

the original and revised cyber-security standards, with particular focus on issues pertaining to implementation and timing of, and compliance with, the standards. There will be an opportunity for interested persons to make very brief public statements at the conference.

**DATES:** The conference will take place on February 4, 2003.

**ADDRESSES:** The conference will take place at: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8004.

**SUPPLEMENTARY INFORMATION:**

**Notice of Technical Conference**

1. Take notice that a technical conference will be held on February 4, 2003, from approximately 9:30 a.m. to 3 p.m. in Hearing Room 1 on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The goal of the conference is to discuss issues relating to the proposed rules for cyber-security of entities interacting on the nation's electric grid.

2. The Commission's proposed cyber-security standard was described in section M and appendix G of the Notice of Proposed Rulemaking (NPR) published in this docket on July 31, 2002. That proposal was developed by the Critical Infrastructure Protection Advisory Group (CIPAG) of the North American Electric Reliability Council (NERC), which has since proposed a set of revisions to the standard that have been approved by the NERC Board.

3. Copies of the NPR security proposal may be obtained from: [http://www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/discussion\\_paper.htm](http://www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/discussion_paper.htm). Copies of the NERC security proposal are available in Attachment A at: [ftp://www.nerc.com/pub/sys/all\\_updl/docs/ferc/RM01-12-000-SMD.pdf](ftp://www.nerc.com/pub/sys/all_updl/docs/ferc/RM01-12-000-SMD.pdf).

4. This conference will build upon the concepts found in the original and revised cyber-security standards. The discussions will focus on the following questions pertaining to implementation and timing of, and compliance with, the standards:

- When should compliance with the standard become mandatory? The original NPR would require compliance in January 2004, but recent discussions have suggested that this standard be advisory in 2004 and mandatory in 2005.
- What is the best way to establish a verification and compliance process for

the standards? What is the current and expected process that NERC uses to determine compliance with the NERC standards, and would it be appropriate for the cyber-security standards as well? Should regular audits be used as part of the compliance and verification effort? Should there be a role for third-party testing or investigation of complaints about the compliance of wholesale market participants?

- What are the appropriate penalties and remedies for non-compliance or inadequate compliance with the cyber-security standards, once they are in effect?
- Should new technical issues that were neither technologically nor commercially ripe for resolution in the proposed standard be identified and recognized now so the wholesale industry and the information technology industry can anticipate the issues and requirements ahead? What issues and cyber-security challenges were not addressed in the proposed standard but should be ready for inclusion in the next standard, if the next standard is adopted in two to three years?

5. Other than with respect to the last bullet above, this workshop will not discuss the substance of the NERC-approved cyber-security standard.

6. The bulk of this workshop will be discussion between attendees. Commission staff has asked selected individuals to speak at this conference, and is not entertaining requests to make presentations. However, interested persons will be permitted to make very brief public statements that are not repetitive of materials already filed in the public record of this docket.

7. All interested persons may attend the technical conference, and registration is not required. However, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to [conferences@ferc.gov](mailto:conferences@ferc.gov).

8. Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening of the conference for a fee. Persons interested in this service should contact David Reininger or

9. Julia Morelli at the Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and click on "FERC."

10. For more information about the conference, please contact Sarah McKinley at (202) 502-8004 or [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

**Magalie R. Salas,**

*Secretary.*

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 55**

[Notice No. 969]

RIN 1512-AC80

**Explosive Pest Control Devices (2002R-285P)**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Based, in part, on a petition we have received, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to provide a limited exemption from the requirements of part 55 for individuals having a legitimate need to use explosive pest control devices for wildlife management purposes. The proposed regulations are intended to facilitate the acquisition of these devices by those individuals who have a legitimate pest control need.

**DATES:** ATF must receive all comments on or before February 28, 2003.

**ADDRESSES:** Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091-0221; *ATTN: Notice No. 969*. Written comments must be signed and may be of any length.

E-mail comments may be of any length and should be submitted to: [nprm@atf.gov](mailto: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" × 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:

##### 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.

Licenses 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

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

mandatory. The likely respondents are individuals and businesses.

- Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.
- Estimated average burden hours per respondent and/or recordkeeper: 0.33 hours (20 minutes).
- Estimated number of respondents and/or recordkeepers: 4,500.
- Estimated annual frequency of responses: 2.

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. This collection is associated with the forthcoming certification form, ATF F 5430.1. The estimated burden for this regulation revision is 1 hour.

### Public Participation

We are requesting comments on the proposed regulations from all interested persons. In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

#### A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927-8525. Facsimile comments must:

- Be legible;
  - Reference this notice number;
  - Be 8½" × 11" in size;
  - Contain a legible written signature;
- and

- Be not more than five pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

#### B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to

determine, in light of all circumstances, whether a public hearing is necessary.

#### C. Disclosure

Copies of this notice and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; telephone (202) 927-7890.

#### D. Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### E. Drafting Information

The author of this document is James P. Ficaretta, Firearms, Explosives, and Arson, 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, the Bureau of Alcohol, Tobacco and Firearms proposes to amend 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 55.141 is amended by adding new paragraph (c) to read as follows:

#### § 55.141 Exemptions.

\* \* \* \* \*

(c) *Explosive pest control devices.* (1) For purposes of this paragraph (c), “explosive pest control device” means 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 ¾ 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. Explosive pest control devices must have been tested, classified, and approved by the U.S. Department of Transportation.

(2)(i) Except for the provisions applicable to persons required under subpart D to obtain licenses or permits, this part does not apply to the receipt, possession, transportation, or shipment of explosive pest control devices when acquired by persons who have a legitimate wildlife pest control use for the devices and who have completed ATF Form 5400.XX certifying, under penalty of perjury, that their use of the devices will be for legitimate wildlife pest control purposes. Form 5400.XX will be retained by the licensee or permittee as part of his permanent records in accordance with § 55.121. This exemption does not apply to persons operating businesses that provide on-site wildlife pest control services using explosive pest control devices.

(ii) Explosive pest control devices are subject to the storage requirements prescribed in subpart K; however, explosive pest control devices that will be used for legitimate wildlife pest control purposes 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 if such devices remain in packaging designed to prevent mass detonation (e.g., the type of packaging in which explosive pest control devices are generally shipped).

Signed: December 18, 2002.

**Bradley A. Buckles,**  
Director.

Approved: January 14, 2003.

**Timothy E. Skud,**

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

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