement to notify ATF in advance of additions and relocations would create a substantially greater burden on proprietors in these cases. Therefore, we are adopting IME's suggestion, in part, and we are proposing to except type 3 and type 5 mobile and portable magazines from the notification requirements of section 55.63. We would note that all magazines used to store explosives must meet all applicable construction and table of distance requirements, regardless of how long they are in a particular location.

8. IME has stated that the industry has taken measures to promote usage of the term "detonator" in place of "blasting cap." It has encouraged ATF to uniformly adopt this term throughout the regulations in part 55. The term "detonator" is commonly referred to as "blasting cap" and ATF believes that there are many users of detonators who actually use that term. In addition, although IME is trying to promote usage of the term "detonator," many of the makers and users of explosives are not members of IME. These persons routinely use the term "blasting cap" and might be confused were IME's suggestion to be adopted. ATF is also concerned that if only the term "detonator" is used, certain explosives information may not be reported to us because of the limited terminology. Accordingly, we are not proposing IME's suggestion.

9. IME has suggested that ATF require any person storing explosives to post a warning sign advising against fighting fires in explosives storage magazines. It has stated that one of its most important policies is to never fight a fire that involves explosive materials. IME also stated that it is aware of instances where fires were fought that involved explosives and those materials detonated, killing and injuring firefighters. As such, IME proposes a requirement that all normal access routes to explosive material storage facilities be posted with a sign warning against fighting explosive fires and advising of a specific emergency phone number.

On August 24, 1998, ATF published in the **Federal Register** a final rule amending the regulations in section 55.201 to require persons storing explosive materials to notify the local fire authority of the type, magazine capacity, and location of each site where such explosive materials are stored (T.D. ATF-400, 63 FR 44999). We believe that this requirement ensures that local fire authorities are apprised of explosive materials storage and the possibility that these materials may be involved in a fire

at explosives premises. We also believe that it would be inappropriate to require those proprietors storing explosives in a non-industrial setting to place outside their homes or businesses a warning sign such as that suggested by IME. In addition to placing an undue burden on proprietors, such a requirement would create a security risk by drawing attention to the fact that explosives are stored on the premises. Accordingly, ATF is not proposing IME's suggestion. However, ATF will not require the removal of warning signs that have been posted.

10. IME has suggested that ATF revise the prohibition on storing explosive materials against interior walls of magazines. It has stated that this restriction is not necessary for modern solid explosive products, such as cutters and perforators. Section 55.214 requires that explosive materials not be placed directly against interior walls and that they must be stored so as not to interfere with ventilation. The ventilation afforded by storage in this manner benefits certain explosive materials (*e.g.*, dynamite, boosters, fireworks) and also helps maintain the integrity of the packaging of the explosives, regardless of the configuration or type of explosive materials. Accordingly, ATF is not proposing IME's suggestion.

11. IME has suggested that ATF amend the permit requirement for interstate transportation of explosives in section 55.141, noting in this regard that DOT regulates both interstate and intrastate transportation of explosives and that, therefore, the exemption at section 55.141(a)(1) makes the requirement for a permit for interstate transportation under section 55.41 superfluous. It has suggested that ATF remove the requirement that a person who intends to transport explosive materials interstate acquire a permit. Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 842(a)(3)) prohibits persons without a license or permit from transporting or shipping explosive materials interstate (except in cases where the individual's State specifically allows the interstate purchase, transport, and shipment from a contiguous State). Accordingly, legislative action would be necessary to relax this requirement.

12. IME has proposed an amendment to the requirement in section 55.104 that a license or permit furnished for the purpose of purchasing explosives contain an original signature. It has suggested that this section be amended to require that the licensee or permittee retain an original signed copy at his or her premises and furnish a photocopy thereof for verification purposes when

purchasing explosives. Under the current regulations, licensees and permittees are required to furnish a copy of their license or permit prior to receiving explosive materials. This copy must contain an original signature certifying that the license or permit is a true copy of a valid license or permit. In the past, ATF has considered similar suggestions to relax the requirement for an original signature. However, we are concerned about the possibility of persons unlawfully acquiring explosives on a stolen copy of a license with a photocopied signature. We believe that this concern is still valid. Accordingly, we are not proposing IME's suggestion.

IV. Proposed Amendments to Part 55

This section contains a compilation of all the proposed amendments to part 55, including those initiated by ATF, those based on comments received in response to Notice No. 845, and those suggested by IME.

A. Subpart B—Definitions (Section 55.11)

Currently, "bulk salutes" are defined in section 55.11 as salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of display fireworks. This definition allows packages containing a majority of salute shells and a minimal number of display fireworks to be stored as display fireworks, rather than as high explosives. This is a problem because storage requirements for display fireworks are less stringent than requirements for the storage of bulk salutes, which are high explosives. Therefore, we are amending the definition of "bulk salutes" to specify that the term includes a collection of salute shells packaged with other types of aerial shells in quantities such that the salute shells comprise more than 50 percent of the total number of shells in the package. This will ensure that packages containing mostly salute shells will be stored properly, as high explosives. This change is consistent with NFPA guidelines.

The term "business premises," as currently defined in the regulations, includes the property where the records of a manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored, or distributed. ATF has encountered situations in which an inspection could not be conducted properly or in a timely manner due to the fact that the records were not at the actual location listed on the license. Therefore, we are amending the definition of "business premises" to

specify that the term, when used with respect to a manufacturer, importer, or dealer, means the property on which explosive materials are manufactured, imported, stored, or distributed. Similarly, when used with respect to an explosives permittee, the term will mean the property on which the explosive materials are received or stored.

The definitions for the terms “articles pyrotechnic,” “consumer fireworks,” and “display fireworks” are being amended for clarification purposes. In addition, technical non-substantive changes are being made to the definition of the term “fireworks process building.”

A definition for the term “fireworks process area” is being added in order to ensure that open-air processing operations are conducted in compliance with the tables of distances in sections 55.222 and 55.223. This is being done in the interest of public safety.

The definition of the term “fireworks shipping building” is being amended to clarify that such a building may be used for the packing of assorted display fireworks into shipping cartons for individual displays or for the loading of packaged displays for shipment to purchasers.

The definition of the term “flash powder” is being amended in order to be more descriptive of the possible ingredients of this explosive.

The definition of the term “hardwood” is being amended to be consistent with the well-recognized industry standards of the NFPA.

As defined in the regulations, the term “highway” means any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public. It has come to our attention that there is confusion as to the meaning of the term “general public.” We believe that even small segments of the general public traveling on roads near explosives magazines are entitled to protections similar to those afforded to large numbers of persons traveling on similar roadways. Moreover, we believe that individuals employed by, or otherwise associated with, one explosives facility should be deemed to be members of the “general public” with respect to any other explosives facility. We are amending the definition of the term “highway” to clarify that any road regularly and openly traveled by any member of the general public would be subject to the table of distance requirements.

The definition of “inhabited building” is being amended to clarify

specific conditions where a building would be considered to be occupied in connection with the manufacture, storage, transportation, and use of explosive materials and, therefore, not be considered an inhabited building. For example, where there are two explosives businesses (Business A and Business B), a building occupied solely by Business A will be considered an “inhabited building” with respect to the explosives storage magazines that are maintained by Business B. However, this same building would fall within the exception for “buildings occupied in connection with the manufacture, transportation, storage, or use of explosive materials” with respect to explosives storage magazines maintained by Business A. This clarification ensures that personnel employed by or otherwise associated with one explosives facility will not “assume the risk” associated with another explosives facility’s operations.

The definition of the term “manufacturer” is being amended to include persons who assemble explosive materials from other explosive materials and/or non-explosive materials, such as fireworks and pyrotechnics. By adding “assemblers” to the definition, the marking requirements of section 55.109 will apply to persons assembling explosive materials.

The definition of the term “softwood” is being amended to be consistent with the well-recognized industry standards of the NFPA.

B Subpart C—Administrative and Miscellaneous Revisions

Section 55.22 is being amended to clarify that copies of approved variances (rather than the applications) are to be kept by the permittee or licensee to whom they are issued so that they can be reviewed by ATF officers. This section is also being amended to provide that the Director may require the resubmission of all variances for the purpose of re-evaluation. For example, the Director may require the resubmission of all variances when there is a change of ownership, control, or personnel; at the time of renewal; or upon disclosure of a person’s possible inability or unwillingness to comply with the terms of a variance.

Section 55.46 is being amended to provide that the Chief, Firearms and Explosives Licensing Center (now known as the “Chief, National Licensing Center”) may, in writing, require the applicant for license or permit renewal to file an original application for license or permit as required by section 55.45. This would be in addition to filing an

application for license renewal on ATF F 5400.14 (part III), or application for permit renewal on ATF F 5400.15 (part III). This ensures compliance with existing requirements in part 55 and is consistent with the firearms regulations in part 178 of this chapter with respect to the renewal of Federal firearms licenses.

Several amendments are being made to section 55.63, relating to changes in explosives magazines:

1. Paragraph (a)(1) is being amended to clarify that magazines used for storage of explosives are subject to the table of distances and magazine construction requirements prescribed in sections 55.206 through 55.211.

2. Paragraphs (a)(2) and (a)(3) are being removed. The provisions of these paragraphs are considered unnecessary because they duplicate the standards specified in sections 55.206 through 55.211.

3. Paragraph (a)(4) is being revised for clarification purposes and is being redesignated as paragraph (e).

4. Paragraph (b), which exempts mobile or portable type 5 magazines from the requirements of section 55.63, is being amended by redesignating the paragraph as paragraph (f) and by providing that type 3 magazines are also exempt from the requirements of this section. We are not proposing to exempt type 4 magazines from the notification provisions of this section, as such magazines are often used and relocated at the premises of fireworks companies. Due, in part, to the seasonal nature of their business, such companies often relocate type 4 magazines during periods of high volume. In the interest of public safety, we will still require that such businesses notify ATF of relocations of type 4 magazines.

5. Paragraphs (c) and (d) provide that the regional director (compliance) (now known as the “Director of Industry Operations”) must be notified prior to repairing, reconstructing, or acquiring new magazines. These paragraphs further require that the regional director (compliance) be notified prior to commencing storage in a new or repaired magazine. We believe that the additional burden of this second notification to ATF after acquisition or repair and prior to storing is not justified. Accordingly, we are amending these paragraphs by redesignating them as paragraphs (b) and (c), respectively, and by removing the requirement that the regional director (compliance) be notified after the acquisition of a new magazine or the repair or reconstruction of an existing magazine.

6. Finally, we are amending section 55.63 by adding a new paragraph (d) to

require licensees and permittees to notify ATF prior to the relocation of magazines. ATF has encountered recurring instances where industry members have relocated their explosives storage magazines to new locations. This has caused difficulty in administration of the regulations and has disclosed unsafe storage conditions in some instances where magazine relocations have been discovered. In the interest of public safety and the effective administration of the regulations, we believe that the notification provisions of this section should apply to the relocation of magazines.

Sections 55.105(g), 55.106(d), and 55.108(b) are being removed as they are redundant. The exemption provisions contained in section 55.141(b) make it clear that, except for the provisions pertaining to licensees, the requirements of part 55 do not apply to certain distributions of black powder under certain conditions. The sections noted above simply reiterate the applicable portions of section 55.141(b). With the removal of paragraph (b) in section 55.108, paragraphs (c) and (d) of that section are being redesignated as paragraphs (b) and (c), respectively.

C. Subpart G—Records and Reports

Section 55.121(a)(1) states that licensees and permittees must keep records pertaining to explosive materials in permanent form, *i.e.*, in commercial invoices or record books. This section is being amended to specify that records may be kept in computer format, provided certain conditions are met. Computer recordkeeping has become a common industry practice and we have approved numerous variances allowing this practice. Paragraph (b) of section 55.121 is being amended by adding the word “business” before “premises” in the first sentence to clarify that this subsection refers to “business premises” as defined in section 55.11.

Section 55.122(a), introductory text, is being amended to provide that the physical inventory required to be taken by licensed importers must consist of all the information specified in paragraph (b) of section 55.122, such as the manufacturer’s marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the importer’s records by the close of the next business day. This will ensure that thefts and losses of explosives are more

quickly detected. Paragraph (c) of section 55.122 is being amended to add the term “use” to the recordkeeping requirements for licensed importers. This will require importers using explosive materials they import to keep records of such use. This is consistent with requirements that are being proposed for licensed manufacturers and dealers.

Section 55.123, which relates to records maintained by licensed manufacturers, is being amended by revising the introductory text of paragraph (a) to provide that the physical inventory required to be taken by licensed manufacturers consists of all the information specified in paragraph (b) of this section, such as the manufacturer’s marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the manufacturer’s records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected. Paragraphs (b)(2) through (b)(4) are being redesignated as paragraphs (b)(3) through (b)(5), respectively. New paragraph (b)(2) provides that records of acquisition kept by manufacturers of explosive materials must contain the importer’s or manufacturer’s name or brand name when explosives are acquired other than by their own manufacture. This is consistent with the requirements for manufacturer’s disposition records and with the required records of acquisition for importers, dealers, and permittees. Paragraph (c) is being amended to require manufacturers to record their use of explosive materials, regardless of the source. This will require manufacturers using explosive materials they manufacture to keep records of such use. Since paragraph (d) is no longer necessary, it is being removed and paragraphs (e) and (f) are being redesignated as paragraphs (d) and (e), respectively.

Section 55.124, regarding records maintained by licensed dealers, is being amended by providing in the introductory text of paragraph (a) that the physical inventory required to be taken by licensed dealers consists of all the information specified in paragraph (b) of this section, such as the manufacturer’s marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all

discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the dealer’s records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected. Paragraph (c)(1) is being amended to require licensed dealers to record their use of explosive materials. This will require dealers using explosive materials that they are not distributing to other persons to keep records of such use.

Section 55.125(a), introductory text, is being amended to provide that the physical inventory required to be taken by permittees consists of all the information specified in paragraph (b) of section 55.125, such as the manufacturer’s marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the permittee’s records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected.

Section 55.126(b) is being amended to require licensees and permittees to verify the identity of nonlicensees and nonpermittees purchasing explosive materials. Under the current regulations, ATF Form 5400.4 must be executed by the buyer for purchases of explosive materials. A Federal explosives licensee or permittee who purchases explosive materials is not required to complete Form 5400.4. Before explosive materials are distributed to nonlicensees or nonpermittees, Form 5400.4 provides that the licensee or permittee must verify the identity of the buyer (distributee), either by acknowledging on the form that the buyer is known to the licensee or permittee or by obtaining from the buyer proof of identification (*e.g.*, a driver’s license). ATF believes that the phrase “is known to me,” as it currently appears on Form 5400.4, is ambiguous and lends itself to confusion and misinterpretation. We believe that it is in the best interests of public safety and our enforcement efforts to require that all nonlicensed/nonpermitted purchasers provide proof of identification prior to the distribution of explosive materials. Accordingly, we are amending section 55.126(b) to require that licensees and permittees obtain proof of identification from all nonlicensees or nonpermittees purchasing explosive materials. This requirement is consistent with respect

to purchases of firearms by nonlicensed individuals.

Section 55.129 is being amended to require that where commercial explosives (except for defense articles subject to the Arms Export Control Act) are exported, exportation is to be in compliance with the Export Administration Act. We are also amending this section to require licensees to maintain proof of exportation of explosive materials to the actual end user. This is intended to prevent diversion activities.

D. Subpart H—Exemptions

Section 55.141 is being amended by revising paragraph (a)(7) to clarify the items exempt from the requirements of part 55. Paragraph (a)(9) is being amended to remove the DOT's regulation cite (49 CFR parts 100 to 177) in order to eliminate possible confusion in the event these regulations are subsequently revised or removed.

E. Subpart K—Storage

Section 55.206(a) currently states that magazines in which high explosives are stored must be a minimum distance from other high explosive magazines. This section is being amended to clarify that, except where magazines are "combined" as provided in footnote 2 of section 55.218, magazines in which high explosives are stored must be located no closer to magazines in which any explosive materials are stored, than the minimum distances specified in the table of distances for storage of explosive materials in section 55.218. This will ensure that all types of explosive materials will be stored appropriately when located in proximity to magazines containing high explosives. To be consistent with the proposed amended definition of "highway," the word "public" is being removed in paragraph (b) of section 55.206. Paragraph (c)(1) of section 55.206 is being amended to require that minimum separation distances be placed between outdoor magazines containing any amount of blasting agents and inhabited buildings, highways, and passenger railways, per the table in section 55.218. This was previously unclear in the notes to the tables of distances in sections 55.218 and 55.220, and the fact that section 55.206 only specifies minimum separation distances for amounts over 50 pounds.

Several amendments are being proposed with respect to section 55.207:

1. IME has suggested that ATF make all references to bullet resistance within part 55 consistent with its standard of ¼-inch steel lined with 3 inches of

hardwood. In its letter, IME referred to section 55.207(a)(7)(ii) that describes the bullet-resistance standard for roof construction for type 1 magazines. Accordingly, this section is being amended to reflect the suggested standard of ¼-inch steel and 3 inches of hardwood. However, ¾-inch steel lined with 4 inches of hardwood, which is currently prescribed in section 55.207(a)(7)(ii), will still be considered bullet-resistant construction as referenced in ATF Ruling 76–18. We are also removing the parenthetical text in section 55.207(a)(7)(ii) to ensure that the exteriors of magazines are constructed with a sufficient amount of fire-resistant materials. In addition, this section is being amended to remove the word "plate" in the phrase "plate steel." This provides consistency with the standards prescribed for other high explosives storage magazines.

Paragraph (a)(8) of section 55.207 is being amended to increase the thickness of hardwood required for magazine door linings from 2 inches to 3 inches. Previously, ATF believed that a wall or door constructed of ¼-inch steel lined with 2 inches of hardwood would resist the penetration of a bullet, based on the standard test. The standard test involves firing a 150 grain M2 ball ammunition having a nominal muzzle velocity of 2700 feet per second from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door (see ATF Rul. 76–18). Examination of bullet-resistance tests conducted by IME indicates that the previous standard is not sufficient. Paragraph (a)(8) is being amended to reflect the standard recommended by IME. Accordingly, effective 1 year from the date of publication of the final rule in the **Federal Register**, all type 1 magazines

commercial explosives are now shipped in 55 and 60 pound cases. ATF believes that adoption of this proposal would not compromise safety.

5. Paragraph (c) is being amended to clarify that a detonator box is a specific type of indoor magazine and that, therefore, detonator boxes must be stored indoors. There has been some confusion as to the requirements for the location of detonator boxes, and this amendment is intended to eliminate the confusion.

6. Paragraph (c) is also being amended to ensure that construction of detonator boxes is such that there will exist a reduced chance of a sparking hazard. This will afford greater public safety.

7. Finally, new paragraph (d) is being added to incorporate the provisions of ATF Ruling 76-18.

Section 55.209 provides that for type 3 magazines one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least $\frac{3}{8}$ -inch diameter is sufficient for locking purposes. We are amending this section to replace the $\frac{3}{8}$ -inch diameter requirement with $\frac{1}{2}$ -inch for purposes of added security. We are also amending this section to ensure that construction of type 3 magazines is such that there will exist a reduced chance of a sparking hazard. We are not proposing to incorporate the provisions of ATF Ruling 76-18 because bullet-resistance standards with respect to type 3 magazines were removed pursuant to T.D. ATF-87 (46 FR 40382, Aug. 7, 1981).

Section 55.210 is being amended to provide in paragraph (a)(1) an additional method (*i.e.*, use of a steering wheel locking device) by which vehicular magazines may be immobilized. Storage in this additional manner must be attended at all times. This is consistent with the requirements that have been imposed by ATF in issuing variances for temporary storage. The primary purpose of this amendment is to allow the temporary storage of low explosives on vehicles prior to use or shipment. ATF has processed numerous variance requests from the fireworks industry to temporarily store display fireworks (except for bulk salutes) on trucks prior to the delivery or set up of fireworks shows. ATF is aware that this practice promotes safety in that trucks are not hastily packed. Since other low explosives are subject to substantially the same security and safety-related requirements as display fireworks (except bulk salutes), we are also providing for temporary storage of these other low explosives. These provisions do not remove the construction

requirements specified in section 55.210. It should also be noted that we are not proposing to amend the regulations to allow for similar temporary storage of high explosives (including bulk salutes) on trucks. This is due to the fact that most trucks used for transportation do not meet the bullet resistance requirements for storage of high explosives. Therefore, temporary storage of high explosives on trucks could pose a public safety hazard. However, ATF will consider variances for the temporary storage of high explosives on vehicles in cases in which the construction of the vehicle ensures that a bullet will not penetrate the vehicle. Paragraphs (a)(2) and (b)(2) are being amended to ensure that construction of type 4 magazines is such that there will exist a reduced chance of a sparking hazard. Paragraph (b)(1) is being amended to increase the indoor storage of low explosives from 50 to 60 pounds. This is consistent with industry shipment standards and IME recommendations.

Several amendments are being proposed with respect to section 55.211:

1. Paragraph (a)(1) is being amended to provide that vehicular magazines must be immobilized by one of the following methods: (a) Have the wheels removed; (b) be equipped with a kingpin locking device; or (c) be equipped with a steering wheel locking device and, if unattended, secured by a fence and locked gate. Any person storing explosives in a magazine immobilized by use of a steering wheel locking device must inspect such magazine at least every 72 hours. This amendment allows the temporary storage of blasting agents on vehicles. ATF has processed numerous requests from the blasting industry to temporarily store blasting agents on trucks. We are aware that this practice promotes safety in that explosive materials are handled less frequently. This proposed amendment sets forth conditions for the temporary storage of blasting agents.

2. Paragraph (a)(4) provides that, in general, padlocks for type 5 magazines must have at least five tumblers and a case-hardened shackle of at least $\frac{3}{8}$ -inch diameter. This paragraph also provides that trailers, semitrailers, and similar vehicular magazines may, for each door, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least $\frac{3}{8}$ -inch diameter, if the door hinges and lock hasp are securely fastened to the magazine and the door frame. As mentioned, a review of explosives theft data indicates that in a significant

number of explosives thefts access was gained to the explosives by cutting the padlock. We believe a general requirement that type 5 magazines be secured with two hooded locks with $\frac{1}{2}$ -inch (rather than $\frac{3}{8}$ -inch) diameter shackles is necessary. However, in the case of bins, we believe that the two hooded locks requirement is unwarranted due to the difficulty in accessing the bins. Accordingly, we are proposing to amend paragraph (a)(4) to provide that type 5 magazines must be secured with two hooded locks with $\frac{1}{2}$ -inch diameter shackles and that bins used on bulk trucks may be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least $\frac{1}{2}$ -inch diameter.

3. Paragraph (b)(1) is being amended to increase the indoor storage of blasting agents from 50 to 60 pounds. This is consistent with industry shipment standards and IME recommendations.

Section 55.213(b)(1) is being amended to allow shock tubes to be stored with detonators that will not mass detonate with electric squibs, safety fuses, igniters, and igniter cord in a type 4 storage magazine because these materials when stored together do not pose a mass detonation hazard.

Section 55.217(b) is being amended to reference the correct NFPA publication and to clarify that all electrical outlets, switches, and devices containing electrical switches must be located outside magazines.

Section 55.218 is being amended to remove the word "public" with respect to highways wherever it appears in the table headings, since under the proposed regulations the term "highway" can mean a private road. In addition, while not a specific regulatory proposal, we are considering amending the table of distances in this section to eliminate the column titled "Public highways with traffic volume 3000 or fewer vehicles/day." ATF believes that this table reference allows a diminished level of protection to travelers on smaller highways than is afforded to travelers on highways with greater traffic volume. Moreover, because roads may become more heavily traveled due to population growth, magazines that may have initially been placed to comply with the low-volume traffic column of the table can become noncompliant. We are also considering amending the table of distances in this section by changing the heading from "Passenger railways—public highways with traffic volume of more than 3,000 vehicles/day" to "Highways and passenger railways." We believe that this change would provide for the

consistent application of this table where highways are concerned and further facilitate consistent application of the proposed definition of "highway." ATF is soliciting comments on these issues.

To be consistent with the proposed amended definition of "highway," the word "public" is being removed from footnote six at the end of the table in section 55.220.

Section 55.222 is being amended to include fireworks process areas in the table heading. The footnotes at the end of the table are being amended to indicate that this table applies to outdoor areas in which fireworks are processed.

Section 55.223 is being amended to clarify that the placement of explosive materials in a fireworks process area must comply with the requirements of the table of distances contained in this section at all times. We are also amending this section by removing the word "public" with respect to highways in the title heading of the table, since under the proposed amended definition of the term a "highway" can be a private road.

Section 55.224 is being amended to incorporate a table for the storage of display fireworks developed by the APA. The current table requires the storer to refer to section 55.218 for the storage of display fireworks in excess of 10,000 pounds to calculate distances separating magazines from inhabited buildings, public highways, passenger railways, and other magazines. The problem presented is that the distance requirements change drastically when going from section 55.224 (for weights up to 10,000 pounds) to section 55.218 (for weights over 10,000 pounds). In comparing the two tables, there are also discrepancies in separation requirements for distances between magazines. APA proposed revising the table at section 55.224 to increase maximum allowable storage under section 55.224 to 200,000 pounds. The revised table provides for more proportionate increases in distances for weights of materials above 10,000 pounds, and it provides for a smooth transition to the table at section 55.218 for weights above 200,000 pounds. ATF has reviewed the table and agrees that the adoption of APA's table will not jeopardize public safety. Bulk salutes remain subject to the table specified in section 55.218.

In addition to the above, a technical nonsubstantive amendment is being made to section 55.224 by removing the parenthetical text in footnote 3 at the end of the table and adding in its place "March 7, 1990." This was the date that

the provisions of section 55.224 became effective, pursuant to T.D. ATF-293.

V. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed amendments clarify the existing regulations and will have a minimal economic impact on the explosives industry. Furthermore, we certify that the revised rule will no longer have a significant economic impact on a substantial number of small entities. We base this certification on the lack of response we received to the RFA analysis set forth in T.D. ATF-293 and comments received on Notice No. 845.

Accordingly, we certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927-8525. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½" x 11" in size;
- Contain a legible written signature;

and

- Be not more than five pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

C. Disclosure

Copies of this notice and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; telephone (202) 927-7890.

D. Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the Federal Register in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

E. Drafting Information

The authors of this document are James P. Ficaretta, Firearms, Explosives, and Arson, and Chad Yoder, Public

Safety Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, the Bureau of Alcohol, Tobacco and Firearms proposes to amend 27 CFR part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by removing the second and last sentences in the definition for "Business premises;" by removing the words "is" and "finished and" in the definition for "Fireworks process building" and adding in their place the words "are" and "finishing or," respectively; by removing the word "and" in the definition for "Fireworks shipping building" and adding in its place the word "or;" by revising the definitions for "Articles pyrotechnic," "Bulk salutes," "Consumer fireworks," "Display fireworks," "Flash powder," "Hardwood," "Highway," "Inhabited building," "Manufacturer," and "Softwood;" and by adding a definition for "Fireworks process area" to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Articles pyrotechnic. Pyrotechnic devices similar to consumer fireworks in chemical composition and construction but intended for professional rather than consumer use. Articles pyrotechnic must meet the weight limits for consumer fireworks and must be classified by the U.S. Department of Transportation as UN0431 or UN0432.

* * * * *

Bulk salutes. A collection of salute shells or salute components. The term includes a collection of salute shells packaged with other types of aerial shells in quantities such that the salute shells comprise more than 50 percent of

the total number of shells in the package.

* * * * *

Consumer fireworks. Small firework devices designed to produce visible or audible effects by combustion and that are intended for use by consumers. The term includes devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. In addition, to be considered a "consumer firework," a device must meet all applicable construction, chemical composition, and labeling requirements of the Consumer Product Safety Commission (CPSC), and it must be a device that the CPSC deems permissible for consumer use. Consumer fireworks must also be devices that are classified under the U.S. Department of Transportation hazardous material classification system as UN0336 or UN0337. The term also includes fused setpieces containing components that together do not exceed 50 mg of salute powder.

* * * * *

Display fireworks. Large fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. The term includes, but is not limited to, salutes containing more than 130 mg of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other fireworks that do not fall within the definition of "consumer fireworks." In addition, to be considered a "display firework" an item must be classified as UN0334 or UN0335 under the U.S. Department of Transportation hazardous material classification system. The term also includes fused setpieces containing components that together exceed 50 mg of salute powder.

* * * * *

Fireworks process area. Any area, not in a fireworks process building, where pyrotechnic compositions or explosive materials are mixed, pressed, processed or otherwise prepared for finishing or assembly; or any finishing or assembly area not in a fireworks process building.

* * * * *

Flash powder. An explosive composition intended to produce a report or flash of light, typically containing, but not limited to, potassium perchlorate, or antimony sulfide, and aluminum metal or similar metals. (Also commonly known as "salute powder" or "photo flash powder.")

* * * * *

Hardwood. Any close-grained wood such as oak, maple, ash, or hickory that is free from loose knots, spaces, wind shakes, or similar defects.

Highway. Any street, alley, or road, including a privately financed, constructed, or maintained road, that is regularly and openly traveled by any member of the general public. For purposes of this definition, the term "general public" includes any and all individuals whose travel on a highway is not directly in connection with activities being undertaken at a particular facility at which explosives are manufactured, assembled, or stored. Individuals employed by or otherwise associated with one explosives facility will generally constitute members of the "general public" with respect to any other explosives facility.

Inhabited building. Any building regularly occupied in whole or in part as a habitation for human beings, or any house of worship, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble or to be present for any purpose, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials. For purposes of this definition, a building occupied by a person will be considered to be "occupied in connection with the manufacture, transportation, storage, or use of explosive materials" only with respect to the explosives operations conducted by the same person.

Manufacturer. (a) Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use; or

(b) Any person engaged in the business of assembling explosive materials from explosive and/or non-explosive materials for purposes of sale or distribution or for his own use.

Softwood. Any coarse-grained wood such as fir, hemlock, pine, or spruce that is free from loose knots, spaces, wind shakes, or similar defects.

Par. 3. Section 55.22(c) is revised to read as follows:

§ 55.22 Alternate methods or procedures; emergency variations from requirements.

(c) **Retention of approved variations.** The licensee or permittee will retain, as part of his records available for examination by ATF officers, any variance approved by the Director under this section. Upon request by the Director, previously approved variance

requests must be resubmitted for a new determination.

Par. 4. Section 55.46(a) is amended by adding a new sentence after the first sentence to read as follows:

§ 55.46 Renewal of license or permit.

(a) * * * The Chief, Firearms and Explosives Licensing Center, by written notification may require the applicant for license or permit renewal to also file completed form ATF F 5400.13/5400.16 or ATF F 5400.21 in the manner required by § 55.45. * * *

Par. 5. Section 55.63 is revised to read as follows:

§ 55.63 Notification of magazine changes.

(a) **General.** Except as provided in paragraph (f) of this section, the requirements of this section are applicable to all magazines used for storage of explosives. Magazines used for temporary storage of explosives are subject to the table of distances and magazine construction requirements prescribed in §§ 55.206—55.211.

(b) **Changes in magazine construction.** A licensee or permittee who intends to make changes in construction of an existing magazine will notify the regional director (compliance) in accordance with paragraph (e) of this section, describing the proposed changes prior to making any changes. Unless otherwise advised by the regional director (compliance), changes in construction may commence.

(c) **Magazines acquired or constructed after permit or license is issued.** A licensee or permittee who intends to construct or acquire additional magazines will notify the regional director (compliance) in accordance with paragraph (e) of this section describing the additional magazines, the proposed location of the magazines, and the class and quantity of explosives to be stored in the magazine. Unless otherwise advised by the regional director (compliance), additional magazines may be constructed, or acquired magazines may be used for the storage of explosives.

(d) **Relocation of magazines.** A licensee or permittee who intends to change the location of an existing magazine will notify the regional director (compliance) in accordance with paragraph (e) of this section describing the proposed changes in location prior to making any changes. Unless otherwise advised by the regional director (compliance), magazines may be relocated after explosives are removed from the magazine. (See also subpart K of this part for storage requirements.)

(e) **Notification of regional director (compliance).** For the purposes of this section, notification of the regional director (compliance) may be by telephone or in writing. However, if notification of the regional director (compliance) is in writing it must be received at least three business days in advance of making changes in construction of an existing magazine or constructing a new magazine, and at least five business days in advance of using any reconstructed magazine or added magazine for the storage of explosives.

(f) **Exception.** Type 3 magazines and mobile or portable type 5 magazines are exempt from the requirements of paragraphs (b), (c), and (d) of this section.

§ 55.105(g) [Removed]

Par. 6. Section 55.105(g) is removed.

§ 55.106(d) [Removed]

Par. 7. Section 55.106(d) is removed.

§ 55.108 [Amended]

Par. 8. Section 55.108 is amended by removing paragraph (b) and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

Par. 9. Section 55.121 is amended by revising paragraph (a)(1) and by adding the word "business" before "premises" in the first sentence of paragraph (b) to read as follows:

§ 55.121 General.

(a)(1) Licensees and permittees will keep records pertaining to explosive materials in permanent form (*i.e.*, commercial invoices, record books) and in the manner required in this subpart. Computer recordkeeping systems may be used to keep records pertaining to explosive materials, provided the following conditions are met:

(i) The system contains all the information required in this subpart;

(ii) The system can be queried by date code or date shift code and/or lot number;

(iii) The system has a daily memory backup capability acceptable to ATF, such as disk or tape;

(iv) The system is capable of providing a printout of all records for purposes of inspection by ATF, when the system memory is purged, or if business is discontinued;

(v) The computer printout contains a record of explosives in inventory, as well as all that were sold during the period covered, sequentially, by date of acquisition;

(vi) The system accounts for and records all explosive materials returned;

(vii) The system records both the manufacturer and the importer of foreign-made explosives;

(viii) The system records the names and addresses of the distributee (buyer), and in the case of a corporation or other business entity, its authorized representative or agent. An ATF Form 5400.4 transaction number may be used to reference additional information, such as date of birth, place of birth, identification used, etc.;

(ix) The system cannot rely on invoices or other paper/manual systems to provide any of the required information. It must be self contained; and

(x) If the business is discontinued, all records, including a final printout, must be forwarded to the ATF Out-of-Business Records Center, or any ATF office in the region in which the business was located.

* * * * *

Par. 10. Section 55.122 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a); by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text “(See also § 55.127.)”; by revising the introductory text of paragraph (c); and by revising paragraph (c)(1) to read as follows:

§ 55.122 Records maintained by licensed importers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

* * * * *

(c) Each licensed importer must, not later than the close of the next business day following the date of use or date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of use or date of disposition.

* * * * *

Par. 11. Section 55.123 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a); by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text “(See also § 55.127.)”; by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5); by adding a new paragraph (b)(2); by revising paragraph (c); by removing paragraph (d); and by redesignating paragraphs (e) and (f) as paragraphs (d) and (e) to read as follows:

§ 55.123 Records maintained by licensed manufacturers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

(b) * * * (2) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

* * * * *

(c)(1) Each licensed manufacturer must, not later than the close of the next business day following the date of use or distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(i) Date of use or date of disposition.

(ii) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(iii) Manufacturer’s marks of identification.

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(vi) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(2) *Exception.* A licensed manufacturer is exempt from the recordkeeping requirements of paragraph (c)(1) of this section if the explosive materials are manufactured for his own use and used within a 24-hour period at the same site.

* * * * *

Par. 12. Section 55.124 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a), by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text “(See also § 55.127.)”, and by revising paragraph (c)(1) to read as follows:

§ 55.124 Records maintained by licensed dealers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled

in the records by the close of the next business day. * * *

* * * * *

(c)(1) Date of use or date of disposition.

* * * * *

Par. 13. Section 55.125 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a) and by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text “(See also § 55.127)”, to read as follows:

§ 55.125 Records maintained by permittees.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

* * * * *

Par. 14. Section 55.126(b) is revised to read as follows:

§ 55.126 Explosives transaction record.

* * * * *

(b) Before the distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises, or to a nonlicensee or nonpermittee who is not a resident of the State in which the licensee or permittee maintains his business premises and is acquiring explosive materials under § 55.105(c), the licensee or permittee distributing the explosive materials will:

(1) Obtain an executed ATF F 5400.4 from the distributee that contains all of the information required on the form and by the regulations in this part; and

(2) Cause the distributee to be identified in any manner customarily used in commercial transactions (e.g., a driver’s license) and will note on the Form 5400.4 the type of identification used and the identification number.

* * * * *

Par. 15. Section 55.129 is amended by designating the existing paragraph as paragraph (a), by revising the first sentence in newly designated paragraph (a), and by adding new paragraphs (b) and (c) to read as follows:

§ 55.129 Exportation.

(a) Exportation of explosive materials is to be in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act (50 U.S.C. APP. 2401 *et seq.*), and the

Export Administration Regulations, 15 CFR, chapter VII, subchapter C. * * *

(b) The licensee or permittee will retain as part of his records available for examination by ATF officers a copy of the export license and the following information:

(1) A certificate of lading executed by a Customs officer of the foreign country to which the explosive materials are exported; or

(2) A sworn statement of the foreign consignee covering the receipt of the explosive materials; or

(3) The return receipt, or a reproduced copy thereof, signed by the addressee or his agent, where the shipment of explosive materials was made by insured or registered parcel post.

(c) Proof of exportation will be retained by the licensee as part of his permanent records and made available for inspection by any ATF officer.

Par. 16. Section 55.141 is amended by revising paragraphs (a)(7), and by removing “.49 CFR Parts 100 to 177,” in paragraph (a)(9) to read as follows:

§ 55.141 Exemptions.

(a) * * *

(7) The importation and distribution of—

(i) Consumer fireworks and articles pyrotechnic, as defined under § 55.11;

(ii) Explosive auto alarms, that are tubular devices containing a small amount of explosive composition and igniting compound, which are ignited by an electric spark. These devices must be so designed that they will neither burst, nor cause external flame on functioning;

(iii) Toy propellant devices and toy smoke devices consisting of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder. These devices must be so designed that they will neither burst, nor cause external flame on functioning and ignition elements, if attached, must be of a design approved by the Department of Transportation Associate Administrator for Hazardous Materials Safety (or other official who is designated under Department of Transportation regulations);

(iv) Cigarette loads, trick matches, and trick noise makers, explosive, of a type approved by the Department of Transportation Associate Administrator for Hazardous Materials Safety (or other official who is designated under Department of Transportation regulations) and described as follows:

(A) Cigarette loads consisting of wooden pegs to which are affixed a small amount of explosive composition;

(B) Trick matches consisting of book matches, strike anywhere matches, or

strike-on-box matches that have small amounts of explosive or pyrotechnic composition affixed to the match stem just below the match head;

(C) Trick noise makers, explosive, consisting of spheres containing a small amount of explosive composition; and

(v) Model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight and designed as single use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing.

* * * * *

Par. 17. Section 55.206 is amended by revising paragraph (a), by removing the word “public” in paragraph (b), and by revising paragraph (c)(1) to read as follows:

§ 55.206 Location of magazines.

(a) Outdoor magazines in which any high explosives are stored must be located no closer to inhabited buildings, passenger railways, highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

* * * * *

(c)(1) Outdoor magazines in which blasting agents are stored must be located no closer to inhabited buildings, passenger railways, or highways than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

* * * * *

Par. 18. Section 55.207 is amended by revising paragraph (a)(7)(ii); by adding a new paragraph (a)(7)(iii); by revising the first sentence in paragraph (a)(8); by removing “3/8 inch” in paragraph (a)(9)(v) and adding in its place “1/2 inch”; and by adding new paragraph (c) to read as follows:

§ 55.207 Construction of type 1 magazines.

* * * * *

(a) * * *

(7) * * *

(ii) A fabricated metal roof constructed of 1/4-inch steel lined with three inches of hardwood.

(iii) Any of the bullet-resistant construction criteria specified in paragraph (c) of this section.

(8) *Doors* All doors are to be constructed of not less than 1/4-inch steel and, effective [Date 1 year after the date of publication of the final rule in the **Federal Register**], lined with at least three inches of hardwood, or otherwise be constructed in accordance with the

bullet-resistant construction criteria specified in paragraph (c) of this section. * * *

* * * * *

(c) *Alternate construction standards for storage facilities with respect to bullet resistance.* Storage facilities (magazines) that are constructed according to any of the following minimum specifications are bullet resistant. (All steel and wood dimensions indicated are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturer's represented thicknesses may be used.)

(1) Exterior of 5/8-inch steel, lined with an interior of any type of non-sparking material;

(2) Exterior of 1/2-inch steel, lined with an interior of not less than 3/8-inch plywood;

(3) Exterior of 3/8-inch steel, lined with an interior of two inches of hardwood;

(4) Exterior of 3/8-inch steel, lined with an interior of three inches of softwood or 2 1/4 inches of plywood;

(5) Exterior of 1/4-inch steel, lined with an interior of five inches of softwood or 5 1/4 inches of plywood;

(6) Exterior of 1/4-inch steel, lined with an intermediate layer of two inches of hardwood and an interior lining of 1 1/2 inches of plywood;

(7) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood;

(8) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6-inches plywood;

(9) Exterior of 3/16-inch steel, lined with an intermediate layer of three inches of hardwood and an interior lining of 3/4-inch plywood;

(10) Exterior of 1/8-inch steel, lined with an interior of five inches of hardwood;

(11) Exterior of 1/8-inch steel, lined with an interior of nine inches of softwood;

(12) Exterior of 1/8-inch steel, lined with an intermediate layer of four inches of hardwood and an interior lining of 3/4-inch plywood;

(13) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of 1/2-inch plywood placed securely against the masonry lining;

(14) Standard eight-inch concrete block with voids filled with well-tamped sand/cement mixture;

(15) Standard eight-inch solid brick;

(16) Exterior of any type of fire-resistant material that is structurally

sound, lined with an intermediate six-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(17) Exterior of 1/8-inch steel, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3 5/8 inches well-tamped dry sand or sand/cement mixture and an interior lining of 3/4-inch plywood;

(18) Exterior of any type of fire-resistant material, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3 5/8 inches well-tamped dry sand or sand/cement mixture, a third intermediate layer of 3/4-inch plywood, and a fourth intermediate layer of two inches of hardwood or 14-gauge steel and an interior lining of 3/4-inch plywood; or

(19) Eight-inch thick solid concrete.

Par. 19. Section 55.208 is amended by revising paragraph (a)(2); by removing "3/8-inch" in paragraph (a)(4)(v) and adding in its place "1/2-inch"; by removing the number "50" wherever it appears in paragraph (b)(1) and adding in its place the number "60;" by removing the word "Exterior" in the title heading of paragraph (b)(2); by adding a new paragraph (b)(2)(iii); by removing "3/8-inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "1/2-inch"; by revising paragraph (c); and by adding new paragraph (d) to read as follows:

§ 55.208 Construction of type 2 magazines.

* * * * *

(a) * * *

(2) Construction. (i) Outdoor magazines, including doors, are to be constructed of not less than 1/4-inch steel and, effective January 29, 2004, lined with at least three inches of hardwood, or otherwise be constructed in accordance with the bullet-resistant construction criteria specified in § 55.207(c). Magazines with top openings will have lids with water-resistant seals or that overlap the sides by at least one inch when in a closed position.

(ii) No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

* * * * *

(b) * * *

(2) * * *

(iii) No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal

nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

* * * * *

(c) Detonator boxes Magazines for detonators in quantities of 100 or less must be stored indoors and are to have sides, bottoms, and doors constructed of not less than number 12-gauge (.1046 inches) metal and lined with a nonsparking material. No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material. Hinges and hasps must be attached so they cannot be removed from the outside. One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 1/2-inch diameter is sufficient for locking purposes.

(d) Alternate construction standards for storage facilities with respect to bullet resistance. Storage facilities (magazines) that are constructed according to any of the following minimum specifications are bullet resistant. (All steel and wood dimensions indicated are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturer's represented thicknesses may be used.)

(1) Exterior of 5/8-inch steel, lined with an interior of any type of non-sparking material;

(2) Exterior of 1/2-inch steel, lined with an interior of not less than 3/8-inch plywood;

(3) Exterior of 3/8-inch steel, lined with an interior of two inches of hardwood;

(4) Exterior of 3/8-inch steel, lined with an interior of three inches of softwood or 2 1/4 inches of plywood;

(5) Exterior of 1/4-inch steel, lined with an interior of five inches of softwood or 5 1/4 inches of plywood;

(6) Exterior of 1/4-inch steel, lined with an intermediate layer of two inches of hardwood and an interior lining of 1 1/2 inches of plywood;

(7) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood;

(8) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6 3/4 inches plywood;

(9) Exterior of 3/16-inch steel, lined with an intermediate layer of three

inches of hardwood and an interior lining of 3/4-inch plywood;

(10) Exterior of 1/8-inch steel, lined with an interior of five inches of hardwood;

(11) Exterior of 1/8-inch steel, lined with an interior of nine inches of softwood;

(12) Exterior of 1/8-inch steel, lined with an intermediate layer of four inches of hardwood and an interior lining of 3/4-inch plywood;

(13) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of 1/2-inch plywood placed securely against the masonry lining;

(14) Standard eight-inch concrete block with voids filled with well-tamped sand/cement mixture;

(15) Standard eight-inch solid brick;

(16) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate six-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(17) Exterior of 1/8-inch steel, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3 5/8 inches well-tamped dry sand or sand/cement mixture and an interior lining of 3/4-inch plywood;

(18) Exterior of any type of fire-resistant material, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3 5/8 inches well-tamped dry sand or sand/cement mixture, a third intermediate layer of "inch plywood, and a fourth intermediate layer of two inches of hardwood or 14-gauge steel and an interior lining of 3/4-inch plywood; or

(19) Eight-inch thick solid concrete.

Par. 20. Section 55.209 is amended by adding two new sentences after the third sentence and by removing "3/8-inch" and adding in its place "1/2-inch" to read as follows:

§ 55.209 Construction of type 3 magazines.

* * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material. * * *

Par. 21. Section 55.210 is amended by revising paragraph (a)(1); by adding two new sentences after the first sentence in paragraph (a)(2); by removing "3/8 inch" in paragraph (a)(4)(v) and adding in its

place "1/2-inch"; by removing the number "50" wherever it appears in paragraph (b)(1) and adding in its place the number "60;" by adding two new sentences after the first sentence in paragraph (b)(2); and by removing "3/8 inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "1/2-inch" to read as follows:

§ 55.210 Construction of type 4 magazines.

(a) * * * (1) *General* Outdoor magazines are to be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines must slope away for drainage or other adequate drainage must be provided. Vehicular magazines must be immobilized by one of the following methods:

- (i) Have wheels removed;
 - (ii) Be equipped with a kingpin locking device; or
 - (iii) Be equipped with a steering wheel locking device. Storage in this manner must be attended at all times.
- (2) * * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

(b) * * * (2) * * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

Par. 22. Section 55.211 is amended by revising paragraph (a)(1); by revising the second and fourth sentences in paragraph (a)(4); by revising paragraph (b)(1); and by removing "3/8 inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "1/2-inch" to read as follows:

§ 55.211 Construction of type 5 magazines.

(a) * * * (1) *General* Outdoor magazines are to be weather-resistant and theft-resistant. The ground around magazines must slope away for drainage or other adequate drainage must be provided. Vehicular magazines must be immobilized by one of the following methods:

- (i) Have wheels removed;

(ii) Be equipped with a kingpin locking device; or

(iii) Be equipped with a steering wheel locking device and, if the magazine is unattended, secured by a fence and locked gate. Any person storing explosives materials in this manner must inspect such magazine at least once every 72 hours.

(4) * * * Padlocks must have at least five tumblers and a case-hardened shackle of at least 1/2-inch diameter. * * * Bins used to load bulk trucks may be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 1/2-inch diameter.

(b) * * * (1) *General* Indoor magazines are to be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. The indoor storage of blasting agents must not exceed a quantity of 60 pounds. More than one indoor magazine may be located in the same building if the total quantity of explosive materials stored does not exceed 60 pounds.

§ 55.213 [Amended]

Par. 23. Section 55.213 is amended by adding "shock tube," after "safety fuse," in paragraph (b)(1).

Par. 24. Section 55.217 is amended by revising the section heading and paragraph (b) to read as follows:

§ 55.217 Lighting and electrical switches.

(b) Electric lighting used in any explosives storage magazine must meet the standards prescribed by the "National Electrical Code" and the National Fire Protection Association, NFPA 495, for the conditions present in the magazine at any time. All electrical outlets, switches, and devices containing electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

§ 55.218 [Amended]

Par. 25. Section 55.218 is amended by removing the word "public" wherever it appears in the table headings.

§ 55.220 [Amended]

Par. 26. Section 55.220 is amended by removing the word "public" in footnote 6 at the end of the table.

Par. 27. Section 55.222 is amended by revising the section heading and

footnotes 3, 4, and 5 at the end of the table, and by adding new footnotes 6 and 7 to read as follows:

§ 55.222 Table of distances between fireworks process buildings, fireworks process areas, and fireworks nonprocess buildings.^{6,7}

* * * * *

³ While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings and fireworks process areas where consumer fireworks or articles pyrotechnic are being processed must meet these requirements.

⁴ A maximum of 500 pounds of in-process pyrotechnic compositions, either loose or in partially assembled fireworks, is permitted in any fireworks process building or fireworks process area. Finished display fireworks may not be stored in a fireworks process building or fireworks process area.

⁵ A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building or fireworks process area. Quantities in excess of 10 pounds must be kept in an approved magazine.

⁶ The placement of explosive materials in a fireworks process area must comply with the requirements of this table of distances at all times.

⁷ This table specifies minimum required separation distances from fireworks process buildings and fireworks process areas to other fireworks process buildings and fireworks process areas; and from fireworks process buildings and fireworks process areas to fireworks nonprocess buildings.

Par. 28. Section 55.223 is amended by revising the section heading, by removing the table heading, and by adding a new footnote 6 at the end of the table to read as follows:

§ 55.223 Table of distances from fireworks process buildings and fireworks process areas to passenger railways, highways, and fireworks plant buildings.^{3, 4, 5, 6}

* * * * *

⁶ The placement of explosive materials in a fireworks process area must comply with the requirements of this table of distances at all times.

Par. 29. Section 55.224 is amended by revising the table and by removing the parenthetical text in footnote 3 at the end of the table and adding in its place "March 7, 1990" to read as follows:

§ 55.224 Table of distances for the storage of display fireworks (except bulk salutes).

Net weight of fireworks ¹ (pounds)	Distance between magazine and inhabited building, passenger railway, or highway ^{2,3,4} (feet)	Distance between magazines ^{2,3,4} (feet)
0–1000	150	100
1001–5000	230	150
5001–10000	300	200
10001–15000	360	200
15001–20000	420	200
20001–30000	480	225
30001–40000	625	250
40001–50000	675	275
50001–60000	910	300
60001–75000	1500	325
75001–100000	1750	375
100001–200000	2000	500
Above 200000	Use table § 55.218

* * * * *

Signed: August 12, 2002.

Bradley A. Buckles,
Director

Approved: January 7, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory,
Tariff and Trade Enforcement)

[FR Doc. 03–1946 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 515

**Reporting and Procedures
Regulations; Cuban Assets Control
Regulations: Publication of Economic
Sanctions Enforcement Guidelines**

AGENCY: Office of Foreign Assets
Control, Treasury.

ACTION: Proposed rule with request for
comments.

SUMMARY: The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury is publishing for public comment an updated version of its internal Economic Sanctions Enforcement Guidelines. These Guidelines are being published as separate appendices to two parts of the Code of Federal Regulations: general provisions are being published as an appendix to the Reporting and Procedures Regulations, 31 CFR part 501, and specific provisions focusing on Cuba are being published as an appendix to the Cuban Assets Control Regulations, 31 CFR part 515.

DATES: Written comments must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through OFAC’s Web site.

Mailing address: Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile number: 202/622–1657.

OFAC’s Web site: <http://www.treas.gov/offices/enforcement/ofac/comment.html>

FOR FURTHER INFORMATION CONTACT: Chief of Records, tel.: 202/622–2500, or Chief Counsel, tel.: 202/622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC’s Web site <http://www.treas.gov/offices/enforcement/ofac/index.html> or via facsimile through a 24-hour fax-on-demand service, tel: 202/622–0077. Comments on these Guidelines may be submitted electronically through OFAC’s Web site <http://www.treas.gov/offices/enforcement/ofac/comment.html>

Procedural Requirements; Request for Comment

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this rule would not have a significant economic impact on a substantial number of small entities. OFAC’s Guidelines impose no regulatory burdens on the public. The Guidelines simply explain OFAC’s enforcement practices based on existing substantive and procedural rules. Accordingly, no regulatory flexibility analysis is required. A regulatory assessment is not required because this rule is not a “significant regulatory action” as defined in Executive Order 12866.

Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission

be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC’s Web site <http://www.treas.gov/offices/enforcement/ofac/index.html>.

Paperwork Reduction Act

The collections of information related to the Reporting and Procedures Regulations and the Cuban Assets Control Regulations have been previously approved by the Office of Management and Budget (“OMB”) under control number 1505–0164. A small adjustment to that collection has been submitted to OMB in order to take into account the voluntary disclosure rule proposed in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The new collection of information is contained in subpart B of part III of the new Appendix to part 501—Economic Sanctions Enforcement Guidelines. This subpart explains that when apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty will generally be mitigated by at least 50%. This voluntary disclosure rule provides an incentive for persons who have violated economic sanctions laws to come forward and provide OFAC information that it can use to better enforce its economic sanctions programs.

The likely submitters who will avail themselves of the voluntary disclosure rule are financial institutions, business organizations, other entities, and individuals who find that they have violated a sanctions prohibition and wish to disclose their violation.

The estimated total annual reporting and/or recordkeeping burden: 50 hours.
The estimated annual burden per respondent/record keeper: 1 hour.