

acquiring them can result in serious and significant consequences.

Accordingly, we are proposing to amend the regulations to provide a limited exemption from the requirements of part 55 for persons having a legitimate need to use explosive pest control devices. As proposed, the term "explosive pest control device" will be defined as any explosive device that is designed and intended solely for use in controlling wildlife pests and that has a container that is a cardboard/pasteboard-type tube not exceeding 4 inches in length and 3/4 inch in diameter or a shotgun shell type container. Explosive pest control devices may contain only pyrotechnic compositions, *e.g.*, black powder, flash powder, or smokeless powder. The component that produces the audible report may not contain more than 40 grains (2.592 grams) of explosive composition. These devices must have been tested, classified, and approved by the U.S. Department of Transportation.

The proposed definition of the term "explosive pest control device" is not limited to 15 mm and 18.2 mm wildlife damage control pyrotechnic devices (that can only be fired from hand-held launchers) as requested by Reed-Joseph in its petition. Based on information we have obtained, it is clear that there are many types of explosive pest control devices available to those persons who have legitimate pest control needs. For example, according to the U.S. Department of Agriculture, problems associated with large concentrations of birds, *e.g.*, depredation of agricultural crops, creation of health hazards, etc., can be reduced through the use of 12-gauge exploding shells (also known as "shell crackers") fired from a shotgun, or 15 mm or 17 mm pyrotechnics fired from a pistol. The Department of Agriculture states that rope firecrackers (also known as "rope salutes") are also useful in frightening birds. With this particular device, the fuses of large firecrackers are inserted through cotton rope. As the rope burns, the fuses are ignited.

To ensure that explosive pest control devices will not be obtained for illicit purposes, the proposed regulations require that persons acquiring such devices must complete an ATF form certifying, under penalty of perjury, that their use of the devices will be solely for legitimate wildlife pest control purposes and that they are not prohibited by law from possessing explosive materials. The form will be retained by the licensee or permittee as part of his permanent records.

In considering the appropriate storage of explosive pest control devices, we

have noted that these devices often contain flash powder as the audible charge used to frighten wildlife pests. Therefore, they are considered high explosives and would ordinarily be required to be stored in a type-1 or type-2 storage magazine. ATF believes that persons acquiring explosive pest control devices will, for the most part, be storing these devices at intermittent times for specific uses and will only be storing small quantities. In addition, we believe that acquiring type-1 and type-2 explosives storage magazines will be cost prohibitive for most end-users due to the infrequent need and use of these devices. Accordingly, we are proposing that explosive pest control devices that are maintained in their original shipping packages may be stored in a type-4 magazine or other similar storage container that is approved by the Director in accordance with the provisions of § 55.22 and that provides an equivalent level of safety and security. We believe that this will ensure a sufficient level of security from theft and, if the explosive pest control devices are maintained in their original shipping packages, will provide a sufficient safeguard against accidental mass explosion.

Except as provided, the proposed regulations do not apply to persons operating businesses that provide on-site wildlife pest control services using explosive pest control devices. Such persons will be required to obtain, at a minimum, a Federal explosives permit and must comply with all applicable provisions of 18 U.S.C. chapter 40 and the regulations in part 55. Unlike farmers and others whose crops, etc., might be endangered if they were made to await issuance of an explosives permit, businesses providing pest control services using explosive pest control devices do not operate under the same time constraints. Moreover, these businesses are likely to maintain large quantities of explosive pest control devices. Similarly, those engaged in the business of dealing, importing, and/or manufacturing explosive pest control devices must obtain Federal explosives licenses and must comply with the applicable provisions of 18 U.S.C. chapter 40 and the regulations in part 55.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined by

Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, 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. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Indeed, the proposed regulations will reduce the burden placed on small businesses.

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 (44 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;
- The accuracy of the estimated burden associated with the proposed collections of information (*see below*);
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 55.141(c). This information is required to ensure that persons acquiring explosive pest control devices will be using such devices for legitimate wildlife pest control purposes. The collections of information are