summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.309 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 520.309 Carprofen.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (d) of this section.

(1) No. 000069 for use of products described in paragraph (a) of this section as in paragraph (d) of this section.

(2) No. 000115 for use of product described in paragraph (a)(1) of this section as in paragraphs (d)(1), (d)(2)(i), and (d)(3) of this section.

* * * * *

(d) * * *

(2) *Indications for use*—(i) For the relief of pain and inflammation associated with osteoarthritis.

(ii) For the control of postoperative pain associated with soft tissue and orthopedic surgery.

* * * * *

Dated: May 13, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–10627 Filed 5–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 5F; AG Order No. 2766–2005]

RIN 1140–AA02

Identification Markings Placed on Imported Explosive Materials and Miscellaneous Amendments (2000R–238P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the current regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to require licensed importers to identify by marking all explosive materials they import for sale or distribution. Licensed manufacturers currently are required to place identification markings on explosive materials manufactured in the United States. Similar marking requirements, however, do not currently exist for imported explosive materials. Identification markings are needed on explosives to help ensure that these materials can be effectively traced for criminal enforcement purposes. Although ATF does not have regulatory oversight over foreign manufacturers, it does have authority over licensed importers of explosive materials. This rule will impose identification requirements on licensed importers of explosive materials that are substantially similar to the marking requirements imposed on domestic manufacturers.

In addition, the final rule incorporates into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. This final rule also amends the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification.

DATES: This rule is effective July 26, 2005.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (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 the misuse of explosive materials. Under section 847 of title 18, U.S.C., the Attorney General ''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 555 (''Commerce in Explosives'').

The term ''explosive materials,'' as defined in 27 CFR 555.11, 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 § 555.23. Section 555.202 provides for 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).

Section 555.109 requires licensed manufacturers of explosive materials to legibly identify by marking all explosive materials manufactured for sale or distribution. The marks required by this section include the identity of the manufacturer and the location, date, and shift of manufacture. This section also provides that licensed manufacturers must place the required marks on each cartridge, bag, or other immediate container of explosive materials for sale or distribution, as well as on the outside container, if any, used for their packaging.

Exceptions to the marking requirements are set forth in § 555.109(b). This section provides that (1) licensed manufacturers of blasting caps are only required to place the required identification marks on the containers used for the packaging of blasting caps, (2) the Director may

authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of part 555, and (3) the Director may authorize the use of other means of identification on fireworks instead of the required markings specified above.

The current regulations do not require the marking of imported explosive materials.

II. Petition—Institute of Makers of Explosives

The Institute of Makers of Explosives (IME) filed a petition with ATF, dated March 7, 2000, requesting an amendment of the regulations to require licensed importers to place the same identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States. As stated in the petition, IME is the safety association of the commercial explosives industry. Its mission is to promote safety and the protection of employees, users, the public and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other operations.

According to the petitioner, commerce in explosives is a global enterprise and it expects the quantity of imported explosives to increase over time. For example, the petitioner stated that between 1994 and 1997, imports of high explosives increased 14-fold to account for approximately 17 percent of all high explosives used annually in the United States. IME further stated that while unmarked high explosives may have entered the United States over the years, it was not until 1999 that the association became aware of significant quantities of unmarked cast boosters being imported into the country. IME contended that, by the end of 1999, about two million unmarked units had been distributed in the United States. The petitioner further stated that many more thousands of tons of these high explosives were expected to be imported into the United States in the near future.

Without a change in the regulations, IME was concerned that these explosives would enter into the commerce of the U.S. without marks of identification, posing significant safety and security risks to the public. Although IME informed ATF that many of its member companies importing explosives into the U.S. mark their imported explosive materials in an effort to ensure the traceability and accountability of the materials, it believes that all imported explosive materials should be appropriately identified. Therefore, it petitioned ATF to amend the Federal explosives regulations.

By letter dated August 2, 2000, IME amended its petition to narrow its scope to importers of high explosives and blasting agents. IME stated that it did not understand that the scope of its initial petition would apply to importers of low explosives. IME noted that it has a specific standard recommending that high explosives and blasting agents be marked with a date/plant/shift code.

III. Advance Notice of Proposed Rulemaking

Based on IME's petition, ATF published in the **Federal Register** on November 13, 2000, an advance notice of proposed rulemaking (ANPRM) requesting information and comments from interested persons on the desirability and feasibility of marking imported explosive materials (Notice No. 906, 65 FR 67669). Although ATF solicited comments on specific questions, it also requested any relevant information on the subject. The comment period for Notice No. 906 closed on January 12, 2001.

In response to Notice No. 906, ATF received three comments. Two commenters argued that licensed importers should place the same or similar identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States.

The petitioner, IME, submitted the third comment. IME reiterated its position that imported high explosives and blasting agents should contain the same identification markings prescribed in the regulations for domestically manufactured explosives. IME also included an attachment as part of its comment that provided responses to the questions posed by ATF in the advance notice.

IV. Notice of Proposed Rulemaking

On October 16, 2002, after consideration of the comments received in response to Notice No. 906, ATF published in the **Federal Register** a notice proposing to amend the regulations to require licensed importers to identify by marking all imported explosive materials (Notice No. 956, 67 FR 63862). ATF stated its belief that the proposed marking requirements would help ensure that imported explosive materials can be effectively traced for criminal enforcement purposes. ATF also proposed to incorporate into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. In addition, ATF proposed to amend the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification. The specific regulatory proposals in Notice No. 956 are discussed in the following paragraphs.

A. Amendments to § 555.109

In an effort to protect the public from the misuse of explosive materials, to more easily identify explosive materials, and to successfully trace misused explosive materials or explosive materials used in crimes, ATF proposed to amend § 555.109 to provide that licensed importers and permittees must identify by marking all explosive materials they import for sale or distribution, or import for their own use. The required marks must be legible and in the English language, using Roman letters and Arabic numerals. The marks must identify the importer's or permittee's name and address, the location (city and country) where the explosive materials were manufactured, as well as the date and shift of manufacture. ATF did not propose to require the name of the foreign manufacturer on imported explosives as requested by IME in its comments submitted in response to the advance notice. Instead, ATF proposed to require placement of the name of the importer on the explosive materials because ATF does not have regulatory oversight over foreign manufacturers, particularly with respect to their recordkeeping practices.

As proposed, the required marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging. This is consistent with current requirements for domestically manufactured explosives. The proposed regulations also provided that the required marks of identification must be placed on imported explosive materials within 24 hours of release from Customs custody.

In addition, under the proposed regulations, the exceptions to the marking requirements currently specified in the regulations would apply to imported explosive materials as well.

ATF also proposed other amendments to § 555.109. ATF clarified that licensed manufacturers must place the required marks of identification on the explosive

materials at the time of manufacture. ATF also proposed to incorporate into the regulations the provisions of ATF Ruling 75–35 (1975–ATF C.B. 65). This ruling authorizes any method, or combination of methods, for affixing the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, show all the required information, and are not rendered unreadable by extended periods of storage. The ruling also provides that where it is desired to utilize a coding system and omit printed markings on the containers, a letterhead application displaying the coding to be used and the manner of its application must be filed by the licensed manufacturer with, and approved by, the Director prior to the use of the proposed coding. Finally, the ruling provides that where a manufacturer operates his or her plant for only one shift during the day, the shift of manufacture need not be shown. Upon the effective date of a final rule in this matter, ATF Ruling 75–35 would be declared obsolete.

B. Miscellaneous Proposals—Amendment of §§ 555.55 and 555.41

Section 555.55 provides that a licensee or permittee who intends to change the class of explosive materials described in his or her license from a lower to a higher classification (e.g., black powder to dynamite) must file an application on ATF Form 5400.13/ATF Form 5400.16 (Application for License or Permit) with the ATF National Licensing Center. If the change in class of explosive materials would require a change in magazines, the amended application must include a description of the type of construction as prescribed in part 555. Business or operations with respect to the new class of explosive materials may not be commenced before issuance of the amended license or amended permit. Finally, upon receipt of the amended license or amended permit, the licensee or permittee must submit his or her superseded license or superseded permit and any copies furnished with the license or permit to the ATF National Licensing Center.

ATF proposed to remove § 555.55. ATF believes that removing this section would provide more flexibility to the explosives industry in terms of the classes of explosive materials involved in their businesses, while not reducing the requirement to store explosive materials in accordance with the regulations contained in subpart K.

Section 555.41 provides general licensing and permit requirements under the Federal explosives laws. Technical amendments were made with respect to § 555.41 in order to be consistent with the proposed amendment of § 555.55.

The comment period for Notice No. 956 closed on January 14, 2003.

V. Notice No. 956—Analysis of Comments and Decisions

ATF received two comments in response to Notice No. 956. Trade associations, the IME (petitioner) and the American Pyrotechnics Association (APA), each submitted comments. IME stated that it represents United States manufacturers of high explosives and other companies that distribute explosives or provide related services. It also stated that over 2.5 million metric tons of explosives are consumed annually in the United States of which IME member companies produce over 95 percent and that the value of its shipments is estimated in excess of $1 billion annually. In addition, the commenter stated that part of its mission is ''to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.'' IME expressed concerns that the proposed regulations would require different markings for imported and domestically manufactured explosives. It also requested clarification of some of ATF's statements in the proposed rule. IME's concerns and questions are discussed in the following paragraphs.

As stated in its comment, the APA is the principal industry trade association representing manufacturers, importers, and distributors of fireworks in the United States. It has over 260 member companies that are responsible for 90 percent of the fireworks displayed in the United States. The APA stated that while it shares the same public safety concerns as the petitioner (IME) for initiating this rulemaking proceeding, it believes that high explosives and low explosives (*e.g.*, fireworks) should be treated differently for the purposes of marking, recordkeeping, and tracking requirements. The commenter explained that the commercial explosives industry differs in many ways from the fireworks industry:

> Products manufactured, imported and distributed by the commercial explosives industry are intended to function by detonation, and their products are generally stored and shipped in bulk form. * * * the display fireworks industry deals in fireworks classed as 1.3G explosives by the Department of Transportation, which have traditionally been deemed by ATF to be 'low explosives'. These devices, for the large part, function by deflagration. A typical fireworks shipment will consist of numerous different sizes and types of aerial display shells, since there is little demand for a fireworks display consisting of only one color or effect.

The APA raised several concerns regarding the proposed regulations. Those concerns will also be addressed in the following paragraphs.

A. Marking Explosives for Manufacturer's/Importer's Own Use

The current regulations at § 555.109(a) provide that ''[e]ach licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution.'' The proposed regulations specified that licensed manufacturers and licensed importers must identify by marking all explosive materials they manufacture or import for sale, distribution, ''or their own use.'' The proposed regulations also specified that permittees must identify by marking all explosive materials they import for their own use. IME expressed concern that the proposed regulation ''introduces a new requirement for licensees to mark explosives they will simply use, not distribute or sell.'' The commenter stated that it views this new requirement as having an effect on three major aspects of the commercial explosives industry. First, IME stated that manufacturers and importers make or import explosive raw materials that may not be sold or distributed, but will be used to make a finished explosive product. IME supports the marking of these raw materials. In contrast, the APA argued that markings should not be required until the product is completed. It stated that many times an individual firework shell may consist of different pyrotechnic compositions and that it would be impossible for the manufacturer to document and detail the identification requirements for each component of an individual shell. The APA further stated that pyrotechnic compositions are generally made by the manufacturer and then incorporated into the shell. The APA is concerned about the marking of component parts, and the recording of the manufacture and use of said products, prior to assembly into the final product. The APA believes that these requirements would put an undue burden on the manufacturer who typically manufactures the pyrotechnic composition and incorporates it into a final shell the same day. The commenter suggests that only pyrotechnic compositions that will be sold by the manufacturer should be marked.

IME contended that the proposed amendment would also have an effect on the manufacture of experimental explosives. IME stated that manufacturers may make experimental explosives that will be used in tests. It supports marking experimental explosives if they are transported off the property of the manufacturing site. However, IME argues that experimental explosives that do not leave the property of the manufacturing site should not be required to have any markings.

Finally, IME stated that the proposed amendment would require manufacturers of binary explosives to place markings on the mixture. Like experimental explosives, IME argued that binary explosives should only be marked if they are transported off the property of the manufacturing site. The commenter recommended that the final regulations provide an exemption from the marking requirements for experimental and binary explosives that are not transported off the property of the manufacturing site.

Decision

Regarding the marking of manufactured and imported explosive materials that are not sold or distributed but will be used to make a finished explosive product, the Department recognizes the APA's concern and finds that the commenter has raised valid arguments. The Department does not believe that it is necessary to require the marking of pyrotechnic compositions that will be incorporated into a final shell. Such a requirement is unreasonable and would be unduly burdensome to the fireworks industry.

With respect to the marking of experimental and binary explosives, the Department believes that the arguments raised by IME also have merit. The Department recognizes that experimental and binary explosives tend to be manufactured or imported in small quantities and used fairly quickly after manufacture. As such, the Department believes that the possibility that the explosives may be stolen from the site prior to use is minimal. As to binary explosives, it is not feasible and serves no law enforcement purpose to mark explosives manufactured and used the same day at a blasting site.

Accordingly, based on the concerns expressed in the comments, this final rule does not adopt the proposal to require licensed manufacturers, licensed importers, and permittees to identify by marking all explosives they manufacture or import for their own use. Since permittees only import explosives for their own use, the reference to permittees in the final rule has been removed.

B. Name and Address of Importer on Imported Explosives

The proposed regulations provided that imported explosive materials must be marked with the name and address (city and state) of the importer. IME objected to this proposal, arguing that such a requirement ''will eliminate nearly all off-the-shelf purchases of foreign-made explosives and force all imports to be specially made or remarked.'' Furthermore, IME contended that in most cases the cost of manually placing the importer's name and address on off-the-shelf, foreign-made explosives would be prohibitive. IME did not provide any cost estimates concerning these costs. On the other hand, IME acknowledged ATF's need to conduct traces of explosive materials and that ''a trace may be hampered by not knowing where to start the chain-of-custody trace.'' The commenter suggested that ATF require importers to provide identifying information to it on imports that are not marked with the name and address of the importer. If all imports of commercial high explosives or blasting agents were reported to ATF along with the foreign manufacturer's marks of identification, IME estimates that ATF would receive these reports, ''at most, once a week.'' According to IME, ATF could file these reports and reference them to find the importer when needed.

Decision

As noted in the proposed rule, ATF does not have regulatory oversight over foreign manufacturers, particularly with respect to their recordkeeping practices. ATF maintains that the identity (name and address) of the importer is necessary to ensure that explosive materials can be effectively traced for criminal enforcement purposes. Not only would this information be invaluable when conducting a trace, but the name and address of the importer may be key information located during a post-blast investigation. Such markings may identify the source of the explosives used at a bomb scene and may provide valuable leads to solving the crime.

In addition, ATF's experience with tracing imported firearms indicates that relying upon the records of foreign manufacturers for tracing a firearm is ineffective. A significant number of countries either do not require manufacturers of firearms to retain records of production or require record retention for an insufficient period of time. Even where such records are retained and are available to a foreign manufacturer, cooperation of such manufacturers with foreign law enforcement is often sporadic or nonexistent. Thus, when importer's markings are missing, illegible, or inaccurate, ATF is frequently unable to trace a firearm by obtaining assistance from foreign firearms manufacturers. For this reason, ATF regulations implementing the marking requirements of the Gun Control Act of 1968 require importers to mark firearms with their name, city, and State, so that the tracing process begins with their records, rather than those of a foreign manufacturer.

ATF believes that reliance upon the markings of a foreign explosives manufacturer to trace explosives will pose the same problems as explained above in relation to firearms tracing. Accordingly, consistent with regulations in 27 CFR 478.92, this rule imposes a requirement on importers to mark the explosives they import with the name and address of the importer, the location of the foreign manufacturer, and the date and shift of manufacture.

Furthermore, an import report as suggested by IME would hinder ATF's ability to trace misused explosives, particularly in instances where there are multiple importers importing the same products. By having the importer's name and address on the misused product, ATF would not have to go through countless reports to determine the identity of the importer. Creating a tracing system for imported explosives by establishing an ATF database of import reports as suggested by IME would be more burdensome for both the industry and ATF. Instead of requiring the information to be placed on the explosives themselves, as is currently required for domestic explosives, such a system would require the completion of forms that provide detailed information on imported explosives that must be sent to ATF and maintained in a newly created ATF database. More significantly, such a tracing system would be inherently less reliable inasmuch as a mistake by an importer in entering the required information on the form would make a trace difficult or in some instances impossible. Requiring the information to be placed on the explosives would ensure that accurate information is available on the source of imported explosives, just as it is today for domestic explosives, through recovery of marked explosives or recovery of the marked component of the explosives at a crime scene. ATF believes that the ability to trace should be just as robust for imported explosives as it is for domestic explosives.

The Department recognizes that this requirement will add some additional costs to imported explosives that are not properly marked during the manufacturing process. However, IME's comments indicate this would likely be a very small percentage of the market. ATF's experience since 1971 indicates that most imported explosives are manufactured specifically for a particular domestic importer pursuant to a particular contract, rather than importers buying from a ''spot market'' of already existing foreign products. ATF has no specific information concerning the ''spot market'' in foreign explosives referenced in IME comments. If such a ''spot market'' exists, importers can require that the explosives from that market be marked properly in the foreign country prior to shipment in order to reduce the need to mark the explosives when they arrive in the United States. Explosives that arrive in the United States unmarked may be marked at a safe location by the importer after the explosives are released from Customs custody. In any event, ATF believes that the potential costs incurred, approximately 1 cent per pound according to IME, for this small category of imported explosives are outweighed by the law enforcement need to ensure the adequate ability to trace explosives. Accordingly, this final rule adopts the amendment as proposed.

C. Location of Manufacturer on Imported Explosives

The proposed regulations provided that imported explosive materials must be marked with the location (city and country) where the explosives were manufactured. IME objected to this proposal, arguing that it is unable to see the value of such a requirement, ''especially since ATF claims it 'has no regulatory oversight over foreign manufacturers.' ''

Decision

While the Department acknowledges that ATF does not have regulatory oversight over foreign manufacturers, it does have authority over licensed importers of explosive materials. The placement of the identifying marks required by this rule, including the location of the manufacturer, will enable ATF to better trace misused materials by narrowing the search through the importer's records and through Customs documents. It is not uncommon for importers to bring the same product into the United States from a number of foreign sources. Thus, by requiring markings that include the name and location of the foreign manufacturer, ATF will be able to trace explosives more quickly, by asking the importer to locate records only for that particular product manufactured by a particular foreign manufacturer. In addition, Customs entry documents and databases list the country of manufacture. In the event that ATF uses Customs information to determine when a particular explosives product entered the United States, the name of the country of manufacture and name of the manufacturer would greatly assist in identifying the shipment. As previously described, this information on the explosives may also provide valuable leads during a post blast investigation. In addition, this requirement is similar to country of origin markings required under the Customs laws in 19 U.S.C. 1304. Accordingly, this final rule requires that imported explosives be marked with the location (city and country) where the explosive materials were manufactured, which is consistent with the way domestically manufactured explosives are marked, and with markings required for imported firearms under 27 CFR 478.92.

D. Marking Imported Explosives Within 24 Hours of Release From Customs Custody

The proposed regulations specified that imported explosive materials must be marked within 24 hours of the date of release from Customs custody if such explosive materials did not bear the required markings at the time of their release. IME stated that this requirement is impractical for several reasons. First, the commenter noted that most ports of entry do not have locations where the imported explosives could be safely marked and it will often take more than 24 hours for the explosives to reach a safe location for marking. Second, IME stated that even if there were a safe location near the port, most shipments could not be marked in 24 hours. Finally, and according to IME most importantly, ''any grace period exposes unmarked explosives to the risk of theft and degrades the effectiveness of the primary intent of the marking requirement.'' Because of this last concern, IME suggested that ATF require imported explosives to be properly marked prior to entry into the United States, noting that ''[t]his is consistent with the NPRM's requirement that domestic manufacturers place the markings on explosives 'at the time of manufacture.' '' The commenter further stated that ''[t]here should be no concessions made to the security of imported explosives.''

The APA stated that while the fireworks industry generally supports the proposed importer identification requirement, it does not support the proposed timetable for compliance. The commenter reiterated its position regarding the unique circumstances involving the fireworks industry and requested that additional time be provided for marking imported explosives released from Customs custody. The APA provided the following justification for requesting additional time to mark imported explosives:

> Many shipments do not leave the port within 24 hours of customs clearance, let alone get unloaded or checked for labeling. It would be impossible to label each case of fireworks on a container within a 24 hour time period, especially when some companies receive multiple container loads per shipment. Thus, to require individual aerial shells (possibly thousands) to be labeled within a 24 hour time period is not feasible nor in the interest of public safety.

Decision

While the Department shares IME's concern regarding the risk of theft of imported explosives released from Customs custody without the proper identification markings, it disagrees with IME's suggestion that ATF should require imported explosives to be properly marked prior to the time of importation. The Department believes that such a requirement would be overly restrictive and unduly burdensome for importers, particularly small importers. Small importers may not have the financial means to have a run of explosives manufactured bearing their name and address. However, based on the comments, the Department recognizes that the proposed requirement to mark imported explosives within 24 hours of release from Customs custody may be overly restrictive and impractical, particularly with respect to importers who are geographically distant from the point of importation.

Accordingly, this final rule provides that licensed importers must place the required marks on all explosive materials imported prior to distribution or shipment for use, and in no event later than 15 days after the date of release from Customs custody. The Department believes that this is a sufficient amount of time for imported explosives to be marked without posing unnecessary and significant safety and security risks to the public. Furthermore, this is consistent with the marking requirements for imported firearms under 27 CFR 478.112(d). In the event additional time is needed to mark the imported explosives, the importer can request a variance

pursuant to the provisions of 27 CFR 555.22.

Additionally, the Department points out that 27 CFR 555.214(b) requires that ''containers of explosive materials are to be stored so that marks are visible.'' Therefore, all containers of explosive materials placed in storage must have proper marks of identification on the immediate outside containers. The marking of individual internal packages may occur within the 15-day period specified in the regulations.

E. Director Approved Coding System

As proposed, 27 CFR 555.109(c)(4) reads as follows:

> If licensed manufacturers, licensed importers or permittees importing explosive materials desire to use a coding system and omit printed markings on the container, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

IME stated that it is not entirely clear under what conditions a manufacturer or importer must seek the Director's approval for markings and it suggested that ATF ''clarify exactly what conditions invoke the need for the Director's approval of coding systems.'' IME stated that in 1971 its member companies implemented a product identification system for packaged explosives manufactured in the United States. The coding system utilizes a series of alpha and numeric characters to indicate the date, work shift, and location of the manufacturer. It does not indicate the name of the manufacturer. As an example, IME stated that a product manufactured on September 30, 1997, during the first shift at a plant that the manufacturer has assigned the letter ''A'' would be ''30SE97A1.'' IME asked if each licensee or permittee using the standard IME coding system would need the Director's approval. IME also asked if a licensee or permittee using a bar code system would need the Director's approval.

Decision

The current regulations specify that licensed manufacturers must place certain marks of identification on explosive materials they manufacture. The required marks of identification include the name of the manufacturer and the location, date, and shift of manufacture. This information must be legible, identifiable, and understandable. ATF Ruling 75–35 provides, in part, that where it is desired to utilize a coding system and omit printed markings on the container, *i.e.*, stating the information required by § 555.109, a letterhead application displaying the coding to be used and manner of its application must be filed with and approved by the Director. This provision of the ruling was incorporated into the proposed regulations. In response to IME's request that ATF clarify when coding systems are permissible, licensees using IME's coding system or a bar code system must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used. Without an explanation as to the meaning of the coding system, the information would be meaningless and ATF would be unable to trace products marked with such a system. In addition, the Department notes that IME's current coding system fails to provide the name of the manufacturer, and is not consistent with regulations in 27 CFR 555.109. Without the name of the manufacturer, or, in the case of imported explosives, the name of the importer, ATF does not have sufficient information to trace explosives. If industry members seek and obtain approved variances, ATF will have information to decode markings, determine the actual manufacturer or importer, and begin the tracing process. In the event that IME members or other members of the explosives industry are utilizing coding systems to mark domestic products, and such members do not have written approval from ATF to use such markings, the member should immediately apply for an alternate method or procedure pursuant to 27 CFR 555.109.

Accordingly, this final rule clarifies that if licensed manufacturers or licensed importers desire to use a coding system and omit printed markings on the container that show all the required information specified in the regulations, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

F. Tracking the Acquisition and Disposition of Explosives by Date/Shift Code

The APA expressed concern involving the required tracking of acquisition and disposition of explosive materials by date/shift code. In general, the APA agrees with the proposed markings for each individual aerial shell. It expressed concern, however, with tracking the distribution of shells by the date/shift code. The APA stated that fireworks package displays often contain shells of numerous sizes, colors and date/shift codes and that to track shells by date/shift code would pose an undue and unnecessary recordkeeping burden on industry members. The APA suggested that records of production and distribution for display fireworks should only show the number and size of the aerial shells. The commenter's suggestion is based on its belief that there is a low occurrence of display fireworks used in criminal activity and that most likely the criminal would transfer the explosive material from the shell to another container. Furthermore, the APA suggested that ATF require all shipping cartons of display fireworks to be marked with the name of the manufacturer or distributor and the date that the fireworks were shipped.

Decision

It is the Department's decision that failure to incorporate the date/shift code in the acquisition and disposition records would hinder the effectiveness and purpose of placing the markings on each individual shell. A shell could be traced to the manufacturer or importer but it would be difficult or impossible to trace the shell any further if the records only contained type and count information. The date/shift code is essential in narrowing the records search to the appropriate time period. Manufacturers and importers manufacture and import thousands of the same type of product, so that marking with the date of shipment alone will not narrow the records search to locate a particular explosive within a reasonable time period. When explosives are used in a criminal incident, time is of the essence. Undue delay in identifying the record of acquisition and disposition for a particular explosive product can interfere in investigating bombings and other criminal incidents using explosives. Placing a code of sorts in the shipping carton could offer some assistance, but would not be effective in instances where the shells are no longer in their shipping cartons. Accordingly, the Department is not adopting the APA's suggestion.

G. Computerized Systems for Tracking Explosives

Another concern of the APA relates to computerized systems for tracking explosive materials. The APA stated that it is aware that some companies are currently using, or looking into the implementation of, systems that use bar coding to identify and track their products. The commenter believes that

this technology will continue to expand in use in the fireworks industry and that significantly greater control over the tracking of individual items should become economically feasible within a few years. In the interim, the APA urged ATF to adopt regulations or policies that permit new methods of recordkeeping (including the use of computerized systems) to be implemented by companies without the need to apply for variances.

Decision

The Department believes that the APA has raised a valid concern with respect to the use of computerized systems for tracking explosives. This issue is being addressed in another rulemaking proceeding (see Notice No. 968, January 29, 2003; 68 FR 4406). Until this rulemaking is completed, industry members may seek written authorization from ATF to use computerized recordkeeping systems that utilize bar coding or other computerized systems to streamline the process. As stated above, the use of coded marking requirements may also be approved through the variance process, and can be used in conjunction with a computerized recordkeeping system. The Department believes that the use of computerized recordkeeping systems will not negate the need to maintain the date shift codes in the records.

Miscellaneous Amendments

Section 555.52 provides for limitations on permits and licenses in respect to business activity or permitted operations and specified class of explosives materials allowed. A technical amendment is being made in this final rule with respect to § 555.52 in order to be consistent with the amendments made in §§ 555.55 and 555.41, which are also being adopted as proposed.

VI. ATF Ruling 75–35

This final rule incorporates the provisions of ATF Ruling 75–35 (1975–ATF C.B. 65), relating to methods of marking containers of explosive materials. Accordingly, the provisions of ATF Ruling 75–35 become obsolete upon the effective date of this final rule.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. However, this rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an ''economically significant'' rulemaking as defined by Executive Order 12866.

Further, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs. The Department believes that the costs associated with compliance with the final regulations are minimal. Comments received in response to the ANPRM and the notice of proposed rulemaking indicate that in all likelihood the foreign manufacturer, rather than the U.S. importer, will place the required marks on explosives that are imported into the United States.

However, some importers may not have the financial means to have a run of explosives manufactured bearing their name and address. ATF estimates that a very small percentage (one percent) of the approximately 413 Federally licensed importers will need to mark imported explosives. In general, the IME stated that marking costs are less than approximately one percent of the product cost, ranging from $.002/lb. to $.01/lb. ATF estimates that approximately five percent of imported explosives would need to be marked. To illustrate, according to the U.S. Census Bureau, approximately 155,240,707 pounds of explosives were imported into the United States in 2003. Based on IME's information, the marking costs associated with 7,762,035 pounds of imported explosives (five percent of 155,240,707 pounds) would range from approximately $15,524 to $77,620.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) 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. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Most U.S. importers should not be significantly affected by the final regulations because the foreign-manufactured explosives they import will already be marked in accordance with the provisions of 27 CFR 555.109. ATF estimates that a very small percentage (one percent) of the approximately 413 Federally licensed importers will need to mark imported explosives. In general, the IME stated that marking costs are less than approximately one percent of the product cost, ranging from $.002/lb. to $.01/lb. ATF estimates that approximately five percent of imported explosives would need to be marked. To illustrate, according to the U.S. Census Bureau, approximately 155,240,707 pounds of explosives were imported into the United States in 2003. Based on IME's information, the marking costs associated with 7,762,035 pounds of imported explosives (five percent of 155,240,707 pounds) would range from approximately $15,524 to $77,620. Accordingly, a regulatory flexibility analysis is not required.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1140–0055. 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 collections of information in this regulation are in 27 CFR 555.109(b)(2). This information is required to properly identify imported explosive materials. The collections of information are mandatory. The likely respondents are businesses.

The estimated average annual burden associated with the collections of information in this final rule is 46 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

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

■ Accordingly, for the reasons discussed in the preamble, 27 CFR Part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 555.41 [Amended]

■ 2. Section 555.41 is amended by removing ''of the class authorized by this permit'' at the end of the second sentence in paragraphs (a)(3) and (b)(3)(ii).

§ 555.52 [Amended]

■ 3. Section 555.52 is amended by removing the phrase ''and class (as described in § 555.202)'' in paragraphs (a) and (b).

§ 555.55 [Removed]

■ 4. Subpart D is amended by removing § 555.55.

■ 5. Section 555.108 is amended by adding a new paragraph (e) to read as follows:

§ 555.108 Importation.

* * * * *

(e) For requirements relating to the marking of imported explosive materials, see § 555.109.

■ 6. Subpart F is amended by revising § 555.109 and by adding a parenthetical text at the end of the section to read as follows:

§ 555.109 Identification of explosive materials.

(a) *General.* Explosive materials, whether manufactured in the United States or imported, must contain certain marks of identification.

(b) *Required marks.* (1) *Licensed manufacturers.* Licensed manufacturers who manufacture explosive materials for sale or distribution must place the following marks of identification on explosive materials at the time of manufacture:

(i) The name of the manufacturer; and

(ii) The location, date, and shift of manufacture. Where a manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(2) *Licensed importers.* (i) Licensed importers who import explosive materials for sale or distribution must place the following marks of identification on the explosive materials they import:

(A) The name and address (city and state) of the importer; and

(B) The location (city and country) where the explosive materials were manufactured, date, and shift of manufacture. Where the foreign manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(ii) Licensed importers must place the required marks on all explosive materials imported prior to distribution or shipment for use, and in no event later than 15 days after the date of release from Customs custody.

(c) *General requirements.* (1) The required marks prescribed in this section must be permanent and legible.

(2) The required marks prescribed in this section must be in the English language, using Roman letters and Arabic numerals.

(3) Licensed manufacturers and licensed importers must place the required marks on each cartridge, bag, or other immediate container of explosive materials that they manufacture or import, as well as on any outside container used for the packaging of such explosive materials.

(4) Licensed manufacturers and licensed importers may use any method, or combination of methods, to affix the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, permanent, show all the required information, and are not rendered unreadable by extended periods of storage.

(5) If licensed manufacturers or licensed importers desire to use a coding system and omit printed markings on the container that show all the required information specified in paragraphs (b)(1) and (2) of this section, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

(d) *Exceptions.* (1) *Blasting caps.* Licensed manufacturers or licensed importers are only required to place the identification marks prescribed in this

section on the containers used for the packaging of blasting caps.

(2) *Alternate means of identification.* The Director may authorize other means of identifying explosive materials, including fireworks, upon receipt of a letter application from the licensed manufacturer or licensed importer showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Paragraph (b)(2) approved by the Office of Management and Budget under control number 1140–0055)

Dated: May 19, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–10618 Filed 5–26–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP TAMPA 05–062]

RIN 1625–AA00

Safety Zone; Tampa Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters within Tampa Bay, Florida, including Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. The safety zone is needed to ensure the safety of all mariners from hazards associated with a fireworks display. Entry into this zone is prohibited to all vessels and persons without the prior permission of the Coast Guard Captain of the Port Tampa or designated representative.

DATES: This rule is effective from 8:30 p.m. until 9:20 p.m. on May 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP TAMPA 05–062] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Marine Safety Office Tampa (813) 228–2191 Ext. 8203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The necessary details for the final date of the fireworks demonstration and the location of the safety zone surrounding it were not provided with sufficient time remaining to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Downtown Tampa Attractions Association is scheduled to conduct a fireworks display on May 29, 2005, in Tampa Bay, Florida. This safety zone is being established to ensure the safety of life during the event, as the public is invited to attend the fireworks display, and falling debris may present a danger to life and property.

Discussion of Rule

The safety zone encompasses the following waters within Tampa Bay: Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Tampa or designated representative. The zone is effective from 8:30 p.m. until 9:20 p.m. on May 29, 2005.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary, because the safety zone will be in effect for only 50 minuets during a time when vessel traffic is limited. Moreover, vessels may enter the zone with the express permission of the Captain of the Port Tampa or designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel from 8:30 p.m. until 9:20 p.m. on May 29, 2005. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 50 minutes late in the evening when vessel traffic is extremely low. Additionally, traffic will be allowed to enter the zone with the permission of the Coast Guard Captain of the Port Tampa or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small Businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).