

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