

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 238

[INS No. 1257-90]

RIN 1115-AA88

#### Contracts With Transportation Lines

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the listings of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States and carriers which have entered into agreements with the U.S. Immigration and Naturalization Service to guarantee the passage through the United States in immediate and continuous transit by aliens destined to foreign countries. It is necessary to publish and record approved transportation line contracts and to make this information available to the public to allow the transportation lines to begin the services agreed to in the contract. This rule will facilitate travel of passengers while passing through the United States.

**EFFECTIVE DATE:** February 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Gene Paz, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4033.

**SUPPLEMENTARY INFORMATION:** The Commissioner of the Immigration and Naturalization Service entered into agreements with Gulf Air, Inc. (dba TransOcean Airways) on August 10, 1989, with U.S. Air on October 31, 1989, and Midway Airlines on November 16, 1989, to provide for the preinspection of their passengers and crew as provided

by section 238(b) of the Immigration and Nationality Act; as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the traveling public.

The Commissioner further entered into agreements with Skyworld Airlines (dba Ports of Call Air) on October 17, 1988, with Y. Guahan Airways, Inc./Guam Marianas Air on December 8, 1988, with Nippon Cargo Airlines Co., Ltd. on December 30, 1988, with Pan Am Express on January 5, 1989, and Air Espana (dba Air Europa) on November 1, 1989, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

On August 5, 1988, Kuwait Airways Corporation formally requested cancellation of Form I-426, Immediate and Continuous Transit Agreement, between the United States and Kuwait Airways Corporation.

Section 238.3(b) deletes Kuwait Airways Corporation from the currently effective list of transportation lines approved to bring aliens to the United States in immediate and continuous transit.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the amendment merely updates the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that the rule will not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. This rule constitutes a notice to the public under 5 U.S.C. 552.

#### List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restrictions, Transportation lines.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR 2.

2. Section 238.3(b) is amended by removing Kuwait Airways Corporation from the listing of *Signatory lines* and by adding in alphabetical sequence the following transportation lines:

#### § 238.3 [Amended]

(b) \* \* \*

Air Espana (dba Air Europa)  
\* \* \* \* \*

Nippon Cargo Airlines Co., Ltd.  
\* \* \* \* \*

Pan Am Express  
\* \* \* \* \*

Skyworld Airlines (dba Ports of Call Air)  
\* \* \* \* \*

Y. Guahan Airways, Inc./Guam Marianas Air  
\* \* \* \* \*

3. Section 238.4 is amended by adding in alphabetical sequence the following transportation lines under the headings to read as follows:

#### § 238.4 [Amended]

\* \* \* \* \*

At Freeport  
\* \* \* \* \*

Midway Airlines  
\* \* \* \* \*

At Nassau  
\* \* \* \* \*

Midway Airlines  
\* \* \* \* \*

U.S. Air  
\* \* \* \* \*

At Shannon  
\* \* \* \* \*

Gulf Air, Inc. (dba TransOcean Airways)  
\* \* \* \* \*

Dated: December 22, 1989.

Richard E. Norton,  
Associate Commissioner, Immigration and Naturalization Service.

[FR Doc. 90-2785 Filed 2-2-90; 8:45 am]

BILLING CODE 4410-10-M



## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[T.D. 8288]

RIN 1545-AN74

## Withholding of Tax on Nonresident Aliens

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulation.

**SUMMARY:** This document contains a temporary Income Tax Regulation relating to withholding of tax on certain payments made to nonresident aliens. This temporary regulation is necessary to provide appropriate guidance with respect to withholding upon payments to a nonresident alien individual from an employee's trust described in section 401(a) of the Internal Revenue Code of 1986 (the "Code") that is exempt from tax under section 501(a) of the Code. The temporary regulation will affect both individuals and withholding agents. The text of the temporary regulation set forth in this document also serves as the text of the proposed regulation cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

**DATES:** Effective date: February 26, 1990. The temporary regulation applies to payments made after February 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202-377-9059, not a toll-free call).

## SUPPLEMENTARY INFORMATION:

## Background

This document contains a temporary Income Tax Regulation (26 CFR part 1) under section 1441 of the Code.

## Need for a Temporary Regulation

Immediate guidance is necessary for withholding agents with respect to payments to which this section applies. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

## Explanation of Provision

Prior to 1987, certain deferred payments made in a year in which the taxpayer was not engaged in a U.S.

trade or business were not treated as effectively connected income even though such payments were attributable to a year in which the taxpayer was engaged in a U.S. trade or business. Section 1242(a) of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2580, added new section 864(c)(6) to the Code. Section 864(c)(6) treats certain deferred payments (including those attributable to the performance of services) made in a year in which the taxpayer is not engaged in a U.S. trade or business, but attributable to another year in which the taxpayer was so engaged in a U.S. trade or business, as effectively connected income. Pensions are treated as compensation for services under § 31.3401(a)-1(e)(2). This 1986 Act change in the characterization of such deferred compensation as effectively connected income necessitates a clarification of the regulations under section 1441 to ensure appropriate withholding upon certain deferred compensation payments made to nonresident aliens. Section 1441 requires withholding of taxes on certain types of income paid to nonresident aliens; exceptions to this statutory rule are authorized for compensation for personal services only to the extent such compensation is exempt under a tax treaty or is subject to wage withholding under section 3402. Special rules with respect to withholding upon certain deferred income are contained in section 3405. Section 864(c)(6) is effective for taxable years beginning after December 31, 1986.

Section 1.1441-4T(b)(1)(ii) is added to clarify that payments made to a nonresident alien individual from any employee's trust described in section 401(a) which is exempt from tax under section 501(a) are not subject to the exception from withholding under section 1441 if an election of no withholding under section 3405 (a)(2) or (b)(3) is in effect. Accordingly, if an election of no withholding under section 3405 (a)(2) or (b)(3) is in effect, such payments are subject to withholding under section 1441.

## Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking

for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small business.

## Drafting Information

The principal author of this regulation is Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing this regulation.

## List of Subjects in 26 CFR 1.1441-1 to 1.1465-1

Income taxes, Aliens, Foreign corporations.

## Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## INCOME TAX REGULATIONS

## PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. \* \* \* Sections 1.1441-4 (b)(1)(ii) and 1.1441-4T also issued under 26 U.S.C. 1441 (c)(4). \* \* \*

Par. 2. Section 1.1441-4 is amended by revising paragraph (b)(1)(ii) to read as follows:

## § 1.1441-4 Exemptions from withholding.

(b) *Compensation for personal services of an individual—(1) Exemption from withholding.* \* \* \*  
(ii) [Reserved] For guidance, see § 1.1441-4T(b)(1)(ii).

Par. 3. A new § 1.1441-4T is added immediately after § 1.1441-4 to read as follows:

## § 1.1441-4T Exemption from withholding (Temporary regulation).

(a) [Reserved]  
(b) *Compensation for personal services of an individual—(1) Exemption from withholding.*  
(i) [Reserved]  
(ii) Withholding is not required under § 1.1441-1 from salaries, wages, remuneration, or any other compensation for personal services of a nonresident alien individual if such compensation is effectively connected with the conduct of a trade or business within the United States and such compensation would be subject to withholding under section 3402 but for



the provisions of section 3401(a) (other than paragraph (a)(8) thereof) and the regulations under that section, provided that an election of no withholding under section 3405 (a)(2) or (b)(3) is not in effect.

(b)(1)(iii) through (5) [Reserved]  
(c) through (i) [Reserved]

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 28, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-2488 Filed 2-2-90; 8:45 am]

BILLING CODE 4830-01-M

## Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 55

[T.D. ATF-293; REF. Notice Nos: 530, 665, 671]

RIN 1512-AA52

### Explosive Materials in the Fireworks Industry

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

**ACTION:** Final rule (Treasury decision).

**SUMMARY:** This final rule amends regulations in 27 CFR part 55 to modify certain regulations and add new sections in subpart K dealing with storage to specifically address the fireworks industry. The regulations are a result of increased concern about the number and severity of explosions which have occurred on the premises of special fireworks industry members and tests on certain stored fireworks explosive materials.

**EFFECTIVE DATE:** This final rule is effective March 7, 1990 except that those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by March 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Daniel Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco, and Firearms, (202) 789-3029.

**SUPPLEMENTARY INFORMATION:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has become increasingly concerned about the number and severity of explosions which have occurred on the premises of special fireworks plants. Serious explosions have occurred which resulted in the

partial or complete destruction of special fireworks factories, damage to surrounding property, and in serious injuries and multiple deaths.

### Summary of Proposed Regulations, Comments, and Changes to part 55

This final rule, in addition to other changes, incorporates the provisions of two fireworks related rulings, ATF Rul. 85-13, A.T.F.Q.B. 1985-3, 47, and ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27, as well as the statutory provisions of Pub. L. No. 99-308, 100 Stat. 449 (1986) relating to black powder. Some of the major provisions of this final rule are:

(1) The high explosives classification is extended to flash powder and bulk salutes for storage purposes since they can be made to detonate by means of a blasting cap when unconfined. The term "bulk salutes" means unfinished salutes and finished salutes which are segregated from other special fireworks. However, when finished salutes have been packed into shipping containers with other special fireworks, they are subject to the same storage requirements for low explosives.

(2) No more than 10 pounds of flash powder used in special fireworks may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations.

(3) No more than 500 pounds of other explosive materials may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations.

(4) The holding of no more than 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks beyond the completion of the workday will require that the processing building or area be located in accordance with the table of distance requirements of 27 CFR 55.218.

(5) New "minimum separation of distance" tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines are established.

(6) The recordkeeping requirements relating to the quantity and description of special fireworks are amended.

(7) The recordkeeping requirement for licensees and permittees selling or disposing of exempt quantities of black powder under the exemption for use solely for sporting, recreational, or cultural purposes in antique firearms or antique devices is eliminated.

### Notice of Proposed Rulemaking

On July 20, 1988, the Bureau published a notice of proposed rulemaking, Notice No. 665, cross-referenced to Notice No. 530 (53 FR 27452) with a 60-day

comment period. The original 60-day comment period was extended an additional 30 days by Notice No. 671 (53 FR 35330).

### Comments Received

During the comment period 16 written comments were received, one of which constituted a request for an extension of the initial 60-day comment period. Among the commenters were three persons involved in the regulation of fireworks, one interested party, two trade associations and nine industry members.

### General

ATF acknowledged in the notice of proposed rulemaking that the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage could have an adverse economic impact on a number of fireworks industry members in that their premises would not permit the storage of high explosives in compliance with the American Table of Distances. For this reason, ATF specifically requested comments from industry members addressing the economic impact of such a reclassification.

Three commenters addressed this issue. However, the comments of two were indirect and offered limited data to aid in assessing the economic impact of the reclassification. The other commenter indicated that up to 90 percent of the industry would suffer economically but did not provide any basis for this estimate.

### Definitions

Five commenters suggested that various definitions in the proposed regulations be modified or eliminated altogether. One commenter suggested that the definition of "Fireworks mixing building" be modified for clarity by removing the word "primarily" from the definition. This change was adopted.

Another commenter, citing National Fire Protection Association Standard 1124, Manufacture, Transportation and Storage of Fireworks, felt that the proposed definition of "Fireworks mixing building" should be modified to conform to the definition found in Standard 1124 which contains an exception for wet sparkler mix. Based on tests conducted by the Department of Transportation, the commenter reasoned that wet sparkler mix does not constitute an explosion hazard. We concur with this comment and have modified our definition to include an exception for preparing wet sparkler mix.



A suggestion was made by one commenter to eliminate the definition of "common fireworks." We disagree with this suggestion because the definition is necessary to distinguish between common and special fireworks.

It was further suggested that the definition of "Fireworks plant warehouse" be eliminated. This suggestion is not adopted since the definition is needed for proper identification of the various types of buildings found on fireworks plant premises.

The question was asked by one commenter whether a fireworks shipping building is subject to the 500-pound limitation applicable to fireworks process buildings as indicated by the language contained in the definition of a fireworks process building. ATF did not intend to define a fireworks shipping building as a fireworks process building and make the shipping building subject to the 500-pound limitation. However, a fireworks shipping building, when used to store finished special fireworks prior to packing into shipping containers, is a magazine subject to all the storage requirements for magazines. Accordingly, we have deleted the reference to fireworks shipping building from the definition of fireworks process building.

Another commenter requested that the definition of "screen barricade" be modified to permit the use of mesh larger than the specified maximum of 1/2 inch. We did not amend this definition since the definition as written is consistent with that found in NFPA Standard 1124. Deviation from that definition could cause confusion within the industry and conflict with Federal, State or local regulatory requirements.

One comment suggested modifying the definition of "flash powder" to include the term "flash paper." We disagree with this suggestion because ATF has no authority to regulate flash paper.

One commenter requested clarification of the proper storage requirements for finished multi-effect fireworks shells which are comprised of salute and non-salute components. ATF considers such finished fireworks shells to be low explosives not requiring storage in high explosives magazines.

#### Subpart G—Records and Reports

It was further suggested that §§ 55.122–55.124 be amended to allow for recordkeeping entries to be in terms of "complete shows" ATF, as reflected in § 55.127, permits entries into the required records to be in terms of complete shows, provided the licensee has catalogs, brochures, etc., available

for inspection which fully disclose the contents of any complete show entered into the records as such.

#### Subpart K—Storage

Three commenters opposed the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage. One reason given was that the commenters have no knowledge of any accidental explosions involving flash powder or bulk salutes stored in low explosives magazines. Another reason was that, while the burn rate for flash powder averaged 750 meters per second and achieved detonation velocity for only a few microseconds, it does not sustain detonation velocity.

Prior to 1985, ATF had no empirical data on fireworks or explosive materials and pyrotechnic compositions used in the assembly of fireworks upon which to base a classification. To learn more about their properties, ATF, in conjunction with the Department of Transportation and participants from within the fireworks industry, conducted a series of tests on a variety of completed special fireworks and various explosive materials and pyrotechnic compositions typically used in the assembly of fireworks. These tests demonstrated that flash powder was a violently reactive material that does reach detonation velocity when confined. Thus, the reclassification of flash powder and bulk salutes is intended to afford the public the degree of protection prescribed for similarly violent explosive materials.

On commenter asked that the word "special" be deleted from "special fireworks" in §§ 55.201(d) and 55.202(b).

Use of the term "special fireworks" is necessary to distinguish such fireworks from finished common fireworks which are exempt from regulation under part 55.

One commenter suggested revising the text of § 55.206(d) for clarity. We concurred with this suggestion and have modified the text. Section 55.221 serves to codify the text of ATF Rul. 85–13, which imposed limits on the quantity of various explosive materials and pyrotechnic compositions permitted to be outside an approved magazine and in any one fireworks process building or area, and required that all dry explosive powders and mixtures, partially assembled special fireworks, and finished special fireworks be returned to an approved magazine at the conclusion of a day's operations. Comments received, which address this section, are discussed below.

Four commenters recommended increasing the maximum quantity of flash powder permitted in any one fireworks process building from the proposed 10-pound maximum found in § 55.221(c) to varying quantities ranging to a high of 125 pounds. The general reason given was that 10 pounds of flash powder will only permit the production of 80 salutes and is economically inefficient in practice. Given the properties of flash powder, ATF believes this 10-pound limit to be both reasonable and necessary from a public safety standpoint. Fireworks plant operators may establish more than one fireworks process building on their premises provided they are located in accordance with the table of distances found in § 55.222. Further, once a batch of flash powder has been processed into salutes, the salutes may be removed to an approved magazine and another 10-pound batch of flash powder may be brought in for processing.

Six commenters opposed the requirement of § 55.221(d) that explosive powders and mixtures and unfinished and finished special fireworks be removed from a fireworks process building to an approved magazine at the end of a day's operations.

The primary objection raised was that the probability of an accidental explosion is greatest when the materials are being transported or handled, and that the requirement for increased movement and handling would enhance the probability of an accident. An example cited was the explosion at an Oklahoma fireworks plant that was initiated while employees were transporting/handling explosive materials used in the assembly of fireworks.

The employment of proper safety practices when handling or moving explosive materials used in the assembly of fireworks will minimize any safety risks. Further, we feel that the threat to the general public posed by leaving explosive materials, pyrotechnic compositions, or unfinished and finished special fireworks unattended in the fireworks process building overnight outweighs the risks associated with increased movement and handling. Further, ATF Rul. 85–13 permits fireworks plant operators to apply for permission to keep such materials in a fireworks process building overnight, provided the fireworks process building is located in accordance with the table of distances in § 55.218. For these reasons, the comments were not adopted.

A commenter requested clarification on whether common fireworks are



permitted to be kept in fireworks process buildings in excess of the 500-pound limitation established in the tables of distances in § 55.223 and 55.224. The regulations will not preclude the storage of finished common fireworks in quantities exceeding the 500-pound net weight limitation in a fireworks process building. However, the fireworks process building used for this purpose could not be used to process new fireworks until such time as the quantity of finished common fireworks in storage drops below the 500-pound net weight limit. In other words, the combined net weight of finished common fireworks in storage and the explosive materials and pyrotechnic compositions in process in a fireworks process building cannot exceed the 500-pound net weight limitation.

Two commenters took exception to the tables of distances appearing in §§ 55.222-55.224, stating that the quantity ranges in the tables are too broad and do not take into account small quantities of explosive materials or pyrotechnic compositions and special fireworks. The tables appearing in these sections were modeled after tables found in NFPA Standard 1124. This was done for the purpose of achieving consistency among Federal and State regulatory requirements whenever possible. In this connection, States have adopted particular NFPA standards. In addition, quantities less than 50 pounds of explosive materials may be stored in indoor magazine located in buildings other than a residence.

A commenter suggested in the interest of public safety that the tables of distances proposed in §§ 55.222-55.224 should be deleted and the American Table of Distances found in § 55.218 be applied to all facets of a fireworks plant's operations. This suggestion was not adopted since the resulting economic impact of such a requirement would be unreasonable and could cause a large number of fireworks plant operators to go out-of-business.

#### Effective Date

ATF recognizes that the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage will have an adverse economic impact on a number of fireworks industry members. Specifically, some industry members will incur a one-time cost of upgrading or acquiring a magazine to store fireworks explosive materials. Further, certain industry members will need to relocate their plant premises, reduce capacity or purchase or lease magazines at a location other than their existing

premises to and from which their explosives material would be transported. Therefore, ATF will allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosive storage requirements for flash powder and bulk salutes. However, existing licensees or permittees who file a new license or permit application for new or additional premises, and any new applicant desiring to enter into the fireworks business after the effective date of these regulations shall comply with the high explosive storage requirements before the application is approved.

#### Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. A final regulatory flexibility analysis has been prepared and reads as follows.

#### Final Regulatory Flexibility Analysis for Explosive Materials in the Fireworks Industry—Regulations (27 CFR Part 55)

##### Rationale for Agency Action

The law (18 U.S.C. 841-848) sets forth a Federal responsibility over the importation, manufacture, distribution, and storage of explosive materials. Regulations implementing the law contain the procedural and substantive requirements relative to, among other things, the storage of explosive materials. There has been an increase in the number and severity of explosions on the premises of special fireworks plants and ATF is particularly concerned about the safe storage of special fireworks explosive materials. The quantity and type of special fireworks explosive materials allowed to be held outside an approved storage magazine and in a building or area

during an assembly process have not been subject to specific regulations.

#### Objective and Legal Basis of the Proposed Rule

**A. Objective basis.** The objective basis of the final regulations is to extend the high explosives classification to certain special fireworks explosive materials for the purpose of storage and to establish new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant storage magazines.

**B. Legal basis.** The legal basis for the final regulations is found in 18 U.S.C. 847. This law gives the Secretary of the Treasury broad discretion to enact rules and regulations reasonably necessary for the importation, manufacture, distribution, and safe storage of explosive materials.

Further, 18 U.S.C. 846 authorizes the Secretary to prescribe precautionary measures to prevent the recurrence of accidental explosions in which explosive materials were involved. Treasury Department Order No. 120-01 dated June 6, 1972, effective July 1, 1972 (formerly No. 221), delegated to the Bureau of Alcohol, Tobacco and Firearms the function of administering such regulations.

**C. Estimate of number of small entities affected and types.** It is estimated that this document will affect about 300 small entities involved in the fireworks industry.

#### Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements Anticipated

**A. Reporting requirements.** The regulations in this document will not impose reporting requirements other than those approved under OMB Docket No. 1512-0373.

**B. Recordkeeping requirements.** The regulations in this document will not impose recordkeeping requirements other than those approved under OMB Docket No. 1512-0373.

**C. Compliance requirements.** The compliance requirements of the regulations were determined by a survey conducted to determine the possible economic impact on the fireworks industry in requiring increased standards for the storage and handling of fireworks explosive materials and comments received from a notice of proposed rulemaking.

Approximately 50 percent of the 300 industry members were surveyed to arrive at projected costs in implementing the regulations and 16 comments were received.



Two types of costs to fireworks industry members were identified in implementing the regulations. A one time cost of upgrading or purchasing a magazine to store certain fireworks explosive materials would average about \$2,500, for an estimated 62 industry members for a total one time of \$155,000.

The other cost, involving an estimated 29 industry members, is more difficult to establish. These industry members have premises on which storage magazines could not comply with the American Table of Distances. Based on their current levels of operation, these industry members would need to relocate their plant premises or purchase or lease magazines at a location other than their existing premises to and from which the explosive materials would be transported. The recurring annual cost to each of these 29 industry members may be as much as \$5,000.

#### Conflicting, Duplicative or Overlapping Federal Rules

None of the requirements of the regulations will conflict, duplicate, or overlap other Federal rules.

#### Alternatives

**A. Multitiering.** This concept was not used because the regulations involve requirements protecting the public safety in the storage of special fireworks explosive materials applicable to all persons involved in the fireworks industry.

**B. Simplification of requirements.** The requirements were determined to be the minimum necessary to improve the safe storage of special fireworks explosive materials.

**C. Performance standards.** This concept was utilized by recognizing the economic impact on any industry member required to upgrade an existing storage facility to the standards for high explosives or to acquire a new high explosives storage magazine. ATF will allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosives storage requirements for flash powder and bulk salutes. However, existing licensees or permittees who must file a new license or permit application for new or additional premises, or any new applicant desiring to enter into the fireworks business after the effective date of these regulations shall comply with the high explosives storage requirements before the application is approved.

**D. Exemption of small entities.** The law does not authorize exemption of any entity from the requirements.

#### Paperwork Reduction Act

The provisions of the following ATF Rulings and Procedures are either incorporated into or are obsoleted by the regulations: ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27; ATF Rul.

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no new requirement to collect information is proposed. However, consistent with the amendments made by this final rule, clarifying revisions to the examples accompanying currently approved reporting and recordkeeping requirements also are being adopted.

#### List of Subjects

##### 27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

#### Drafting Information

The principal author of this document is Lawrence G. White, formerly with the Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

#### Obsolete Explosive Materials Rulings

85-13, A.T.F.Q.B. 1985-3, 47; and Industry Circular 82-8, dated July 13, 1982.

#### Authority and Issuance

#### PART 55—[AMENDED]

27 CFR part 55—Commerce in Explosives is amended as follows:

**Paragraph 1.** The authority citation for part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

**Par. 2.** Section 55.11 is amended by revising the definition of ammunition to correct a misspelled word, and adding definitions for bulk salutes, bullet-sensitive explosive materials, common fireworks, fireworks, fireworks plant, flash powder, fireworks mixing building, fireworks nonprocess building, fireworks process building, fireworks plant warehouse, fireworks shipping building, pyrotechnic compositions, salute, screen barricade, and special fireworks to read as follows:

#### § 55.11 Meaning of terms.

**Ammunition.** Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses. The term does not include black powder.

**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 special fireworks.

**Bullet-sensitive explosive materials.** Explosive materials that can be exploded by 150-grain M2 ball ammunition having a nominal muzzle velocity of 2700 fps (824 mps) when fired from a .30 caliber rifle at a distance of 100 ft (30.5 m), measured perpendicular. The test material is at a temperature of 70 to 75 degrees F (21 to 24 degrees C) and is placed against a 1/2 inch (12.4 mm) steel backing plate.

**Common 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. Common fireworks are classified as Class C explosives by the U.S. Department of Transportation (DOT). 49 CFR 173.100(r)

**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 "common fireworks" or "special fireworks" described by U.S. Department of Transportation in 49 CFR 173.88 and 173.100.

**Fireworks mixing building.** Any building or area used for mixing and blending pyrotechnic compositions except wet sparkler mix.

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

**Fireworks plant.** All land and buildings thereon used for or in



connection with the assembly or processing of fireworks, including warehouses used with or in connection with fireworks plant operations.

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

**Fireworks Process building.** Any mixing building; any building in which pyrotechnic compositions or explosive materials is pressed or otherwise prepared for finished and assembly; or any finishing or assembly building.

**Fireworks shipping building.** A building used for the packing of assorted special fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

**Flash powder.** An explosive material intended to produce an audible report and a flash of light when ignited and typically containing potassium perchlorate, sulfur or antimony sulfide, and aluminum metal.

**Pyrotechnic compositions.** A chemical mixture which, upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

**Salute.** An aerial shell, classified as a special 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.

**Screen barricade.** Any barrier that will contain the embers and debris from a fire or deflagration in a process building, thus preventing propagation of fire to other buildings or areas. Such barriers shall be constructed of metal roofing, 1/4 to 1/2 inch (6 to 13 mm) mesh screen, or equivalent material. The barrier extends from floor level to a height such that a straight line from the top of any side wall of the donor building to the eave line of any exposed building intercepts the screen at a point not less than 5 feet (1.5 m) from the top of the screen. The top 5 feet (1.5 m) of the screen is inclined towards the donor building at an angle of 30 to 45 degrees.

**Special 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 "common fireworks." Special fireworks are classified as Class B explosives by the U.S. Department of Transportation, 49 CFR 173.88(d).

Par. 3. Section 55.26(a)(2) is revised to read as follows:

**§ 55.26 Prohibited shipment, transportation, or receipt of explosive materials.**

(a) \* \* \*

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4).

Par. 4. Section 55.105 is amended by revising paragraph (g) to read as follows:

**§ 55.105 Distributions to nonlicensees and nonpermittees.**

(g) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4).

Par. 5. Section 55.122 is amended by revising paragraphs (b) (4) and (5) and (c) (4) and (5) and removing paragraph (f) to read as follows:

**§ 55.122 Records maintained by licensed importers.**

(b) \* \* \*

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

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

(c) \* \* \*

(4) Quantity (applicable quantity units, such as pounds of explosives,

number of detonators, number of special fireworks, etc.).

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

Par. 6. Section 55.123 is amended by revising paragraphs (b) (3) and (4), (c) (4) and (5) and (d) (2) and (3) and by removing paragraph (g) to read as follows:

**§ 55.123 Records maintained by licensed manufacturers.**

(b) \* \* \*

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

(4) Name, brand name or description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) \* \* \*

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

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

(d) \* \* \*

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

(3) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 7. Section 55.124 is amended by revising paragraphs (b) (4) and (5) and (c) (4) and (5) and by removing paragraph (g) to read as follows:

**§ 55.124 Records maintained by licensed dealers.**

(b) \* \* \*

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



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

(c) \* \* \*

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

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

Par. 8. Section 55.125 is amended by removing paragraph (b)(3) and paragraph (f), by revising paragraph (c) (4) and (5), and redesignating paragraph (g) as paragraph (f) to read as follows:

**§ 55.125 Records maintained by licensed manufacturers—limited and permittees.**

(c) \* \* \*

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

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

Par. 9. Section 55.127 is revised 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 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. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Quantity entries for special fireworks may be expressed as the number and size of individual special fireworks in a finished state or as the number of packaged display segments or packaged displays. Information as to the number and size of special fireworks contained

in any one packaged display segment or packaged display shall be provided to any ATF officer on request. Any discrepancy which might indicate a theft or loss of explosive materials is to be reported in accordance with § 55.30.

**§ 55.130 [Removed]**

Par. 10. Section 55.130 is removed.

Par. 11. Section 55.141(b) is revised to read as follows:

**§ 55.141 Exemptions.**

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16) or antique devices, as exempted from the term "destructive devices" in 18 U.S.C. 921(a)(4).

Par. 12. Section 55.201 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) to read as follows:

**§ 55.201 General.**

(a) Section 842(j) of the Act and § 55.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. Further, section 846 of this Act authorizes regulations to prevent the recurrence of accidental explosions in which explosive materials were involved. The storage standards prescribed by this subpart confer no right or privileges to store explosive materials in a manner contrary to State or local law.

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

(e) The provisions of § 55.202(a) classifying flash powder and bulk salutes as high explosives are mandatory after March 7, 1990: *Provided*, that those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by March 7, 1991.

Par. 13. Section 55.202 (a) and (b) are revised to read as follows:

**§ 55.202 Classes of explosive materials.**

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined, (for example, dynamite, flash powders, and bulk salutes). See also § 55.201(e).

(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 "special fireworks" defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR part 173, except for bulk salutes).

Par. 14. Section 55.206 is amended by revising paragraph (b) to read as follows:

**§ 55.206 Location of magazines.**

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 55.219, except that the table of distances in § 55.224 shall apply to the storage of special fireworks. The distances shown in § 55.219 may not be reduced by the presence of barricades.

Par. 15. Section 55.221 is added to read as follows:

**§ 55.221 Requirements for special fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks.**

(a) Special fireworks, pyrotechnic compositions and explosive materials used to assemble fireworks 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.

(b) No more than 500 pounds (227 kg) of pyrotechnic compositions or explosive materials are permitted at one time in any fireworks mixing building, any building or area in which the pyrotechnic compositions or explosive materials are pressed or otherwise prepared for finishing or assembly, or any finishing or assembly building. All pyrotechnic compositions or explosive materials not in immediate use will be stored in covered, non-ferrous containers.

(c) The maximum quantity of flash powder permitted in any fireworks process building is 10 pounds (4.5 kg).



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

Par. 16. Sections 55.222 through 55.224 are added to read as follows:

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

Net weight of fireworks <sup>1</sup> (pounds)	Special fireworks <sup>2</sup> (feet)	Common fireworks <sup>3</sup> (feet)
0-100	57	37
101-200	69	37
201-300	77	37
301-400	85	37
401-500	91	37
Above 500	Not permitted <sup>4,5</sup>	Not permitted <sup>4,5</sup>

<sup>1</sup> Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

<sup>2</sup> The distances in this column apply only with natural or artificial barricades. If such barricades are not used, the distances must be doubled.

<sup>3</sup> While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

<sup>4</sup> A maximum of 500 pounds of in-process pyrotechnic compositions, either loose or in partially-assembled fireworks, is permitted in any fireworks process building. Finished special fireworks may not be stored in a fireworks process building.

<sup>5</sup> A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building. Quantities in excess of 10 pounds must be kept in an approved magazine.

**§ 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 COMMON FIREWORKS, MAGAZINES AND FIREWORKS SHIPPING BUILDINGS, AND INHABITED BUILDINGS<sup>3,4</sup>.

Net weight of fireworks <sup>1</sup> (pounds)	Special fireworks <sup>1</sup> (feet)	Common fireworks <sup>2</sup> (feet)
0-100	200	25
101-200	200	50
201-300	200	50
301-400	200	50
401-500	200	50
Above 500	Not permitted	Not permitted

<sup>1</sup> Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

<sup>2</sup> While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

<sup>3</sup> This table does not apply to the separation distances between fireworks process buildings (see

§ 55.222) and between magazines (see §§ 55.218 and 55.224).

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

**§ 55.224 Table of distances for the storage of special fireworks (except bulk salutes).**

Net weight of firework <sup>1</sup> (pounds)	Distance between magazine and inhabited building, passenger railway, or public highway <sup>3,4</sup> (feet)	Distance between magazines <sup>2</sup> (feet)
0-1000	150	100
1001-5000	230	150
5001-10000	300	200
Above 10000	Use table § 55.218	

<sup>1</sup> Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

<sup>2</sup> For the purposes of applying this table, the term "magazine" also includes fireworks shipping buildings for special fireworks.

<sup>3</sup> For fireworks storage magazines in use prior to (30 days from the date of publication of the final rule in the FEDERAL REGISTER), the distances in this table may be halved if properly barricaded between the magazine and potential receptor sites.

<sup>4</sup> This table does not apply to the storage of bulk salutes. Use table at § 55.218.

Signed: September 29, 1989.

Daniel R. Black,

Acting Director.

Approved: December 27, 1989.

Dated: December 27, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

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**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**RIN 1218-AB26**

**Air Contaminants**

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule; partial stay of effective date for two substances.

**SUMMARY:** OSHA reduced exposure limits for 375 air contaminants on January 19, 1989 at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until April 1, 1990.

**DATES:** These actions take effect on February 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA Office of

Public Affairs, Room N-3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** On January 19, 1989 at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989 start-up date of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until February 1, 1990. See 54 FR 36765, September 5, 1989; 54 FR 41244, October 6, 1989; and 54 FR 50372, December 6, 1989.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989 start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until April 1, 1990.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9-83 (48 FR 35736).

Signed at Washington, DC this 30th day of January 1990.

Gerard F. Scannell,

Assistant Secretary.

**PART 1910—[AMENDED]**

1. The authority citation for subpart Z of part 1910 continues to read in part as follows:

**Authority:** Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (38 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of table Z-1-A, which have identical limits listed in the Transitional Limits columns of