

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

[T.D. ATF-400; Ref: Notice No. 841]

RIN 1512-AB55

Commerce in Explosives (95R-036P)

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations to clarify the meanings of terms, increase license and permit fees, eliminate duplication in licensing, relax the licensing requirements for on-site manufacturers, implement a storage notification requirement for manufacturers and other storers of explosives, update the theft/loss hotline number for reporting thefts or losses of explosives, and make minor modifications to regulations on storage.

DATES: This final rule is effective December 22, 1998.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

The Bureau of Alcohol, Tobacco and Firearms (ATF) is concerned with the safety of emergency personnel responding to fires on sites where explosives are stored. ATF is amending the regulations in 27 CFR Part 55 to require any person who stores explosive materials to notify local fire departments of the locations where explosives are stored. The regulations are also being amended to clarify the meaning of terms; modify the American Table of Distances to conform with the Institute of Makers of Explosives (IME) latest revisions; update and incorporate references and definitions to reflect current government and industry standards; facilitate transition to the United Nations explosives classification codes; allow on-site manufacturers to operate under one manufacturer's license; and extend the term for original and renewal licenses and permits from one year to three years.

Notice of Proposed Rulemaking

On October 15, 1996, ATF published in the **Federal Register** a notice of proposed rulemaking (Notice No. 841, 61 FR 53688), with a 90-day comment

period. The comment period closed on January 13, 1997. This notice proposed the following amendments to the regulations:

(1) Require anyone storing explosive materials to notify local law enforcement officials and fire departments of the type, magazine capacity, and location of each site where explosive materials are stored.

(2) Increase the license and permit fees to \$200 and \$100 and renewals to \$100 and \$50, respectively.

(3) Eliminate the manufacturer-limited license.

(4) Amend the definitions of "fireworks," "highway," and "salute," and change the names of "common fireworks" to "consumer fireworks" and "special fireworks" to "display fireworks" and amend their definitions.

(5) Amend the definition of "fireworks nonprocess building" to eliminate the unnecessary reference to fireworks plant warehouse.

(6) Substantially adopt the American Table of Distances as revised by the Institute of Makers of Explosives.

(7) Update the ATF hotline for reporting thefts or losses of explosive materials.

ATF received 426 written comments in response to Notice No. 841. Comments were submitted by several major model rocketry industry groups such as the National Association of Rocketry (NAR) and Tripoli Rocketry Association (Tripoli), and their members. Comments were also submitted by fireworks hobbyists, small display fireworks operators, major explosives industry safety associations and professional organizations such as the Institute of Makers of Explosives (IME), the American Pyrotechnic Association (APA), the National Fire Protection Association (NFPA), and the International Association of Fire Fighters (IAFF). Comments were also received from concerned citizens.

Discussion of Comments—Final Rule**Subpart B—Definitions**

ATF received three comments relating to proposals to amend the definitions in 27 CFR 55.11. Notice No. 841 proposed defining the term "highway" as "any public street, public alley, or public road." With regard to the definition of "highway," a number of commenters emphasized the importance of defining highway as any *public* road, *public* street, or *public* alley, and stressed that such roads should not include private roads on mine property, manufacturing sites, or construction projects. The commenters stated that the tables of distances set forth in the regulations are

intended to apply only to roads financed, constructed, or maintained by government entities. Other comments also strongly urged ATF to clarify that the definition of "highway" includes a public funding element, so as to avoid posing undue burden on the explosives industry in placing magazines at minimum separation distances from private roads.

In the interest of ATF's statutory obligation to consider public safety, if a privately financed, constructed, or maintained road is regularly and openly traveled by the general public, ATF may determine that the road is "public" so that it is subject to the table of distance requirements. This interpretation allows ATF to maintain the flexibility to determine on a case-by-case basis whether a private road is used by the general public in a manner that warrants protection by the table of distance requirements. Accordingly, ATF is revising the definition of "highway" proposed in Notice No. 841 to include this interpretation.

ATF received two comments in response to proposals to amend various fireworks definitions. One commenter recommends that ATF eliminate confusion as to which table of distances, if any, applies to fireworks plant warehouses and fireworks and nonprocess buildings. The commenter recommends that the definition of fireworks plant warehouse be amended to state that no work of any kind shall be performed in the warehouse except for the placement in or removal of fireworks items from storage. The commenter also recommends that the definition of "fireworks nonprocess building" be amended to eliminate "fireworks plant warehouse" from its definition. Such warehouse would, therefore, not be subject to the separation distances in sections 55.222 and 55.223. The final rule adopts both these comments.

The commenter also urges ATF to consider incorporating NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks into 27 CFR Part 55, by reference. Further, the NFPA, which represents over 65,000 individuals and 115 national organizations including individuals from fire departments, health care facilities, and Federal, State, and local governments, makes the same suggestion. The NFPA recommends that ATF adopt a variety of its codes and standards by reference where applicable, such as NFPA 495, Explosives Materials Code, NFPA 498, Safe Havens and Interchange Lots, NFPA 1123, Code for Fireworks Display, NFPA 1125, Code for the Manufacture

of Model and High Power Rocket Motors, NFPA 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, and NFPA 1127, Code for High Power Rocketry.

Since the standards set forth in these industry codes were not part of the proposals set forth in Notice No. 841, ATF is not adopting this comment at this time. However, ATF will consider including these standards in a separate notice of proposed rulemaking to be published at a future date.

AFT received one comment on its proposals to amend the definitions of "common" and "special" fireworks by using specific United Nations Organization (UN) identification numbers. The commenter feels that the incorporation of UN numbers in conjunction with references to U.S. Consumer Product Safety Commission (CPSC) and U.S. Department of Transportation (DOT) offers little improvement over the current definitions.

As an alternative, the commenter recommends that ATF consider definitions and classifications based on amounts and what stage the compositions, components, and semi-finished fireworks are in as they move through the manufacturing process. The commenter recommends that ATF provide examples distinguishing size, construction, composition, effect, and labeling for purposes of defining applicability of the regulations. ATF will not be adopting this suggestion at this time as it would not enhance the effective administration of the Federal explosives regulations.

It has also been recommended that AFT adopt the American Pyrotechnic Association's (APA) Standard 87-1 with respect to defining and classifying fireworks for licensing and storage determinations, in addition to the appropriate NFPA standards and codes. ATF will consider incorporating these standards into the regulations in a separate notice of proposed rulemaking.

In the course of examining the U.S. Department of Transportation (DOT) regulations, ATF determined that certain items do not fall within the DOT definition of consumer fireworks in terms of their suitability for use by the general public. Certain items present a minor explosion hazard and are regulated by DOT in the same manner as consumer fireworks. DOT classifies these articles as "articles, pyrotechnic for technical purposes." Although it is clear that these items should be exempt from ATF licensing, storage, and recordkeeping requirements, they are intended to be used by professional pyrotechnics operators only, and not the

general public. In Notice No. 841, ATF proposed that articles pyrotechnic (UN0431 and UN0432) be included in the definition of "consumer fireworks."

In the interest of public safety, ATF has determined that a separate definition is needed for articles pyrotechnic, to prevent the general public from considering these items as suitable for other than professional use only. Accordingly, ATF has amended the regulations to clarify that the manufacture of articles pyrotechnic is regulated by ATF. However, finished articles pyrotechnic, though not suitable for general consumer use, are not subject to ATF importation, licensing, storage, or recordkeeping requirements. This final rule amends regulations in 27 CFR 55.141 to provide this exemption.

Information regarding fused setpieces is being added to the definitions of "consumer fireworks" and "special fireworks" to help clarify their classification.

Subpart D—Licenses and Permits

Four hundred and seventeen commenters, representing 98 percent of the total comments received, strongly opposed the licensing fee increase. ATF proposed to raise the Federal explosives users permit fee from \$20 to 100. The majority of this group of commenters were affiliated with one or more of the major model rocketry associations such as NAR or Tripoli, whose members typically hold a Type 34 permit, users of low explosives.

As an alternative to the fee increase, this group proposed that ATF designate a special type of hobby permit for exclusive use by high power model rocket hobbyists which would have a lower fee than that proposed by Notice No. 841. In response to these and other similar comments, ATF will propose in a separate notice of proposed rulemaking to create a separate definition and a lower permit fee for all "hobbyists" who receive, transport or ship low explosive materials in the pursuit of recreational or sporting activities.

No other comments were received in opposition to the proposal to raise license and permit fees. Statutory authority allows ATF to set fees up to \$200 for a license or permit. Accordingly, upon the effective date of this final rule, the fee to engage in the business of importing, manufacturing, or dealing in explosive materials increases from \$50 to \$200; from \$20 to \$100 for a users permit; and from \$2 to \$75 for a user-limited permit.

In addition, in conjunction with the fee increases, this final rule increases

the term of the original license or permit from one year to three years.

Two commenters expressed opposition to the proposal to eliminate the category of "manufacturer-limited" license. ATF bases its elimination of this license on the fact that no such licenses have been issued in the last 4 years and that the activities covered under the manufacturers-limited license are generally of an ongoing nature and thus would require a regular manufacturer's license. Accordingly, this final rule eliminates the manufacturer-limited license, as proposed in Notice No. 841.

Subpart K—Storage

Notification of the "Authority Having Jurisdiction for Fire Safety" of Explosives Storage Sites

Overall, commenters favored a notification requirement to the appropriate local authority regarding the location of sites where explosives are stored. However, approximately 200 commenters opposed a sweeping requirement to notify all local law enforcement officials of storage. These commenters suggest that notification be limited to local emergency response personnel only, as the term "local law enforcement official" could be interpreted broadly enough to include individuals who may not necessarily have a need to know of such storage. This final rule clarifies that notification shall be made specifically to the "authority having jurisdiction for fire safety," defined as the fire department having jurisdiction for the area in which explosive materials are to be manufactured or stored. ATF will make available a listing of all State Fire Marshals to assist the industry in determining the Authority Having Jurisdiction for Fire Safety for a particular area. The list will also be posted on the ATF web page at www.atf.treas.gov.

ATF received one comment opposing the revision of section 55.218 by reducing the table of distances for the storage of explosive materials from 2 pounds to 0 pounds on the basis that it would require persons handling less than 2 pounds of fireworks to conform with overly strict separation distances. The commenter proposes that ATF should instead distinguish section 55.218, Table of distances for the storage of explosive materials, from section 55.219, Table of distances for storage of low explosives, more clearly to show that section 55.218 covers high explosives and section 55.219 covers low explosives only.

ATF believes that section 55.206 adequately clarifies which table of distances to use for the storage of explosive materials, including when to use the table found at section 55.224 for the storage of display fireworks. Accordingly, we are not adopting this comment.

ATF is amending the table of distances in §§ 55.222 and 55.223 to make it clear that, 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 where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

Miscellaneous

One commenter addressed a note to section 55.224, the table of distances for the storage of display fireworks. Note 3 of the table of distances in section 55.224 allows the distances in the table to be halved for magazines which were in use prior to March 7, 1990, if properly barricaded. The commenter requests that ATF clarify that distances between grandfathered magazines may also be halved if properly barricaded.

ATF concurs that Note 3 in the table of distances in section 55.224 was also intended to apply to the distances between magazines which were in use prior to March 7, 1990. Accordingly, this final rule amends section 55.224 to apply Note No. 3 to the separation distances between magazines.

A technical amendment is being made to §§ 55.45(b) and 55.46(b) to specify the application used for user-limited special fireworks permits, ATF Form 5400.21. In addition, a technical amendment to § 55.63 renames the section as "Magazines acquired or constructed after permit or license is issued." This change is necessary to clarify the intent of this section which is to account for explosives storage facilities constructed or otherwise acquired after the license or permit is issued.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These final regulations provide clarification and consistency

with industry terminology. In addition, the increases in license and permit fees are within the maximum amounts provided by the statute. Further, the burden placed on licensees and permittees for the collection and disclosure of explosives manufacture and storage information to the local authority having jurisdiction for explosives or fire safety is minimal.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512-0536. 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 the Office of Management and Budget. The collection of information in this regulation is in 27 CFR 55.201(f). This information is required to inform fire departments having jurisdiction over sites where explosives are stored or manufactured so that they can protect emergency response personnel called to fire scenes where explosives may be stored. The likely respondents are Federal licensees and permittees who store or manufacture explosive materials. The estimated total annual reporting burden per respondent is 90 minutes. The estimated number of respondents is 10,057. The estimated annual frequency of responses is 2.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C., 20226.

Disclosure

Copies of the notice of proposed rulemaking, the written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is Mark D. Waller, Arson and Explosives Programs Division, 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, ATF amends 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 definitions for the terms "Common fireworks," "Licensed manufacturer-limited," "Manufacturer limited," and "Special fireworks;" by revising the definitions for the terms "Bulk salutes," "Fireworks," "Fireworks nonprocess building," "Fireworks plant warehouse," "Fireworks shipping building," "Highway," and "Salute;" and by adding new definitions for the terms "Articles pyrotechnic," "Authority having jurisdiction for fire safety," "Consumer fireworks," and "Display fireworks" to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Articles pyrotechnic. Pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432.

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Authority having jurisdiction for fire safety. The fire department having jurisdiction over sites where explosives are manufactured or stored.

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Bulk salutes. 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.

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Consumer fireworks. Any small firework device designed to produce

visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, 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. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder.

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Display fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks." Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

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Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks" or "display fireworks" as defined by this section.

* * * * *

Fireworks nonprocess building. Any office building or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

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Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither explosive materials nor pyrotechnic compositions used to manufacture or assemble fireworks.

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Fireworks shipping building. A building used for the packing of assorted display fireworks into shipping cartons for individual public displays

and for the loading of packaged displays for shipment to purchasers.

* * * * *

Highway. 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.

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Salute. An aerial shell, classified as a display firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

* * * * *

Par. 3. Section 55.30 is amended by removing "800-424-9555" in paragraphs (a), (b), and the introductory text of paragraph (d) and adding in its place "1-800-800-3855" and by revising paragraphs (c)(4) and (d)(3) to read as follows:

§ 55.30 Reporting theft or loss of explosive materials.

* * * * *

(c) * * *

(4) Description (dynamite, blasting agents, detonators, etc.) and United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D, as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

(d) * * *

(3) Description (United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D) as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

Par. 4. Section 55.41(b)(2) is revised to read as follows:

§ 55.41 General.

* * * * *

(b) * * *

(2) A separate license shall not be required of a licensed manufacturer with respect to his on-site manufacturing.

* * * * *

Par. 5. Section 55.42 is revised to read as follows:

§ 55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a three year license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—\$200.

(2) Importer—\$200.

(3) Dealer—\$200.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer—\$100.

(2) Importer—\$100.

(3) Dealer—\$100.

Par. 6. Section 55.43 is revised to read as follows:

§ 55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—\$100 for a three year permit.

(2) User-limited (nonrenewable)—\$75.

(b) Each applicant for renewal of a user permit shall pay a fee of \$50 for a three year permit.

§ 55.45 [Amended]

Par. 7. Section 55.45(b) is amended by adding "or Permit, User Limited Special Fireworks, ATF F 5400.21" after "ATF F 5400.16" in the first sentence and by adding "and ATF F 5400.21" after "ATF F 5400.16" in the last sentence.

Par. 8. Section 55.46(b) is revised to read as follows:

§ 55.46 Renewal of license or permit.

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(b) A user-limited permit is not renewable and is valid for a single purchase transaction. Applications for all user-limited permits must be filed on ATF F 5400.16 or ATF F 5400.21, as required by § 55.45.

Par. 9. Section 55.51 is revised to read as follows:

§ 55.51 Duration of license or permit.

An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

Par. 10. Section 55.63 is amended by revising the heading of paragraph (d) to read as follows:

§ 55.63 Explosives magazine changes.

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(d) *Magazines acquired or constructed after permit or license is issued.* * * *

Par. 11. Section 55.102 is revised to read as follows:

§ 55.102 Authorized operations by permittees.

(a) *In general.* A permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a permittee's operations bring him within the definition of manufacturer, importer, or dealer under this part, he shall qualify for the appropriate license.

(b) *Distributions of surplus stocks.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance

with § 55.103, and to nonlicensees or to nonpermittees in accordance with § 55.105(d).

Par. 12. Section 55.103 (a)(1) and (2) is revised to read as follows:

§ 55.103 Transactions among licensees/permittees.

(a) *General.* (1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

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Par. 13. Section 55.105(d) is revised to read as follows:

§ 55.105 Distributions to nonlicensees and nonpermittees.

* * * * *

(d) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

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§ 55.122 [Amended]

Par. 14. Section 55.122 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place "display fireworks", and by removing "(sf)" in paragraphs (b)(5) and (c)(5) and adding in its place "(df)".

§ 55.123 [Amended]

Par. 15. Section 55.123 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(3), (b)(4), (c)(4), (c)(5), and (d)(3), and adding in its place "display fireworks", and by

removing "(sf)" in paragraphs (b)(4), (c)(5), and (d)(3) and adding in its place "(df)".

§ 55.124 [Amended]

Par. 16. Section 55.124 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place "display fireworks", and by removing "(sf)" in paragraphs (b)(5) and (c)(5) and adding in its place "(df)".

Par. 17. Section 55.125 is amended by revising the section heading and the introductory text of paragraph (a); by removing "license or" in paragraph (a)(1) and "licensee or" in the third sentence of paragraph (a); by removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e); and by revising redesignated paragraphs (b)(4) and (b)(5) to read as follows:

§ 55.125 Records maintained by permittees.

(a) Each permittee shall take true and accurate physical inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee shall take a special inventory

* * *

(b) * * *

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

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

* * * * *

Par. 18. Section 55.127 is amended by revising the first sentence and by removing "special fireworks" wherever it appears and adding in its place "display fireworks" to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily summary transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. * * *

Par. 19. Section 55.141(a)(7) is revised to read as follows:

§ 55.141 Exemptions.

(a) * * *

(7) The importation, distribution, and storage of fireworks classified as

UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as "consumer fireworks" or "articles pyrotechnic."

* * * * *

§ 55.163 [Amended]

Par. 20. Section 55.163 is amended by removing "licensed manufacturer-limited,".

Par. 21. Section 55.201 is amended by revising paragraph (d), by adding paragraph (f), and by adding a parenthetical text at the end of the section to read as follows:

§ 55.201 General.

* * * * *

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks and articles pyrotechnic.

* * * * *

(f) Any person who stores explosive materials shall notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.

(Paragraph (f) approved by the Office of Management and Budget under control number 1512-0536)

Par. 22. Section 55.202(b) is revised to read as follows:

§ 55.202 Classes of explosive materials.

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(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and "display fireworks" classified as UN0333, UN0334, or UN0335 by the U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes).

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§ 55.206 [Amended]

Par. 23. Section 55.206(b) is amended by removing "special fireworks" and adding in its place "display fireworks".

Par. 24. Section 55.218 is amended by removing "Public highways glass A to D" where it appears in the table heading, and adding in its place "Public highways with traffic volume 3000 or less vehicles/day"; by removing the

number "2" where it appears as the first entry in the column titled "Pounds over" and adding in its place the number "0;" and by revising the source citation at the end of the table to read as follows:

§ 55.218 Table of distances for storage of explosive materials.

* * * * *

Table: American Table of Distances for Storage of Explosives (December 1910), as Revised and Approved by the Institute of Makers of Explosives-July, 1991.

Par. 25. Section 55.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 55.221 Requirements for display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks or articles pyrotechnic.

(a) Display fireworks, pyrotechnic compositions, and explosive materials used to assemble fireworks and articles pyrotechnic shall be stored at all times as required by this Subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

* * * * *

(d) All dry explosive powders and mixtures, partially assembled display fireworks, and finished display fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 26. Section 55.222 is amended by removing "special fireworks" wherever it appears and adding in its place "display fireworks"; by removing "common fireworks" wherever it appears and adding in its place "consumer fireworks"; and by revising footnote 3 at the end of the table to read as follows:

§ 55.222 Table of distances between fireworks process buildings and between fireworks process and fireworks nonprocess buildings.

* * * * *

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 where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

* * * * *

Par. 27. Section 55.223 is amended by revising the title heading of the table; by removing "special fireworks" in the table heading and adding in its place "display fireworks"; by removing "common fireworks" in the table heading and adding in its place

"consumer fireworks"; by revising footnote 2 and adding a new footnote 5 at the end of the table to read as follows:

§ 55.223 Table of distances between fireworks process buildings and other specified areas.

Distance from Passenger Railways, Public Highways, Fireworks Plant Buildings used to Store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings.^{3 4 5}

* * * * *

² 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 where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

³ This table does not apply to the separation distances between fireworks process buildings (see § 55.222) and between magazines (§§ 55.218 and 55.224).

⁴ The distances in this table apply with or without artificial or natural barricades or screen barricades. However, the use of barricades is highly recommended.

⁵ No work of any kind, except to place or move items other than explosive materials from storage, shall be conducted in any building designated as a warehouse. A fireworks plant warehouse is not subject to § 55.222 or this section, tables of distances.

§ 55.224 [Amended]

Par. 28. Section 55.224 is amended by removing "special fireworks" wherever it appears and adding in its place "display fireworks", and by adding footnote reference "3" after "2" in the title heading for the third column of the table.

Signed: May 28, 1998.

John W. Magaw,
Director.

Approved: July 14, 1998.

John P. Simpson,
Deputy Assistant Secretary (Regulatory,
Tariff, and Trade Enforcement).
[FR Doc. 98-21867 Filed 8-21-98; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ04

Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, or Training and Rehabilitation Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death due to VA hospital care, medical or surgical treatment, examination, or training and rehabilitation services. Under this final rule, benefits are payable for additional disability or death caused by VA hospital care, medical or surgical treatment, or examination only if VA fault or "an event not reasonably foreseeable" proximately caused the disability or death. Benefits are also payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services. This final rule is necessary to reflect Congress' recent amendment of 38 U.S.C. 1151, the statutory authority for such benefits.

DATES: Effective Date: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 1151 of 38 U.S.C. previously authorized the award of compensation or dependency and indemnity compensation for any additional disability or death of a veteran which did not result from the veteran's own willful misconduct but which did result from an injury or aggravation of an injury suffered as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation awarded under any of the laws administered by VA or as a result of having submitted to an examination under any such law. 38 CFR 3.358 and 3.800 contain the regulatory provisions implementing those statutory provisions.

Effective for claims filed on or after October 1, 1997, section 422(a) of Pub. L. 104-204, 110 Stat. 2874, 2926 (1996), amended 38 U.S.C. 1151 to authorize an award of compensation or dependency and indemnity compensation for a veteran's "qualifying additional disability" or "qualifying death." Under 38 U.S.C. 1151, as amended, an additional disability or death qualifies for compensation or dependency and indemnity compensation if it (1) was not the result of the veteran's willful misconduct; (2) was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by VA, either by a VA employee or in a VA facility; and (3) was proximately caused