

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