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SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from misuse of explosive materials. Under section 847 of title 18, U.S.C., the Secretary of the Treasury "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 55 ("Commerce in Explosives").

The term "explosive materials," as defined in section 55.11, means explosives, blasting agents, water gels, and detonators. The term includes, but is not limited to, all items in the "List of Explosive Materials" provided for in section 55.23. Section 55.202 provides that there are three classes of explosive materials: (1) High explosives (e.g., dynamite, flash powders, and bulk salutes); (2) low explosives (e.g., black powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks (except bulk salutes)); and (3) blasting agents (e.g., ammonium nitrate-fuel oil and certain water gels).

Under the law and its implementing regulations (section 55.41), persons engaging in the business of manufacturing, importing, or dealing in explosive materials are required to be licensed. In general, persons acquiring or receiving explosive materials in interstate commerce for their own use are required to obtain a permit.

Licensees and permittees must comply with the provisions of part 55, including those relating to storage and other safety requirements, as well as recordkeeping and theft reporting requirements. However, certain items and activities have been given exempt status under the law (18 U.S.C. 845) and its implementing regulations (section 55.141). For example, the provisions of part 55 do not apply to the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision.

Explosive Pest Control Devices

Explosive pest control devices contain black powder, flash powder, and/or a

similar pyrotechnic composition. Many of these devices contain flash powder, a high explosive, as the component that produces the audible report. These devices are used for wildlife management purposes as an effective deterrent and are necessary for pest control efforts within the agricultural, aquacultural (commercial fishing operations), horticultural, and aviation industries. Commonly known as "bird bombs," "shell crackers," "seal bombs," etc., explosive pest control devices are used to deter wildlife pests without harming them.

Generally, the current regulations in part 55 require that persons acquiring or receiving explosive materials in interstate commerce must possess a license or permit. Thus, prior to acquiring any explosive pest control devices in interstate commerce, persons must submit an application for a license or permit to ATF along with the appropriate fee. The issuance of a license or permit can be a lengthy process. Consequently, the threat and damage to crops, aircraft, etc., may have long passed before a person with a legitimate need for the devices has obtained the necessary license or permit. In addition, the requirement to obtain a license or permit can be cost prohibitive, particularly in instances where persons have only an intermittent need for using explosive pest control devices.

Reed-Joseph Petition

ATF received a petition, dated April 30, 2001, filed by Reed-Joseph International Company (Reed-Joseph), requesting an amendment of the explosives regulations. Specifically, Reed-Joseph requested an amendment of section 55.141(a) to provide that the requirements of part 55 not apply to the importation and distribution of certain 15 mm and 18.2 mm pyrotechnic devices used for wildlife damage control purposes. As suggested by Reed-Joseph, a new exception would specify that the provisions of part 55 would not apply to:

The importation and distribution of 15 MM and 18.2 MM pyrotechnic devices for animal damage control purposes with U.S. Department of Transportation "Classification of Explosives" as follows:

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s., UN 0471. *U.N. Classification Code:* 1.4E. *Reference Number:* EX-9810074. *Product Designation/Part Number:* (F105 AZ F 0626 073 Ind A). CAPA Cartridge (18.2 MM). and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s., UN 0349. *U.N. Classification Code:* 1.4 S. *Reference Number:* EX-9806011. *Product Designation/Part Number:* Screamer Siren Scare Cartridge 15 MM. and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0471. *U.N. Classification Code:* 1.4 E. *Reference Number:* EX-9704086. *Product Designation/Part Number:* Report Cartridge—Bird Banger 15 MM. and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0471. *U.N. Classification Code:* 1.4 E. *Reference Number:* EX-8602015. *Product Designation/Part Number:* Pest Control Cartridge (15 MM). and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0349. *U.N. Classification Code:* 1.4 S. *Reference Number:* EX-8304001. *Product Designation/Part Number:* Bird Whistler (15 MM).

In its petition, Reed-Joseph states that to its knowledge, no 15 mm or 18.2 mm wildlife damage control pyrotechnic devices are manufactured in the United States and that there are only two companies that import and distribute 15 mm or 18.2 mm pyrotechnics used for wildlife damage control, Reed-Joseph and Sutton Ag Enterprises of Salinas, California. As such, the petitioner contends that by limiting exemptions to 15 mm and 18.2 mm wildlife damage control pyrotechnics imported by reputable and licensed firms, ATF will be able to separate firms meeting legitimate wildlife control damage control needs from those that will sell these devices to the general public. The petitioner also states that these pyrotechnics "may only be fired from hand-held launchers that use .22 caliber blank cartridges as ignition source or Very-type flare launchers."

Discussion/Proposed Amendments

ATF recognizes that the use of explosive pest control devices can be an important part of an effective wildlife management program within the agricultural, aquacultural, horticultural, and aviation industries. We also recognize that the current regulations in part 55 impose a significant hardship on these affected industries, particularly with respect to licensing and permit requirements and requirements concerning the storage of explosives. As indicated, farmers, ranchers, etc. often have an immediate need for these pest control devices and any delay in