

DEPARTMENT OF JUSTICE**Bureau of Alcohol, Tobacco, Firearms and Explosives****27 CFR Part 555**

[ATF No. 1; Docket No. 2002R-341P]

RIN 1140-AA00

Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296

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

ACTION: Interim final rule with request for comments.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is amending the regulations to implement the provisions of the Safe Explosives Act, Title XI, Subtitle C of Pub. L. 107-296, the Homeland Security Act of 2002 (enacted November 25, 2002). This interim rule implements the law which: requires that all persons receiving explosives on and after May 24, 2003, obtain a Federal license or permit, and creates a new type of permit, the "limited permit;" requires applicants for licenses and permits to provide as part of their application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of "responsible persons;" extends the time for ATF to act on an application for a license or permit from 45 days to 90 days; authorizes warrantless inspections of places of storage maintained by applicants for limited permits and holders of limited permits; provides that only licensees and holders of user permits must post their licenses and permits and make them available for inspection; requires that ATF conduct background checks on responsible persons and employees authorized to possess explosive materials; specifies additional categories of persons who may not lawfully receive or possess explosive materials, *i.e.*, aliens (other than permanent resident aliens and other excepted aliens), persons dishonorably discharged from the military, and persons who have renounced their U.S. citizenship; broadens the interstate commerce element of the prohibited persons section of the law to specify that a violation is committed if possession of explosive materials affects interstate or foreign commerce; provides ATF the authority to require licensed manufacturers and licensed importers

and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product; broadens the scope of a criminal violation of the law to include any institution or organization receiving Federal financial assistance within the categories of property covered by the violation; expands ATF's authority to grant relief from disabilities to all categories of prohibited persons; and adds a new theft-reporting violation, providing felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery. This interim rule also incorporates the provisions of ATF Ruling 76-10, which will become obsolete as of May 24, 2003.

The interim rule will remain in effect until superseded by final regulations.

DATES: *Effective date:* This interim rule is effective March 20, 2003.

Comment date: Comments must be submitted on or before June 18, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco, Firearms and Explosives; PO Box 50221; Washington, DC 20091-0221; *Attn:* ATF No. 1. Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: nprm@atf.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this document number, as noted above, and be legible when printed on 8½" × 11" paper. ATF will treat e-mail as originals and ATF will not acknowledge receipt of e-mail. See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Firearms, Explosives and Arson; 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:**Background**

Public Law 107-296 (116 Stat. 2135), the Homeland Security Act of 2002, was enacted on November 25, 2002. In general, the provisions of the Homeland Security Act became effective 60 days after the date of enactment, January 24, 2003. Under Title XI, Subtitle B of the Homeland Security Act, the law

enforcement responsibilities of the Bureau of Alcohol, Tobacco and Firearms, including its authority over explosives, were transferred to the new Bureau of Alcohol, Tobacco, Firearms and Explosives of the Department of Justice.

Section 1512(a) of the Homeland Security Act provides in pertinent part that the completed administrative actions of an agency shall not be affected by either the enactment of the Act or the transfer of the agency to the Department of Homeland Security. In the regulations in Title 28, CFR, the Attorney General has delegated to the new Bureau of Alcohol, Tobacco, Firearms and Explosives (which will also be known as "ATF") the statutory authorities that were transferred to the Attorney General by the Homeland Security Act, including authority over Chapter 40 of Title 18, United States Code. That regulation also provided that the regulations previously issued by ATF in 27 CFR part 55, will continue in effect as if adopted by the Attorney General until recodified, superseded, repealed or amended.

In a separate document published in the **Federal Register** on January 24, 2003 (68 FR 3744), the regulations in 27 CFR part 55 were transferred from Chapter 1 to Chapter 2 of Title 27, and were redesignated as part 555.

Title XI, Subtitle C of Public Law 107-296, the Safe Explosives Act (hereafter, "the Act"), amended the Federal explosives laws in 18 U.S.C. Chapter 40. As stated in House Report No. 107-658, 107th Congress, 2d Session, September 17, 2002, accompanying H.R. 4864, the "Anti-terrorism Explosives Act of 2002" (the House version of the Act), the primary purpose of the Act is to provide tighter security for explosive materials and increased security measures for purchasers and possessors of explosives by requiring all persons who wish to obtain explosives, even for limited use, to obtain a Federal license or permit. The House Report notes that since September 11, 2001, the United States has been on high alert due to concern about possible terrorist threats and, accordingly, has increased security throughout our society. The report notes that additional precautions will help to prevent threats posed by explosive materials, and the legislation seeks to address such precautions. The report mentions incidents of concern such as the 1993 World Trade Center bombing, the 1995 Oklahoma City bombing, the 2002 attempt to detonate a bomb in a suspect's shoe on an aircraft, and the Federal Bureau of Investigation's (FBI's) uncovering of a terrorist plot to detonate

a "dirty bomb." The report notes that the Attorney General has stated that suicide bombings and car bombings could be the next line of attack by terrorists in the United States.

As noted by Senator Kohl during consideration of the Act in the Senate:

Most Americans would be stunned to learn that in some States it is easier to get enough explosives to take down a house than it is to buy a gun, get a driver's license, or even obtain a fishing license. Currently, it is too easy for would be terrorists and criminals to obtain explosive materials. Although permits are required for interstate purchases of explosives, there are no current uniform national limitations on the purchase of explosives within a single State by a resident of that State. * * * We must take all possible steps to keep deadly explosives out of the hands of dangerous individuals seeking to threaten our livelihood and security. The Safe Explosives Act is critical legislation, supported by the administration. It is designed solely to [sic] the interest of public safety. It will significantly enhance our efforts to limit the proliferation of explosives to would be terrorists and criminals. It will close a loophole that could potentially cause mass destruction of property and life.

148 Cong. Rec. S 11374, 11391–11394, Vol. 148, No. 150 (November 19, 2002)

Effective Dates for the Provisions of the Safe Explosives Act

A. Provisions Effective January 24, 2003

The following provisions of the Act became effective January 24, 2003:

- Adding three new categories of persons who may not lawfully receive or possess explosive materials;
- Broadening the interstate commerce element of the prohibited persons section of the law to specify that a violation is committed if possession of explosive materials affects interstate or foreign commerce;
- Providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product;
- Broadening the scope of a criminal violation of the law to include any institution or organization receiving Federal financial assistance within the categories of property covered by the violation;
- Expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons; and
- Adding a new theft-reporting violation, providing felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery.

B. Provisions Effective May 24, 2003

The following provisions of the Act become effective May 24, 2003:

- The requirement that all persons receiving explosives obtain a Federal license or permit, and the creation of a new type of permit, the "limited permit;"
- The requirement that applicants for licenses and permits provide as part of their application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of "responsible persons;"
- The extension of the time for ATF to act on an application for a license or permit from 45 days to 90 days;
- The authorization for warrantless inspections of places of storage for applicants for limited permits and holders of limited permits;
- The provision that only licensees and holders of user permits must post their licenses and permits and make them available for inspection; and
- The requirement that ATF conduct background checks on responsible persons and employees authorized to possess explosive materials.

Changes to Explosives Laws and Regulations

The new statutory provisions and the regulatory changes necessitated by the law are as follows:

I. Limited Permit

The Act amended the Federal explosives laws in 18 U.S.C. Chapter 40 to require that all persons receiving explosives on and after the effective date (May 24, 2003) obtain a Federal permit. Existing law provides for a "user permit" that is necessary only if the holder transports, ships, or receives explosive materials in interstate or foreign commerce. The Act creates an additional type of permit, the "limited permit," that will authorize the holder to receive explosive materials only within his State of residence on no more than 6 separate occasions during the one-year period of the permit. The interim regulations specify that the term "6 separate occasions" means six deliveries of explosive materials. Each delivery must relate to a single purchase transaction and be documented on only one ATF Form 5400.4, Limited Permittee Transaction Report; be referenced on a single commercial invoice or purchase order; and be delivered in one shipment to the purchaser.

ATF Ruling 76–10 (1976–ATF C.B. 105) holds that a single Form 5400.4

may be used for a series of deliveries of explosive materials made over a 30-day period. Since that ruling is inconsistent with the definition of "6 separate occasions" set forth in this rule, it will become obsolete as of May 24, 2003.

Section 845, title 18 U.S.C., and implementing regulations at section 555.141, provide that the law and regulations, except for certain specified criminal violations, do not apply to activities and products specified therein. Among the exemptions listed are black powder (50 pounds for sporting and other limited purposes); small arms ammunition and components; Government agencies; and consumer fireworks. These exemptions are not changed by the Act or this interim rule.

The Act also provides that the maximum fee to be charged for the limited permit is \$50 for a one-year period, and the renewal fee may not exceed one-half the original fee.

Regulations that implement these provisions of the Act are in §§ 555.26, 555.27, 555.43, 555.45, 555.102, 555.103, 555.105, 555.106, 555.125, and 555.126.

A. Section 555.26 (Prohibited Shipment, Transportation, Receipt, Possession, or Distribution of Explosive Materials)

Section 555.26 has been amended to describe activities that are not authorized by a limited permit. Specifically, the section prescribes, in accordance with the provisions of the Act, that holders of limited permits may not transport, ship, cause to be transported or receive explosive materials in interstate or foreign commerce. Holders of limited permits may receive explosives only from distributors located in the permit-holder's State of residence and such receipt of explosive materials may occur no more than six times during the one-year duration of the limited permit. Persons seeking to acquire explosive materials more frequently or seeking to acquire or transport explosive materials in interstate commerce must obtain a Federal explosives license or user permit.

This section has also been amended to reflect the newly expanded categories of persons prohibited from shipping, transporting, receiving, and possessing explosive materials. Newly added "prohibited categories" include illegal and nonimmigrant aliens, persons who have been discharged from the armed forces under dishonorable conditions, and persons who have renounced their United States citizenship. Section 555.106 has been amended to reflect these new categories as well, in the

context of persons to whom distribution of explosive materials is prohibited.

B. Section 555.27 (Out-of-State Disposition of Explosive Materials)

Effective May 24, 2003, the provisions of section 555.27 will no longer apply because this section contemplates that distributions of explosives can be made to persons not holding a Federal explosives license or permit. The Federal explosives law, as amended by the Act, now provides that all persons acquiring explosives must have, at minimum, a limited permit.

C. Section 555.43 (Permit Fees)

Section 555.43 has been amended to describe the fee structure for the issuance of limited permits, including renewals of limited permits. The Act provides that the fee for a limited permit may not exceed \$50. The fee for renewal of a limited permit is capped by statute at one-half the amount of the original fee. This section sets the fee for a limited permit significantly lower than the statutory maximum, providing that the fee for an original limited permit will be \$25 and providing also that the fee for each subsequent renewal of a limited permit will be \$12. ATF believes this fee is affordable for most infrequent users but serves to offset some of the costs associated with processing an application. The fee for the limited permit is not intended as a "user fee," because it does not compensate ATF for the full cost of processing the application, conducting an inspection of storage facilities, and conducting background checks for the applicant, responsible persons, and employees.

D. Section 555.45 (Original License or Permit)

Section 555.45 explains that license and permit applications postmarked on or after the effective date of this interim rule, must be submitted along with ATF Form 5400.28 (Responsible Person Questionnaire) or, where applicable, multiple Forms 5400.28. On this form, applicants and others who will direct the policies of the applicant with respect to explosive materials will be required to answer whether they fall within any of the categories of persons prohibited from possessing explosive materials. Form 5400.28 includes questions concerning the newly added categories of prohibited persons. It is important that ATF obtain this information for all licenses and permits issued after the effective date to ensure that no persons with authority to direct the explosives operations of a licensee or permittee are prohibited by law from possessing explosive materials.

For licenses and permits to be issued on and after May 24, 2003, ATF Forms 5400.13 and 5400.16 will mandate that all responsible persons be identified. The statutory requirement to include fingerprints and photographs of each responsible person will also become effective.

On and after May 24, 2003, ATF Form 5400.28 will be re-titled as the Employee Possessor Questionnaire. Each person who will be possessing explosive materials in the course of his employment will be required to complete this form. Each person completing the form will be required to provide appropriate identifying information, including name of employer and residential address and will be required to declare whether he falls within any of the categories of persons prohibited from possessing explosive materials. This information will be used to conduct a background check to ensure that employees are not within the categories of persons Congress has determined should not possess explosive materials. Responsible persons will not complete a Form 5400.28 because their identifying information will be submitted on the license or permit application form.

An applicant for a license or permit that will be issued on and after May 24, 2003, must submit an application that includes the appropriate identifying information for responsible persons as well as their fingerprints and photographs. Fingerprints must be submitted on FBI Form FD-258 in accordance with the instructions on the form and must be submitted by the applicant with the application. Also, where applicable, Form 5400.28, Employee Possessor Questionnaire must be submitted with the application for each employee who will be possessing explosive materials in the course of his employment.

E. Section 555.102 (Authorized Operations by Permittees)

Section 555.102 has been amended to reflect that, effective May 24, 2003, persons not holding a Federal explosives license or permit will be prohibited from acquiring explosive materials. Accordingly, this section has been changed to provide that permittees disposing of surplus stocks of explosive materials may dispose of those stocks only to licensees or other permittees.

F. Section 555.103 (Transactions Among Licensees/Permittees and Transactions Among Licensees and Holders of User Permits)

Section 555.103 has been amended to clarify the procedures to be followed

where distributions of explosives are made by licensees to other licensees and holders of user permits. These procedures have been clarified to conform to the newly applicable procedures set forth in section 555.105 for transactions in which limited permittees are acquiring explosive materials. In this regard, section 555.103, like section 555.105, has been amended to comport with Congress' intention, as expressed in the House Report No. 107-658, 107th Congress, 2d Session, September 17, 2002, to "provid[e] tighter security for explosive materials and increased security measures for purchasers and possessors of explosives."

In general, the procedures outlined in this section are similar to practices currently authorized (and/or required) under part 555. Included among these are a requirement that the distributor verify the licensed status of the licensee or permittee who wishes to purchase explosive materials and a requirement that, prior to or at the time of distribution, the distributee provide the distributor with a list of persons authorized to accept delivery of explosive materials and with a statement identifying the intended use for the explosive materials. Distributors will be required to verify that any person seeking to accept delivery of explosive materials on behalf of a distributee is, in fact, on the list of persons authorized to accept delivery and to verify the identity of such person by examining an identification document. The term "identification document" is defined in section 555.11.

Current regulations require that purchasers provide the distributor with a certified list of persons authorized to order explosive materials. Because most orders are placed via phone or fax, rather than over-the-counter, ATF believes this requirement is not particularly helpful in ensuring distribution of explosives to authorized persons. Accordingly, sections 555.103 and 555.105 have been revised to eliminate this requirement and to replace it with the requirement to provide a certified list of persons authorized to accept delivery of explosives. ATF believes this system is consistent with Congress' intention that there should be stringent security in the system established for transfers of explosive materials. The system set forth in sections 555.103 and 555.105 is designed to ensure that licensees and permittees deliver explosives only to persons affiliated with a purchaser holding a license or permit and to require verification of those persons' identities prior to relinquishing

possession of the explosive materials. Once all licenses and permits have been renewed under the licensing criteria of the Act, any person accepting delivery of explosives would have had a background check conducted in accordance with section 555.33, as an employee authorized to possess explosive materials. Thus, the regulatory system established in sections 555.103 and 555.105 will reduce the likelihood of the delivery of explosive materials to prohibited persons who are employed by members of the explosives industry. ATF believes these controls are essential in ensuring that persons who are likely to use explosives for criminal or terrorist purposes are denied access through legitimate industry channels.

G. Sections 555.105, 555.106, and 555.126 (Distribution of Explosive Materials and Records)

Sections 555.105, 555.106, and 555.126 have been amended to conform to the Act's mandate that all persons who wish to acquire explosives, whether in interstate or intrastate commerce, must obtain a Federal explosives license or permit. As noted above, the Act created a new type of permit, the "limited permit" that can be used by persons who wish to obtain explosives only within their states of residence on no more than six occasions per year. Previously, "intrastate" purchasers of explosives could acquire explosives without a Federal license or permit. Intrastate purchasers prior to receiving explosive materials completed ATF Form 5400.4, Explosives Transaction Record. The form required the purchaser to certify that he was not a felon, fugitive, or other prohibited person. This system of transactions relied on the "honor system" since background checks were not conducted on purchasers. Effective May 24, 2003, ATF Form 5400.4 will be revised and re-titled as the Limited Permittee Transaction Report. This form will be completed by limited permittees when purchasing explosive materials from licensees or permittees.

The amended provisions of sections 555.105 and 555.126 outline procedures for explosives transactions involving holders of limited permits. These procedures have been amended to comport with Congress' intention, as expressed in the House Report No. 107-658, 107th Congress, 2d Session, September 17, 2002, to "provid[e] tighter security for explosive materials and increased security measures for purchasers and possessors of explosives."

The amended provisions require that, prior to (or at the time of) taking distribution of explosive materials, a limited permittee must have submitted to the distributor a list of persons authorized to accept delivery of explosive materials on the limited permittee's behalf. Additionally, prior to a delivery of explosive materials, the limited permittee must complete the appropriate section on Form 5400.4 and affix to the form one of his six original Intrastate Purchase of Explosives Coupons (IPECs), ATF Form 5400.30. Form 5400.4 (with the appropriate section completed and with IPEC affixed) must be provided by the limited permittee to the distributor prior to (or at the time of) distribution, and the distributor must, after verifying the identification of the purchaser and executing the appropriate section on the form, remit one copy of the form to ATF and retain the other copy in his permanent records as required by section 555.121.

The information concerning acquisition of explosive materials by a particular limited permittee will be used to ensure that the permittee does not exceed the 6 transactions authorized by his permit and that the permittee has storage magazines suitable for the type and quantity of explosive materials acquired. If a Form 5400.4 indicates, for example, that a particular limited permittee acquired 1,000 pounds of explosive materials, but the application inspection indicated that the limited permittee maintained only a single indoor storage magazine (capable of lawfully storing only 50 pounds of explosives), the report would be referred to an ATF field office for investigation. This is another important safeguard to prevent theft, loss, or diversion of explosives into criminal channels due to unsafe or insecure storage.

Form 5400.4 requires that the limited permittee provide information regarding the use to which he intends to put the explosive materials. Identifying information concerning the limited permittee and, if applicable, the person who will be accepting delivery of the explosive materials is also required. The form prescribes that the distributor examine an identification document provided by the person accepting delivery of explosive materials and that he note the type and number of the identification document. The distributor must also report the quantity, manufacturer, and description of the explosive materials to be distributed. The form also provides an option for the distributor to document information concerning marks of identification and size of the explosives to be distributed.

This information is helpful in tracing explosives at the request of law enforcement officials who have recovered stolen explosives or explosives that have been used in an actual or attempted criminal or terrorist bombing. ATF is soliciting comment as to whether this optional information should be mandatory.

Included among the provisions of sections 555.103 and 555.106 is a requirement that the distributor verify the status of the licensee or permittee who wishes to purchase explosive materials and a requirement that, prior to or at the time of distribution, the distributee provide the distributor with a list of persons authorized to accept delivery of explosive materials and a statement identifying the intended use for the explosive materials. Distributors will be required to verify that any person seeking to accept delivery of explosive materials on behalf of a distributee is, in fact, on the list of persons authorized to accept delivery and to verify the identity of such person by examining an identification document.

Sections 555.103 and 555.105 also revise procedures for use of ATF Form 5400.8 (Explosives Delivery Record). In all cases, the distributor will be required to verify the identity of the person taking possession of explosive materials by examining an identification document and noting the type and number of the document on Form 5400.8. This procedure will remain in effect until May 24, 2003. On and after this date, the procedure for executing Form 5400.8 will require that all common or contract carriers taking possession of explosive materials for delivery to a licensee or permittee must complete this form prior to taking possession of explosive materials whether they are hired by the distributor or by the distributee. Employees of purchasers will no longer complete ATF Form 5400.8.

ATF believes it is essential that Form 5400.8 be executed in all instances when licensees and permittees transfer possession of explosive materials to a truck driver who is not an employee of the distributor. Truck drivers employed by the distributor would be employees authorized to possess explosives and would have had a background check conducted in accordance with section 555.33. Execution of the delivery record by employees of common or contract carriers who transport explosive materials and verification of their identification will help ensure that explosives are not placed in the hands of prohibited persons for possible diversion to criminal or terrorist use.

ATF believes the most efficient manner of conducting transactions with limited permittees would be a system whereby a distributor verifies the limited permittee's status and the number of authorized transactions remaining by conducting an online query of a database maintained by ATF. For distributors who do not have access to a computer, such queries would be conducted via a toll-free number connected to ATF's Firearms and Explosives Licensing Center. Such a system would virtually eliminate fraud since there would be no presentation of permits or Intrastate Purchase of Explosives Coupons. Such a system would also reduce the burden on buyers and sellers of explosives. ATF has established a similar system to be used voluntarily by Federal firearms licensees (FFLs) to verify the validity of a license held by another licensee. This system, the FFL eZ Check system, is accessed via ATF's website or by calling the Firearms and Explosives Licensing Center. The eZ Check system is popular with Federal firearms licensees and is an efficient method of verifying license status. ATF believes a similar system would be useful for verifying permit status of licensees and permittees as required under part 555. ATF seeks comment on the feasibility and utility of establishing such a system and whether such a system should be used in conjunction with the procedures required by sections 555.103 and 555.105.

H. Section 555.125 (Records Maintained by Permittees)

Section 555.125 has been revised to set forth recordkeeping requirements for limited permittees. Because ATF has no statutory right to inspect such records, absent consent or a warrant, the requirements imposed are only those necessary to ensure the permittee's ability to detect a theft or loss of explosives and to respond to requests from ATF to trace explosives. Specifically, limited permittees will be required to take a physical inventory of explosives on an annual basis. Limited permittees will also be required to keep permanent acquisition and disposition records of explosive materials that include date of acquisition; name of manufacturer; manufacturer's marks of identification; quantity; description; and name, address and license number of the person from whom received. Significantly, this section provides that a commercial record may be used as the permanent record, if it includes all the foregoing information. It should be noted that no recordkeeping entries are required for explosive materials that are

used by a limited permittee in its business or operations. However, limited permittees disposing of surplus stocks to other licensees or permittees would be required to make a permanent record of such dispositions. Because permittees are not authorized to engage in an explosives business, such disposition records would not be a commercial record. Accordingly, such record would take the form of a permanent written record, such as a notebook. Finally, section 555.127, which is not amended by this interim rule, will also apply to limited permittees. This section will require limited permittees to keep a daily summary of magazine transactions for each magazine used to store explosive materials. This summary requires recording, not later than the close of the next business day, the total quantity of explosives received in and removed from each magazine during a 24-hour period and the total explosives remaining on hand at the end of the day. This requirement has applied to all licensees and permittees since 1971. It enables licensees and permittees to readily detect discrepancies between physical inventory and record inventory so that thefts and losses can be promptly reported.

I. Elimination of the "User-Limited" Permit

ATF is also soliciting comment on removal of the user-limited permit from part 555. This permit authorizes the holder to ship, transport, and receive explosive materials in interstate or foreign commerce, but is valid for only a single purchase transaction. ATF issues very few of these permits each year, generally to organizations that wish to obtain fireworks for annual Fourth of July displays. Most organizations have, in recent years, arranged for the distributor of the fireworks to arrive at the event and put on the fireworks display. This eliminates the need for the organization to obtain a permit and ensures that persons trained to handle explosive materials maintain custody and control of the explosives throughout the event. Those few organizations that wish to obtain explosives interstate for the Fourth of July or other purposes, may obtain a user permit. ATF believes that retention of the user-limited permit is unnecessary and proposes elimination of this permit from part 555.

II. Licensing Information and Criteria

The Act amended Chapter 40 to require applicants for licenses and permits to provide with the application the names and appropriate identifying

information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of "responsible persons." The requirement to submit fingerprints and photographs ensures that a thorough background check can be completed. The term "responsible person" is defined in the law as an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. This would generally include sole proprietors, partners, site managers, corporate officers and directors, and majority shareholders.

This provision does not require corporate applicants for licenses or permits to list every corporate officer or director as a "responsible person" on its application. Those officials having no power to direct the management and policies of the applicant with respect to explosive materials are not "responsible persons" and may not be listed on the application. For example, in a large corporation that uses explosive materials in one of its many business activities, there will likely be many corporate officials having no responsibility or authority in connection with the company's explosives business. These officials should not be listed as "responsible persons" on the application, and need not submit fingerprints and photographs to ATF.

The requirement that applicants provide names of, and appropriate identifying information for, all employees authorized to possess explosive materials allows ATF to verify, by conducting a background check, that these individuals are not prohibited from receiving or possessing explosive materials. As noted in the legislative history of the Act, "[i]t is too easy for would-be terrorists and criminals to obtain access to explosive materials by obtaining jobs with explosives licensees or permittees." House Report No. 107-658, 107th Congress, 2d Session, September 17, 2002. Applicants for licenses and permits are not required to list every employee of the business. Rather, they must list only those employees expected to possess explosive materials as part of their duties. As directed by Congress (See House Report 107-658, *id.*), ATF is guided by case law interpreting "possession" under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. Possession under the GCA may be either actual or constructive. Actual possession exists when a person is in immediate possession or control of explosive materials, and includes instances where a person knowingly has direct physical control over the

explosive materials at a given time. Thus, employees who handle explosive materials in the course of their employment would clearly be in possession of those materials. This would include employees who handle explosive materials as part of the production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees, such as blasters, who actually use explosive materials.

Where direct physical control over explosive materials is absent, an employee has constructive possession where he knowingly has the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others. For example, an employee at a construction site who keeps keys for magazines in which explosive materials are stored or who directs the use of explosive materials by other employees would be in constructive possession of the explosive materials. Likewise, an employee transporting explosive materials from a licensee to a purchaser has constructive possession of the explosive materials, even though the employee may not have direct contact with the explosives.

The criteria for issuing licenses have been revised to provide that a license will not be issued to an applicant if any of the employees authorized to possess explosive materials is described in any paragraph of section 842(i) of the statute. This section lists "prohibited persons" who may not lawfully receive or possess explosive materials including felons, unlawful drug users, and fugitives.

A new provision has been added to require that applicants for limited permits provide a certification with the application stating that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period of the permit. This provision is effective May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.11, 555.34, 555.49, 555.54, and 555.57.

III. Time Period for Acting on Applications

Current law gives ATF 45 days to act on an application for a license or permit. The Act extended that period to 90 days. This provision is effective on May 24, 2003. Regulations that implement this provision of the Act are in § 555.49.

IV. Inspection Authority

The Act also amended the licensing criteria to provide that ATF must verify "by inspection" that applicants for user

permits and licenses have places of storage for explosive materials that meet the standards of safety and security set forth in the regulations. This will require an on-site inspection of all new applicants for user permits and licenses issued on and after May 24, 2003, in order to verify compliance with the storage requirements specified in the regulations. The inspection requirement will also apply to renewals for user permits and licenses after the effective date.

The Act does not require an on-site inspection of storage facilities for applicants for limited permits. Instead, it provides that ATF may verify by inspection or by such other means as the Attorney General determines appropriate that the applicant for the limited permit has suitable storage. The Act allows ATF the option to verify storage by means other than an on-site inspection for the first or second renewal of a limited permit, and requires an on-site inspection for the third renewal if an inspection has not been conducted within the previous 3 years. Other means of verification include written certifications, telephone interviews, site plans, magazine description worksheets, and other appropriate means. The above provisions of the Act are effective on May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.24, 555.34, 555.49, 555.54, 555.57, 555.121, 555.125, and 555.126.

V. Posting of Permits

The Act amended section 843(g) of the Federal explosives laws, 18 U.S.C. 843(g), to provide that only licensees and holders of user permits must post their licenses and permits and make them available for inspection. Thus, holders of limited permits are exempted from this requirement. This provision is effective on May 24, 2003.

Regulations that implement this provision of the Act are in § 555.101.

VI. Background Checks and Letters of Clearance

A. Voluntary Checks Not Associated With a License or Permit Application

Effective May 24, 2003, the Act requires ATF to conduct background checks on responsible persons and employees authorized to possess explosive materials upon request by a licensee or permittee. In addition, the law requires ATF to determine whether any of the responsible persons or employees are prohibited persons under 18 U.S.C. 842(i), and to notify the employer of the determination. Also, the

Act requires ATF to issue a letter of clearance to the responsible person or employee, if the results of the background check do not indicate that the person is prohibited from possessing explosive materials. If the results of the background check indicate that the person may be prohibited from possessing explosive materials, ATF must notify the employer of the determination and issue a letter to the employee or responsible person advising of the determination, providing information concerning how the disability may be relieved, and explaining how the determination may be appealed.

Regulations that implement these provisions of the Act are in §§ 555.33. Section 555.33 provides that, if ATF receives from a licensee or permittee the names and appropriate identifying information of responsible persons and employees who will be authorized by an employer to possess explosive materials in the course of employment with an employer, ATF will conduct a background check to determine whether the responsible person or employee is one of the persons prohibited from possessing explosive materials. If ATF determines that the responsible person or the employee does not fall within a prohibited category, ATF will notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance that confirms the determination. As noted in House Report 107-658, ATF will not violate the privacy rights of an employee by disclosing to an employer the reason for the determination that an employee is a prohibited person. The employer will be notified only whether the employee is cleared or may be a prohibited person. Only an employee who ATF has determined is prohibited will receive information regarding the basis for the prohibition.

If ATF determines that the responsible person or employee is prohibited from possessing explosive materials, ATF will notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that: confirms the determination; explains the grounds for the determination; provides information on how the disability may be relieved; and explains how the determination may be appealed. The employer must then take immediate steps to remove the responsible person from his position directing the management and policies of the business or operations as they relate to explosive materials or, as the

case may be, to remove the employee from a position requiring the possession of explosive materials. Also, if the employer has listed the employee as a person authorized to accept delivery of explosive materials, the employer must remove the employee from such list and immediately, and in no event later than the second business day after such change, notify distributors of such change.

Section 555.33 also provides for an appeal process for a responsible person or employee to challenge an adverse determination. Such appeals must be submitted to the Director in writing within 45 days of issuance of the determination. In the case of employees and responsible persons who have not submitted fingerprint cards, fingerprints must be submitted in accordance with the instructions in the letter of denial. In the case of both responsible persons and employees, it may be necessary to submit additional information or documents in support of an appeal, such as certified court records. Responsible persons and employees, where appropriate, are encouraged to contact the agency that originated the record containing the information causing the adverse determination. If the records are corrected as a result of contact with an originating agency, ATF will take steps to correct the record with the agency responsible for the record system.

B. Background Checks Conducted in Connection With Applications for License or Permit (Including Renewals)

The background checks conducted under section 555.33 will also be done in conjunction with the issuance of a license or permit under 18 U.S.C. 843.

There is no requirement that persons holding a license or permit prior to May 24, 2003, submit names of responsible persons and employees for background checks. Such licensees and permittees need not provide this information until their license or permit is renewed on or after May 24, 2003. Moreover, ATF has no authority, prior to May 24, 2003, to conduct background checks that are not associated with a license or permit application, including a renewal application.

C. Reporting Changes in Responsible Persons and Employees Authorized To Possess Explosive Materials

All persons who have been issued licenses or permits, including renewals, on and after May 24, 2003, must report any change in responsible persons or employees authorized to possess explosive materials. ATF will then conduct a background check on any

new responsible persons or employees in accordance with section 555.33. The report of such changes will ensure that all persons having access to or possession of explosive materials are not prohibited persons likely to misuse explosives for criminal or terrorist purposes. Regulations that implement these provisions of the Act are in §§ 555.33 and 555.57.

VII. Prohibited Persons

A. Definitions

The Act amended 18 U.S.C. 842(d) and 842(i) to provide additional categories of persons who may not lawfully transport, ship, receive or possess explosive materials. Prior to amendment, persons under indictment for or convicted of a felony, fugitives from justice, unlawful users of or persons addicted to controlled substances, and persons adjudicated as a mental defective or committed to a mental institution were prohibited from transporting, shipping, receiving or possessing explosive materials. The Act added aliens (other than permanent resident aliens and certain other excepted aliens), persons dishonorably discharged from the military, and persons who have renounced their U.S. citizenship to the list of prohibited persons. These provisions of the law became effective on January 24, 2003.

Definitions for the categories of prohibited persons are set forth in section 555.11 and are consistent with the definitions for the categories of persons prohibited from receiving or possessing firearms contained in 27 CFR 478.11. (For background information concerning these definitions see T.D. ATF-391, June 27, 1997; 62 FR 34634.) The definitions in this part and part 478 of this chapter are also consistent with judicial decisions interpreting the statutory categories of prohibited persons. The new definitions in section 555.11 include the three new categories added to the law by the Act as well as definitions for categories that have been in the statute since 1970. These include "committed to a mental institution," "adjudicated as a mental defective," and "unlawful user of or addicted to any controlled substance." It was necessary to define all these terms so that persons applying for explosives licenses or permits on or after the effective date of this interim rule, will know whether responsible persons (such as partners, corporate officers, and directors) are prohibited and therefore cannot be associated with the applicant. It is also necessary to define these terms so that persons who are subject to explosives disabilities are put on notice that they

may not lawfully transport, ship, receive or possess explosives. These persons need to know the criteria ATF will use in determining who is subject to such disabilities so that they may apply for relief from disabilities pursuant to 18 U.S.C. 845(b) if they desire.

Finally, it is also necessary to clearly define the categories of prohibited persons so that a thorough background check can be conducted on applicants for licenses and permits, responsible persons, and persons applying for relief from disabilities. A clear understanding of which persons fall within the different statutory categories is necessary to determine whether a particular person is a prohibited person under the law. Background checks will also be conducted on employees authorized to possess explosive materials by an employer applying for, or renewing, a license or permit that will be issued on and after May 24, 2003. Because it generally takes 90 days to process such applications, it is anticipated that many applications for the new limited permit will be submitted in February and March of 2003. Thus, background checks on employees may begin in February 2003, necessitating clear definitions for the guidance of those persons conducting the background checks. Clear definitions will also assist employees and responsible persons who appear to fall within a category of prohibited persons in preparing an appeal to a prohibited person determination they believe is erroneous or to file an application for relief from disabilities if they desire.

An amendment has been made to section 555.45(a) requiring submission of ATF Form 5400.28, Responsible Person Questionnaire, for all applications for a license or permit postmarked on or after the effective date of this interim rule. The purpose of the questionnaire is to obtain a certification from each responsible person stating that he or she is not prohibited from receiving or possessing explosive materials under the new prohibited persons provisions of the law, *i.e.*, non-excepted aliens, persons dishonorably discharged from the military, and renunciates.

As stated previously in relation to licensing criteria, in determining whether a particular person is in possession of explosives, ATF is guided by case law under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. Possession may be actual or constructive, but in all instances no violation of section 842(i) is committed unless the person "knowingly" possesses the explosives.

Regulations that implement the prohibited persons provisions of the Act are in §§ 555.11, 555.26, 555.106, and 555.142.

B. Department of Transportation Exemption

Current law, 18 U.S.C. 845(a)(1), provides an exemption from the Federal explosives laws (except for specified plastic explosives and bombing and arson offenses) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety." The Act did not amend this provision of the law. This provision exempts persons from application of the Federal explosives laws when (1) the Department of Transportation (DOT) has actually regulated a relevant aspect of the transportation of explosive materials or explicitly determined that regulation is not necessary; and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of this exemption, the term "safety" includes security concerns.

DOT has recently issued an interim final rule, effective February 3, 2003, that addresses security issues regarding transportation of explosives by aliens via commercial motor vehicles and railroads from Canada into the United States. 68 FR 6083 (February 6, 2003). In the new regulation, DOT has exercised its authority to make security determinations, and generally provides that Canadian truck and rail operators may transport explosives to the United States only after they have been the subject of security checks to ensure that the operators do not pose a security risk.

The DOT interim rule did not establish new requirements regarding the transportation of explosives by air or by water, but the supplementary information to that rule discussed the existing rules and procedures enforced by the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and by the United States Coast Guard, regulating aliens transporting explosives in commerce into the United States by air or by water, respectively.

DOT is currently assessing the need for new or revised regulations concerning security aspects of the commercial transportation of explosives and certain other hazardous materials by air, rail, highway, and vessel carriers. As part of this assessment, DOT is examining the extent to which security

concerns related to prohibited persons who handle explosives incident to and in connection with the commercial transportation of explosives are already addressed under existing regulations. Where such concerns are not currently addressed in the existing DOT regulatory scheme, DOT has the authority to issue new or revised regulations in the future addressing the security risks posed by the commercial transportation of explosives by any of the categories of prohibited persons. For example, DOT has stated that it plans to issue regulations in the near future to implement the provisions of section 1012 of the USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001). This statute requires, in pertinent part, that the Department of Justice conduct background checks on drivers of commercial motor vehicles applying to States for a hazardous materials endorsement and report the results of the background check to DOT, which will then determine whether the driver poses a security risk.

When DOT has exercised its authority to assess the security risks related to persons who handle explosives incident to and in connection with the transportation of explosives in commerce, and has an existing regulation or has implemented a new or revised regulation addressing this aspect of the transportation of explosives by a particular mode, whether by truck, railroad, air, or water, ATF's authority to enforce the Federal explosives laws against such persons during the commercial transportation of explosives is preempted under 18 U.S.C. 845(a)(1), to the extent that the regulation and security assessment address the prohibited categories set forth in 18 U.S.C. 842(i). For example, if DOT conducts a security assessment and adopts regulations to permit certain felons to obtain a commercial driver's license with a hazardous materials endorsement, then ATF would have no authority to enforce 18 U.S.C. 842(i)(1) against such felons while they are shipping, transporting, receiving, or possessing explosives incident to and in connection with the commercial transportation of explosives.

It is important to note that DOT's regulatory authority covers commercial transportation only. Thus, the preemption of the explosives laws occurs only during the commercial transportation of the explosives (and applies only to the shipping, possessing and receiving incident to and in connection with commercial transportation). A prohibited person who ships, transports, receives, or possesses explosives not incident to and

in connection with commercial transportation will violate 18 U.S.C. 842(i) irrespective of DOT's regulation.

ATF has amended 27 CFR 555.141(a)(1) to include language clarifying the DOT exception of 18 U.S.C. 845(a)(1).

ATF has recently been advised that the trucking industry may employ persons who are subject to Federal explosives disabilities. It is ATF's longstanding position that a driver transporting explosive materials in a truck or other vehicle has possession of such materials. Thus, if the driver falls within any of the categories of prohibited persons, the driver may not knowingly ship or transport any explosive in interstate or foreign commerce or receive or possess any explosive which has been shipped or transported in interstate or foreign commerce, unless the person is addressed by a current DOT security assessment regulation as discussed above, or one of the other statutory exemptions applies. See 18 U.S.C. 845(a).

It is not ATF's intention to place unnecessary obstacles in the path of legitimate commerce in explosive materials. However, Congress has made it clear that the persons specified in section 842(i) may not lawfully possess explosives unless their activities fall within one of the statutory exceptions in 18 U.S.C. 845(a) or they apply for and receive relief from disabilities under 18 U.S.C. 845(b). ATF encourages any individual who is a prohibited person, who has a need to possess or transport explosives for purposes of his employment, and who is not within the scope of any DOT security assessment regulation, to apply for relief under 18 U.S.C. 845(b) as soon as possible. ATF will process relief applications as quickly as possible when a person's employment is contingent upon lawful possession of explosives.

VIII. Interstate Commerce Element of 18 U.S.C. 842(i)

The Act also amended section 842(i) to broaden the interstate commerce element of the statute. Prior to amendment, section 842(i) made it unlawful for prohibited persons to ship or transport any explosive in interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in interstate or foreign commerce. The amendment adds "or affecting" before "interstate" each place the term appears in section 842(i). This provision became effective on January 24, 2003.

Regulations that implement this provision of the Act are in § 555.26.

IX. Samples of Explosive Materials and Ammonium Nitrate

The Act added a new section 843(i) to Chapter 40 providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product. The Act requires ATF to authorize, by regulation, reimbursement of the fair market value of the samples furnished as well as reasonable cost of shipment.

This provision became effective on January 24, 2003. Regulations that implement this provision of the Act are in § 555.110.

X. Amendment of 18 U.S.C. 844(f)

The Act amended section 844(f)(1) of Chapter 40 to broaden the scope of the statute. Prior to amendment, this section made it unlawful to damage or destroy by means of fire or explosive any building, vehicle, or other personal or real property owned, possessed by, or leased to a Federal agency. The amendment broadens the statute by including any institution or organization receiving Federal financial assistance within the categories of property covered by the prohibition. This amendment restores language inadvertently deleted from the statute by the Antiterrorism and Effective Death Penalty Act of 1996. This provision became effective on January 24, 2003.

XI. Relief From Disabilities

The Act amended section 845(b) of Chapter 40 to expand ATF's authority to grant relief from disabilities to all categories of prohibited persons. Prior to enactment of the Act, the statute provided authority for ATF to grant relief only to persons under indictment for or convicted of a felony. ATF had no statutory authority to grant relief to persons falling within the remaining prohibited categories. Although all persons may now apply for relief, the statute did not expand the existing language allowing licensees or permittees who apply for relief due to an indictment or conviction for a felony to continue their operations until the application for relief is acted upon. Thus, because the law does not provide a similar benefit for other disabilities, licensees and permittees subject to other disabilities will not be allowed to continue operations during the pendency of a relief application. This provision became effective on January 24, 2003.

Regulations that implement this provision of the law are in § 555.142. The regulation requires an application for relief to be filed on ATF Form 5400.29, Application for Restoration of Explosives Privileges. The regulation also specifies categories of persons to whom the Director will generally not grant relief. Such categories of persons include persons who have not been discharged from parole or probation for at least 2 years, fugitives, non-expected aliens, unlawful drug users, persons committed to a mental institution or adjudicated as a mental defective, and persons prohibited by the law of the State in which the applicant resides from receiving or possessing explosive materials. However, the Director will consider such applications and may grant relief in extraordinary circumstances where the granting of such relief is consistent with the public interest. The Director may also grant relief to non-expected aliens who have been lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least 2 years if he determines that the applicant has a compelling need to possess explosives, such as for purposes of employment. Thus, ATF will entertain relief applications from such persons who need to possess explosives for purposes of their employment with an explosives licensee or permittee or other employment where possession of explosives is required as part of the employee's duties. The regulation is intended to convey ATF's general policy that it is not in the public interest to grant relief to prohibited persons so they may lawfully possess explosives in the United States. This approach is consistent with the history and purposes of the Act, which indicate Congress' intention to prevent access to explosives by those categories of persons deemed most likely to misuse them in criminal or terrorist incidents.

ATF has been advised that there may be a significant number of non-expected aliens who are employed by the explosives industry in the United States or who transport explosives via common carrier. To date, it appears that the majority of such aliens are Canadian citizens. As stated above, non-expected aliens who have a need to possess explosives for purposes of employment fall within the "compelling need" provisions of the regulations and will have their applications for relief processed expeditiously. ATF has been working with the Canadian government to streamline the procedures for processing relief applications submitted

by Canadian citizens, particularly with respect to criminal background checks conducted in connection with such investigations. Again, it is not ATF's intention to impose unnecessary obstacles to commerce in explosives. ATF anticipates granting relief to many Canadian citizens who have no criminal records and whose records and reputations indicate that their possession of explosives in the United States poses no threat to public safety. Likewise, citizens of other countries who have a need to possess explosives for purposes of employment can expect ATF to act as quickly as possible on properly completed applications for relief from disabilities.

XII. Theft Reporting

The Act added a new section 844(p) to Chapter 40, providing for felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery. Existing law, section 842(k), makes it unlawful for any person having knowledge of the theft or loss of explosive materials to fail to report such theft or loss within 24 hours of discovery to ATF and local authorities. The penalty for violation of section 842(k) is a fine of not more than \$100,000, imprisonment for not more than one year, or both. By contrast, the penalty for licensees or permittees who violate section 844(p) is a fine of not more than \$250,000, imprisonment for not more than five years, or both. This provision became effective on January 24, 2003.

Regulations that implement this provision of the Act are in § 555.165.

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, Bureau of Alcohol, Tobacco, Firearms and Explosives 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. Following is an assessment of the costs and benefits of this regulation.

1. Estimated Costs

i. Cost of obtaining a “limited permit” for infrequent users of explosive materials. By statute, the fee for obtaining a “limited permit” is capped at \$50 for an original permit and at one-half the origination fee for timely renewals. This rule sets the fee for obtaining an original limited permit significantly lower than the statutory allowance. The fee is set at \$25 for an original limited permit and at \$12 for each renewal. ATF estimates that the requirement to obtain a limited permit will impact approximately 20,000 persons. Each applicant for a limited permit must submit an application that includes information on each responsible person and employee possessor and which includes photographs and fingerprints for each responsible person. ATF estimates that applicants for a limited permit will generally have three to five responsible persons per applicant. ATF estimates that the average cost of taking and submitting photographs will be approximately \$1.50 per photograph. Although some law enforcement agencies assess fees for taking fingerprints, others perform this service without charge. ATF is advised that, where a fee is assessed, the fee generally ranges from five to ten dollars per set of fingerprints. In connection with background checks conducted as part of the application process, employee possessors will have to submit fingerprints if the employee appeals an adverse determination or challenges the accuracy of the record upon which the adverse determination is based. ATF estimates that each applicant for a limited permit will have three to five employee possessors and that name-based checks of such employees will result in adverse determinations for less than one percent. ATF estimates that the time required to complete the application for a limited permit is 1 hour and 30 minutes. In addition, ATF estimates that the time required for each employee possessor to complete Form 5400.28 (Employee Possessor Questionnaire) is 20 minutes per employee. Finally, each applicant for a limited permit will spend 1 to 2 hours complying with an ATF inspection of their storage facilities. Therefore, ATF estimates that the initial economic impact of this rule is as follows:

Application fee—20,000 applicants × \$25 = \$500,000.

Photographs for responsible persons— $100,000 \times \$1.50 = \$150,000$.

Fingerprints for responsible persons— $100,000 \times \$10 = \$1,000,000$.

Fingerprints for employees— $1,000 \times \$10 = \$10,000$.

Time to complete application— $20,000 \times 1.5 \text{ hours} \times \$13 \text{ (mean hourly wage for clerical worker)} = \$390,000$.

Time to complete Form 5400.28— $100,000 \times .33 \text{ (hours)} \times \$14 \text{ (mean hourly wage for blue collar worker)} = \$462,000$.

Time spent on ATF inspection— $20,000 \times 2 \text{ (hours)} \times \$17 \text{ (mean hourly wage for supervisory blue collar workers)} = \$680,000$.

Accordingly, this interim rule will result in approximately a \$3,192,000 cost to the explosives industry’s nonlicensed/nonpermitted population.

ii. No additional cost to limited permittees associated with storage of explosive materials. Existing law and regulations require that all persons storing explosive materials do so in accordance with 27 CFR part 555, subpart K. Accordingly, persons who have been acquiring explosive materials, even on an infrequent basis, should already have proper explosives storage facilities. However, because the Safe Explosives Act brings previously nonlicensed/nonpermitted infrequent users of explosive materials under ATF’s oversight and mandates that ATF verify the storage facilities of all licensees and permittees, certain persons may need to obtain an appropriate explosives storage magazine. Because infrequent users of explosive materials will not likely be storing large quantities of explosive materials, ATF believes that such users will acquire indoor explosives storage magazines. Quantity restrictions for indoor storage of explosive materials are limited to 50 pounds. The cost of indoor explosives storage magazines that meet the regulatory requirements of part 555, subpart K is approximately \$300. However, because the requirement to properly store explosive materials is a pre-existing requirement for all persons, whether a licensee or permittee or a nonlicensed/nonpermitted person, this cost does not result from the Act and this rule.

iii. Similar process for explosives transactions under existing regulations and new regulations. ATF regulations already require that nonlicensee/nonpermittee purchasers complete a transaction record requiring, among other things, that purchasers provide their names, addresses, appropriate identifying information, and a certification that they are not prohibited

from receiving explosive materials. The distributor is required to verify the identity of the purchaser, and indicate on the transaction record the quantity and type of explosive materials distributed to the purchaser. This record is completed each time a seller distributes explosive materials to a nonlicensee/nonpermittee.

This rule will require the same basic information before a purchaser may be issued a “limited permit” and the six Intrastate Purchase of Explosives Coupons (IPECs). This rule continues the requirement that a distributor complete a form prior to distribution of explosive materials. However, much of the information required by the form is listed on the IPEC that will be affixed to the transaction record. This change will not result in significant costs.

iv. Additional cost of compliance for licensees and holders of user permits. There are approximately 8,600 persons holding explosives licenses and user permits as of the date of this interim rule. Upon the first renewal of such licenses and permits on and after May 24, 2003, the holders must comply with the new photograph and fingerprint requirements of the Act. Each renewal application must also include a completed Form 5400.28 for each employee possessor. Assuming three to five responsible persons per licensee/permittee and three to five employee possessors for same, the additional estimated cost of compliance would be as follows:

Time to complete Form 5400.28— $8,600 \times 5 \times \$14 \text{ (mean hourly wage for blue collar worker)} = \$602,000$.

Photographs for responsible persons— $8,600 \times 5 \times \$1.50 = \$64,500$.

Fingerprints for responsible persons— $8,600 \times 5 \times \$10 = \$430,000$.

Fingerprints for employees— $430 \times \$10 = \$4,300$.

Accordingly, this interim rule will result in a cost to persons currently holding a license or permit of approximately \$1,100,800.

2. Benefits

The Act and this rule provide important benefits in public security and safety. The Act mandates ATF to perform background checks of persons and business entities to ensure that responsible persons and employee possessors of explosive materials are not prohibited from shipping, transporting, receiving, or possessing explosive materials. This mandate enables ATF to determine whether a person is subject to an explosives disability before such person may obtain explosive materials. Thus, the Act as implemented by this

rule provides preventative tools to increase public safety and security. Moreover, the required background checks may help to ensure that would-be terrorists are not permitted to obtain explosive materials for illicit use.

Prior to enactment, ATF did not have the authority to verify that persons, except licensees and permittees, properly stored explosive materials. The Act requires that all persons who wish to acquire explosive materials obtain, at minimum, a "limited permit," and that ATF verify the storage facilities of all licensees and permittees. This mandate authorizes ATF to verify that explosive materials are securely stored and that storage of explosive materials does not pose a threat to public safety.

3. Assessment

The public security and safety benefits of this rule outweigh its costs. As stated above, the costs are minimal, affect a small sector of the economy, and in some cases represent pre-existing requirements (e.g., storage).

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, ATF 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: Civil Justice Reform

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

D. Administrative Procedure Act (APA)

Immediate implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the exceptions found at 5 U.S.C. 553(b)(A), (b)(B), and (d). The Safe Explosives Act was enacted in response to the terrorist attacks of September 11, 2001. Its provisions close numerous gaps in Federal law to prevent the threat of the use of explosives in future acts of terrorism. Issuance of a notice of proposed rulemaking followed by a comment period, consideration of the comments, and publication of a final rule would delay implementation of these important security and safety provisions. In addition, the effective date for certain provisions of the Safe

Explosives Act was January 24, 2003, only 60 days after enactment, with the remaining provisions effective on May 24, 2003. The explosives industry needs immediate guidance to comply with the statute. For example, industry members will need to determine whether any of their employees are prohibited from possessing explosives under the new prohibited person categories added to 18 U.S.C. 842(i). In addition, the explosives industry, responsible persons, employees who possess explosives in the course of their employment, and members of the general public need immediate guidance on the procedures for applying for relief from explosives disabilities under 18 U.S.C. 845(b). It is also necessary to provide immediate guidance concerning the limited permit provisions of the law to give persons who may require such a permit time to learn the new requirements of the law, determine whether they should obtain a limited permit or a user permit, and file an application to avoid conduct which will be unlawful after the applicable effective date.

The portion of this interim rule that reflects agency organization, procedure and practice is exempt under section 553(b)(A) of the APA. With respect to the portion of this interim rule that makes technical amendments, there is good cause for a finding that notice and public procedure is unnecessary and contrary to the public interest pursuant to section 553(b)(B) of the APA. With respect to the remainder of this interim rule, there is good cause for a finding that notice and public procedure is impracticable and contrary to the public interest, pursuant to section 553(b)(B) of the APA. The due and timely execution of the agency's responsibilities in implementing the Safe Explosives Act would be unavoidably impeded by a time-consuming notice and comment period. For the reasons stated above, there is also good cause for a finding that this interim rule is exempt from the effective date limitations under section 553(d).

E. 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 Director, Bureau of Alcohol, Tobacco, Firearms and

Explosives, 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. This rule will affect persons who hold a Federal explosives license as a manufacturer or importer of, or dealer in, explosive materials. It will also affect persons who hold Federal user permits that authorize them to obtain explosives in interstate or foreign commerce. Users include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect infrequent or occasional users who obtain explosive materials within their State of residence. The foregoing would include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect "responsible persons" affiliated with Federal explosives licensees and permittees, as well as employees authorized by a licensee or permittee to possess explosive materials in the course of their employment. Finally, the rule will affect individuals subject to Federal explosives disabilities under 18 U.S.C. 842(i).

Although a number of the persons affected by the rule may be small businesses, many of these businesses already hold Federal explosives licenses and permits and, therefore, the economic impact upon these businesses will not be significant. Moreover, the requirement for businesses to comply with the requirements of the rule is a statutory mandate that ATF must implement. The rule will improve ATF's service to the explosives industry and the general public by setting forth clear procedures for obtaining a license or permit under the new provisions of the law, by setting forth definitive criteria for conducting background checks, and by providing a thorough description of the relief from disabilities provisions of 18 U.S.C. 845(b). The obligations placed on limited permittees under the provisions of the interim rule are only those necessary to ensure that such persons are not prohibited from possessing explosives and to limit their access to explosives in accordance with the restrictions in the law. The rule has been drafted to impose as few obstacles as possible to the acquisition of explosive materials by these infrequent, intrastate users.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small

Business Regulatory Enforcement Fairness Act of 1996. 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.

G. 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.

H. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under the following control numbers: 1140-0030, 1140-0073, 1140-0074, 1140-0075, 1140-0076, 1140-0077, 1140-0078, 1140-0079, 1140-0080, 1140-0081, 1140-0082, and 1140-0083. 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 555.33, 555.34, 555.41, 555.45, 555.49, 555.54, 555.57, 555.103, 555.105, 555.110, 555.125, 555.126, and 555.142.

This information is required to ensure compliance with the provisions of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296. The collections of information are mandatory. The likely respondents are individuals and businesses.

As indicated, the collections of information contained in this interim rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the

Office of Management and Budget, Attention: Desk Officer for the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

- Whether the collections of information are necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco, Firearms and Explosives, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the collections of information (see below);
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

With respect to § 555.33:
Estimated total annual reporting and/or recordkeeping burden: 1,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

With respect to § 555.34:
Estimated total annual reporting and/or recordkeeping burden: 264 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .33 hours (20 minutes).

Estimated number of respondents and/or recordkeepers: 800.

Estimated annual frequency of responses: 1.

With respect to §§ 555.41 and 555.45:
Estimated total annual reporting and/or recordkeeping burden: 2,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 seconds.

Estimated number of respondents and/or recordkeepers: 40,000.

Estimated annual frequency of responses: 6.

With respect to § 555.49:
Estimated total annual reporting and/or recordkeeping burden: 416 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 seconds.

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.54:
Estimated total annual reporting and/or recordkeeping burden: 170 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .17 hours (10 minutes).

Estimated number of respondents and/or recordkeepers: 1,000.

Estimated annual frequency of responses: 1.

With respect to § 555.57:
Estimated total annual reporting and/or recordkeeping burden: 100,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 2.

With respect to § 555.103:
Estimated total annual reporting and/or recordkeeping burden: 25,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.105:
Estimated total annual reporting and/or recordkeeping burden: 25,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.110:
Estimated total annual reporting and/or recordkeeping burden: 1,175 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 2,350.

Estimated annual frequency of responses: 1.

With respect to § 555.126:
Estimated total annual reporting and/or recordkeeping burden: 12,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .08 hours (5 minutes).

Estimated number of respondents and/or recordkeepers: 5,000.

Estimated annual frequency of responses: 300.

With respect to § 555.142:
Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated average annual burden hours per respondent and/or recordkeeper: .02 hours (1 minute).

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: 1.

Public Participation

ATF is requesting comments on the interim regulations from all interested persons. ATF is also specifically requesting comments on the clarity of this interim rule and how it may be made easier to understand.

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

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

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

- Be legible;
- Reference this document number;
- Be 8½" x 11" in size;
- Contain a legible written signature;

and

- Be not more than five pages long.

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

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927-7890.

Regulation Identification Number

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

Drafting Information

The author of this document is James P. Ficareta; Firearms, Explosives and Arson; 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

For the reasons discussed in the preamble, 27 CFR Part 555, is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

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

Authority: 18 U.S.C. 847.

Par. 2. Section 555.1 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 555.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), Pub. L. 103-322 (108 Stat. 1796), Pub. L. 104-132 (110 Stat. 1214), and Pub. L. 107-296 (116 Stat. 2135).

(b) * * *

(3) The issuance of permits;

* * * * *

Par. 3. Section 555.11 is amended by revising the definitions for "ATF officer," "Bureau," "Director," and "Permittee" and by adding new definitions for the terms "Adjudicated as a mental defective," "Alien," "Appropriate identifying information," "ATF," "Committed to a mental institution," "Common or contract carrier," "Controlled substance," "Discharged under dishonorable conditions," "Identification document," "Limited permit," "Mental institution," "Renounced U.S. citizenship," "Responsible person," and "Unlawful user of or addicted to any controlled substance" to read as follows:

§ 555.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective. (a) A determination by a court, board,

commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others;

or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term will include—

(1) A finding of insanity by a court in a criminal case; and

(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility by any court or pursuant to articles 50a and 76b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Alien. Any person who is not a citizen or national of the United States.

* * * * *

Appropriate identifying information.

The term means, in relation to an individual:

(a) The full name, date of birth, place of birth, sex, race, street address, State of residence, telephone numbers (home and work), country or countries of citizenship, and position at the employer's business or operations of responsible persons and employees authorized to possess explosive materials;

(b) The business name, address, and license or permit number with which the responsible person or employee is affiliated;

(c) If an alien, INS-issued alien number or admission number; and

(d) Social security number, as optional information (this information is not required but is helpful in avoiding misidentification when a background check is conducted).

* * * * *

ATF. (a) *Prior to January 24, 2003.* The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

ATF officer. (a) *Prior to January 24, 2003.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

(b) *On and after January 24, 2003.* An officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Bureau. (a) *Prior to January 24, 2003.* The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

* * * * *

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Common or contract carrier. Any individual or organization engaged in the business of transporting passengers or goods.

* * * * *

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

* * * * *

Director. (a) *Prior to January 24, 2003.* The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by general court-martial. The term does not include any separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge.

* * * * *

Identification document. A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, a political subdivision of a foreign government, an international

governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

* * * * *

Limited permit. A permit issued to a person authorizing him to receive for his use explosive materials from a licensee or permittee in his state of residence on no more than 6 occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce.

* * * * *

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

* * * * *

Permittee. Any user of explosives for a lawful purpose who has obtained either a user permit or a limited permit under this part.

* * * * *

Renounced U.S. citizenship. (a) A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

- (1) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or
- (2) Before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).

(b) The term will not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

Responsible person. An individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Generally, the term includes partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.

* * * * *

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of a controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before possession of the explosive materials,

but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire explosive materials or receives or possesses explosive materials. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

* * * * *

Par. 4. Section 555.24 is revised to read as follows:

§ 555.24 Right of entry and examination.

(a) Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or holder of a user permit for the purpose of inspecting or examining any records or documents required to be kept under this part, and any facilities in which explosive materials are kept or stored.

(b) Any ATF officer may inspect the places of storage for explosive materials of an applicant for a limited permit or, in the case of a holder of a limited permit, at the time of renewal of such permit.

(c) The provisions of paragraph (b) of this section do not apply to an applicant for the renewal of a limited permit if an ATF officer has, within the preceding 3 years, verified by inspection that the applicant's place of storage for explosive materials meets the requirements of subpart K of this part.

Par. 5. Section 555.26 is revised to read as follows:

§ 555.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

(a) *General.* No person, other than a licensee or permittee knowingly may transport, ship, cause to be transported, or receive any explosive materials:

Provided, That the provisions of this paragraph (a) do not apply to 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).

(b) *Holders of a limited permit.* No person who is a holder of a limited permit may—

(1) Transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials;

(2) Receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder; or

(3) Receive explosive materials on more than 6 separate occasions, during the period of the permit, from one or more licensees or permittees whose premises are located within the State of residence of the limited permit holder. (See § 555.105(b) for the definition of "6 separate occasions.")

(c) *Possession by prohibited persons.* No person may ship or transport any explosive material in or affecting interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in or affecting interstate or foreign commerce who:

(1) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(4) Has been adjudicated as a mental defective or has been committed to a mental institution;

(5) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) Has been discharged from the armed forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

(d) *Distribution to prohibited persons.* No person may knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age;

(2) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(3) Is a fugitive from justice;

(4) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(5) Has been adjudicated as a mental defective or has been committed to a mental institution;

(6) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(7) Has been discharged from the armed forces under dishonorable conditions; or

(8) Having been a citizen of the United States, has renounced citizenship.

(e) See § 555.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or possession of plastic explosives that do not contain a detection agent.

Par. 6. Section 555.27 is revised to read as follows:

§ 555.27 Out-of-State disposition of explosive materials.

(a) No nonlicensee or nonpermittee may distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or who has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) The provisions of this section do not apply on and after May 24, 2003.

Par. 7. Section 555.33 is added to subpart C to read as follows:

§ 555.33 Background checks and clearances (effective May 24, 2003).

(a) *Background checks.* (1) If the Director receives from a licensee or permittee the names and appropriate identifying information of responsible persons and employees who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Director will conduct a background check in accordance with this section.

(2) The Director will determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26). In making such determination, the Director may take into account a letter or document issued under paragraph (a)(3) of this section.

(3)(i) If the Director determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26), the Director will notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, as the case may be, a letter of clearance which confirms the determination.

(ii) If the Director determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26), ATF will notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that confirms the determination; explains the grounds for the determination; provides information on how the disability may be relieved; and explains how the determination may be appealed. The employer will retain the notification as part of his permanent records in accordance with § 555.121. The employer will take immediate steps to remove the responsible person from his position directing the management or policies of the business or operations as they relate to explosive materials or, as the case may be, to remove the employee from a position requiring the possession of explosive materials. Also, if the employer has listed the employee as a person authorized to accept delivery of explosive materials, as specified in § 555.103 or § 555.105, the employer must remove the employee from such list and immediately, and in no event later than the second business

day after such change, notify distributors of such change.

(b) *Appeals and correction of erroneous system information.* (1) *In general.* A responsible person or employee may challenge the adverse determination set out in the letter of denial, in writing and within 45 days of issuance of the determination, by directing his or her challenge to the basis for the adverse determination, or to the accuracy of the record upon which the adverse determination is based, to the Director. The appeal request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge. Any record or document of a court or other government entity or official furnished in support of an appeal must be certified by the court or other government entity or official as a true copy. In the case of an employee, or responsible person who did not submit fingerprints, such appeal must be accompanied by two properly completed FBI Forms FD-258 (fingerprint card). The Director will advise the individual in writing of his decision and the reasons for the decision.

(2) *Employees.* The letter of denial, among other things, will advise an employee who elects to challenge an adverse determination to submit the fingerprint cards as described above. The employee also will be advised of the agency name and address that originated the record containing the information causing the adverse determination (“originating agency”). At that time, and where appropriate, an employee is encouraged to apply to the originating agency to challenge the accuracy of the record(s) upon which the denial is based. The originating agency may respond to the individual’s application by addressing the individual’s specific reasons for the challenge, and by indicating whether additional information or documents are required. If the record is corrected as a result of the application to the originating agency, the individual may so notify ATF which will, in turn, verify the record correction with the originating agency and take all necessary steps to contact the agency responsible for the record system and correct the record. The employee may provide to ATF additional and appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge to ATF’s decision to uphold the initial denial. If ATF does not receive such additional documentation or record(s) within 45 days of the date of the decision

upholding the initial denial, ATF will close the appeal.

(3) *Responsible persons.* The letter of denial, among other things, will advise a responsible person of the agency name and address which originated the record containing the information causing the adverse determination (“originating agency”). A responsible person who elects to challenge the adverse determination, where appropriate, is encouraged to apply to the originating agency to challenge the accuracy of the record(s) upon which the denial is based. The originating agency may respond to the individual’s application by addressing the individual’s specific reasons for the challenge, and by indicating whether additional information or documents are required. If the record is corrected as a result of the application to the originating agency, the individual may so notify ATF which will, in turn, verify the record correction with the originating agency and take all necessary steps to contact the agency responsible for the record system and correct the record. A responsible person may provide additional documentation or records as specified for employees in paragraph (b)(2) of this section.

(Approved by the Office of Management and Budget under control number 1140-0081)

Par. 8. Section 555.34 is added to subpart C to read as follows:

§ 555.34 Replacement of stolen or lost ATF Form 5400.30 (Intrastate Purchase of Explosives Coupon (IPEC)).

When any Form 5400.30 is stolen, lost, or destroyed, the person losing possession will, upon discovery of the theft, loss, or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director by telephoning 1-888-ATF-BOMB (nationwide toll free number). The report will explain in detail the circumstances of the theft, loss, or destruction and will include all known facts that may serve to identify the document. Upon receipt of the report, the Director will make such investigation as appears appropriate and may issue a duplicate document upon such conditions as the circumstances warrant.

(Approved by the Office of Management and Budget under control number 1140-0077)

Par. 9. Section 555.41 is revised to read as follows:

§ 555.41 General.

(a) *Licenses and permits issued prior to May 24, 2003.* (1) Each person intending to engage in business as an importer or manufacturer of, or a dealer

in, explosive materials, including black powder, must, before commencing business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must obtain a permit under this subpart; except that it is not necessary to obtain a permit if the user intends to lawfully purchase:

(i) Explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State; or

(ii) Commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(2) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer must file an application, with the required fee (see § 555.42), with ATF in accordance with the instructions on the form (see § 555.45). A license will, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials except under the following circumstances:

(i) A separate license will not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

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

(iii) It will not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(iv) A separate license will not be required of licensed manufacturers with respect to their on-site manufacture of theatrical flash powder.

(3) Except as provided in paragraph (a)(1) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must file an application, with the required fee (see § 555.43), with ATF in accordance with the instructions on the form (see § 555.45). A permit will, subject to law, entitle the permittee to acquire, transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one permit is required under this part.

(b) *Licenses and permits issued on and after May 24, 2003.* (1) *In general.* (i) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, must, before commencing business, obtain the license required by this subpart for the business to be operated.

(ii) Each person who intends to acquire for use explosive materials within the State in which he resides on no more than 6 separate occasions during the 12-month period in which the permit is valid must obtain a limited permit under this subpart. (See § 555.105(b) for definition of "6 separate occasions.")

(iii) Each person who intends to acquire for use explosive materials from a licensee or permittee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who intends to acquire for use explosive materials within the State in which he resides on more than 6 separate occasions during a 12-month period, must obtain a user permit under this subpart.

(iv) It is not necessary to obtain a permit if the user intends only to lawfully purchase commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(2) *Importers, manufacturers, and dealers.* Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer must file an application, with the required fee (see § 555.42), with ATF in accordance with the instructions on the form (see § 555.45). A license will, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the

business specified by the license, at the location described on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials except under the following circumstances:

(i) A separate license will not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

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

(iii) It will not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials. No licensee will be required to obtain a user permit to lawfully transport, ship, or receive explosive materials in interstate or foreign commerce.

(iv) A separate license will not be required of licensed manufacturers with respect to their on-site manufacture of theatrical flash powder.

(3) *Users of explosive materials.* (i) A limited permit will, subject to law, entitle the holder of such permit to receive for his use explosive materials from a licensee or permittee in his state of residence on no more than 6 separate occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce. Holders of limited permits who need to receive explosive materials on more than 6 separate occasions during a 12-month period must obtain a user permit in accordance with this subpart.

(ii) Each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must file an application for a user permit, with the required fee (see § 555.43), with ATF in accordance with the instructions on the form (see § 555.45). A user permit will, subject to law, entitle the permittee to transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one user permit per person is required under this part, irrespective of the number of locations relating to explosive materials operated by the holder of the user permit.

(Approved by the Office of Management and Budget under control number 1140-0083)

Par. 10. Section 555.43 is revised to read as follows:

§ 555.43 Permit fees.

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

- (1) User—\$100 for a three-year period.
- (2) User-limited (nonrenewable)—\$75.
- (3) Limited—\$25 for a one-year period.

(b)(1) Each applicant for renewal of a user permit must pay a fee of \$50 for a three-year period.

(2) Each applicant for renewal of a limited permit must pay a fee of \$12 for a one-year period.

Par. 11. Section 555.45 is amended by adding a heading to paragraph (a) and two new sentences at the end of that paragraph; by adding a heading to paragraph (b) and two new sentences at the end of that paragraph; by adding a new paragraph (c); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.45 Original license or permit.

(a) *Licenses issued prior to May 24, 2003.* * * * The Chief, Firearms and Explosives Licensing Center, will not approve an application postmarked on or after March 20, 2003, unless it is submitted with a Responsible Person Questionnaire, ATF Form 5400.28. Form 5400.28 must be completed in accordance with the instructions on the form.

(b) *Permits issued prior to May 24, 2003.* * * * The Chief, Firearms and Explosives Licensing Center, will not approve an application postmarked on or after March 20, 2003, unless it is submitted with a Responsible Person Questionnaire, ATF Form 5400.28. Form 5400.28 must be completed in accordance with the instructions on the form.

(c) *Licenses and permits issued on and after May 24, 2003.* (1) *License.* Any person who intends to engage in the business as an importer of, manufacturer of, or dealer in explosive materials, or who has not timely submitted an application for renewal of a previous license issued under this part, must file an application for License, Explosives, ATF F 5400.13, with ATF in accordance with the instructions on the form. ATF Form 5400.13 may be obtained by contacting any ATF office. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a);

(ii) Include appropriate identifying information concerning each responsible person;

(iii) Include a photograph and fingerprints for each responsible person;

(iv) Include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials by submitting ATF F 5400.28 for each employee; and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) *User permit and limited permit.* Except as provided in § 555.41(b)(1)(iv), any person who intends to acquire explosive materials in the State in which that person resides or acquire explosive materials from a licensee or holder of a user permit in a State other than the State in which that person resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted an application for renewal of a previous permit issued under this part, must file an application for Permit, Explosives, ATF F 5400.16 or Permit, User Limited Display Fireworks, ATF F 5400.21 with ATF in accordance with the instructions on the form. ATF Form 5400.16 and ATF Form 5400.21 may be obtained by contacting any ATF office. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a);

(ii) Include a photograph, fingerprints, and appropriate identifying information for each responsible person;

(iii) Include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials by submitting ATF F 5400.28 for each employee; and

(iv) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) The Chief, Firearms and Explosives Licensing Center, will conduct background checks on responsible persons and employees authorized by the applicant to possess explosive materials in accordance with § 555.33. If it is determined that any responsible person or employee is described in any paragraph of section 842(i) of the Act, the applicant must submit an amended application indicating removal or reassignment of that person before the license or permit will be issued.

(Approved by the Office of Management and Budget under control number 1140-0083)

Par. 12. Section 555.49 is revised to read as follows:

§ 555.49 Issuance of license or permit.

(a) *Issuance of license or permit prior to May 24, 2003.* (1) The Chief, Firearms and Explosives Licensing Center, will issue a license or permit if—

(i) A properly executed application for the license or permit is received; and

(ii) Through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit.

(2) The Chief, Firearms and Explosives Licensing Center, will approve a properly executed application for a license or permit, if:

(i) The applicant is 21 years of age or over;

(ii) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom distribution of explosive materials is prohibited under the Act;

(iii) The applicant has not willfully violated any provisions of the Act or this part;

(iv) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(v) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(vi) The applicant has storage for the class (as described in § 555.202) of explosive materials described on the application, unless he establishes to the satisfaction of the Chief, Firearms and Explosives Licensing Center, that the business or operations to be conducted will not require the storage of explosive materials;

(vii) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business; and

(viii) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341).

(3) The Chief, Firearms and Explosives Licensing Center, will approve or the regional director (compliance) will deny any application for a license or permit within the 45-day

period beginning on the date a properly executed application was received. However, when an applicant for license or permit renewal is a person who is, under the provisions of § 555.83 or § 555.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under § 555.142, as the case may be.

(4) The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only will be issued.

(5) Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(b) *Issuance of license or permit on and after May 24, 2003.* (1) The Chief, Firearms and Explosives Licensing Center, will issue a license or permit if:

(i) A properly executed application for the license or permit is received; and

(ii) Through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit.

(2) The Chief, Firearms and Explosives Licensing Center, will approve a properly executed application for a license or permit, if:

(i) The applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in any paragraph of section 842(i) of the Act;

(ii) The applicant has not willfully violated any provisions of the Act or this part;

(iii) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(iv) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(v) The applicant has storage for the class (as described in § 555.202) of explosive materials described on the application;

(vi) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to

explosive materials for the location in which he intends to do business;

(vii) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341);

(viii) None of the employees of the applicant who will be authorized by the applicant to possess explosive materials is a person described in any paragraph of section 842(i) of the Act; and

(ix) In the case of an applicant for a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.

(3) The Chief, Firearms and Explosives Licensing Center, will approve or the regional director (compliance) will deny any application for a license or permit within the 90-day period beginning on the date a properly executed application was received.

However, when an applicant for license or permit renewal is a person who is, under the provisions of § 555.83 or § 555.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under § 555.142, as the case may be.

(4) The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only will be issued.

(5) Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(Approved by the Office of Management and Budget under control number 1140-0082)

Par. 13. Section 555.51 is revised to read as follows:

§ 555.51 Duration of license or permit.

(a) *Prior to May 24, 2003.* An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

(b) *On and after May 24, 2003.* (1) An original license or user permit is issued for a period of three years. A renewal license or user permit is also issued for a period of three years. However, a user-

limited permit is valid only for a single purchase transaction.

(2) A limited permit is issued for a period of one year. A renewal limited permit is also issued for a period of one year.

Par. 14. Section 555.54 is amended by designating the introductory text as paragraph (a); by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively; by adding a new paragraph (b); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.54 Change of address.

* * * * *

(b) Licensees and permittees whose mailing address will change must notify the Chief, Firearms and Explosives Licensing Center, at least 10 days before the change.

(Paragraph (b) approved by the Office of Management and Budget under control number 1140-0080)

Par. 15. Section 555.57 is amended by revising the section heading; by redesignating the existing paragraph as paragraph (a); by adding new paragraphs (b), (c), and (d); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.57 Change of control, change in responsible persons, and change of employees.

* * * * *

(b) For all licenses or permits issued on and after May 24, 2003, each person holding the license or permit must report to the Chief, Firearms and Explosives Licensing Center, any change in responsible persons or employees authorized to possess explosive materials. Such report must be submitted within 30 days of the change and must include appropriate identifying information for each responsible person. Reports relating to newly hired employees authorized to possess explosive materials must be submitted on ATF F 5400.28 for each employee.

(c) Upon receipt of a report, the Chief, Firearms and Explosives Licensing Center, will conduct a background check, if appropriate, in accordance with § 555.33.

(d) The reports required by paragraph (b) of this section must be retained as part of a licensee's or permittee's permanent records for the period specified in § 555.121.

(Approved by the Office of Management and Budget under control number 1140-0074)

Par. 16. Section 555.101 is amended by adding the word "user" before the

word "permit" in the section heading and wherever else it appears.

Par. 17. Section 555.102 is amended by revising paragraph (b) to read as follows:

§ 555.102 Authorized operations by permittees.

* * * * *

(b) *Distributions of surplus stocks.* (1) *Distributions of surplus stocks prior to May 24, 2003.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 555.103, and to nonlicensees or to nonpermittees in accordance with § 555.105(a)(4).

(2) *Distributions of surplus stocks on and after May 24, 2003.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 555.103 and § 555.105.

Par. 18. Section 555.103 is revised to read as follows:

§ 555.103 Transactions among licensees/ permittees and transactions among licensees and holders of user permits.

(a) *Transactions among licensees/ permittees prior to May 24, 2003.* (1) *General.* (i) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

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

(iii) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(iv) Where possession of explosive materials is transferred at the distributor's premises, the distributor must in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a common or contract carrier transporting explosive materials to a licensee or permittee, the distributor delivering explosive materials must obtain an executed ATF F 5400.8, Explosives Delivery Record, from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and required by this part.

Example 1. An ATF F 5400.8 is required when:

a. An employee of the purchaser takes possession at the distributor's premises.

b. An employee of a common or contract carrier hired by the purchaser takes possession at the distributor's premises.

Example 2. An ATF F 5400.8 is not required when:

a. An employee of the distributor takes possession of the explosives for the purpose of transport to the purchaser.

b. An employee of a common or contract carrier hired by the distributor takes possession of the explosives for the purpose of transport to the purchaser.

(2) *License/permit verification of individuals.* (i) The distributee must furnish a certified copy (or, in the case of a user-limited, the original) of the license or permit. The certified copy need be furnished only once during the current term of the license or permit. Also, a licensee need not furnish certified copies of licenses to other licensed locations operated by such licensee.

(ii) The distributor may obtain any additional verification as the distributor deems necessary.

(3) *License/permit verification of business organizations.* (i) A business organization may (in lieu of furnishing a certified copy of a license) furnish the distributor a certified list which contains the name, address, license number and date of license expiration of each licensed location. The certified list need be furnished only once during the current term of the license or permit. Also, a business organization need not furnish a certified list to other licensed locations operated by such business organization.

(ii) A business organization must, prior to ordering explosive materials, furnish the licensee or permittee a current certified list of the representatives or agents authorized to

order explosive materials on behalf of the business organization showing the name, address, and date and place of birth of each representative or agent. A licensee or permittee may not distribute explosive materials to a business organization on the order of a person who does not appear on the certified list of representatives or agents and, if the person does appear on the certified list, the licensee or permittee must verify the identity of such person.

(4) *Licensee/permittee certified statement.* (i) A licensee or permittee ordering explosive materials from another licensee or permittee must furnish a current, certified statement of the intended use of the explosive materials, e.g., resale, mining, quarrying, agriculture, construction, sport rocketry, road building, oil well drilling, seismographic research, to the distributor.

(ii) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(iii) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(iv) The licensee or permittee purchasing explosive materials must revise the furnished copy of the certified statement only when the information is no longer current.

(5) *User-limited permit transactions.* A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see § 555.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor must write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

(b) *Transactions among licensees/ permittees on and after May 24, 2003.* (1) *General.* (i) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a holder of a user permit disposing of surplus stock to a licensee; a holder of a user permit; or a holder of a limited permit who is within the same State as the distributor) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to

continue business or operations under this part has been terminated.

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

(iii) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(2) *Verification of license/user permit.*

(i) Prior to or with the first order of explosive materials, the distributee must provide the distributor a certified copy (or, in the case of a user-limited, the original) of the distributee's license or user permit. However, licensees or holders of user permits that are business organizations may (in lieu of a certified copy of a license or user permit) provide the distributor with a certified list that contains the name, address, license or user permit number, and date of the license or user permit expiration of each location.

(ii) The distributee must also provide the distributor with a current list of the names of persons authorized to accept delivery of explosive materials on behalf of the distributee. The distributee ordering explosive materials must keep the list current and provide updated lists to licensees and holders of user permits on a timely basis. A distributor may not transfer possession of explosive materials to any person whose name does not appear on the current list of names of persons authorized to accept delivery of explosive materials on behalf of the distributee. In all instances, the distributor must verify the identity of the person accepting possession of explosive materials on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(iii) A licensee or holder of a user permit ordering explosive materials from another licensee or permittee must provide to the distributor a current, certified statement of the intended use of the explosive materials, e.g., resale, mining, quarrying, agriculture, construction, sport rocketry, road building, oil well drilling, seismographic research, etc.

(A) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(B) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(C) The licensee or holder of a user permit purchasing explosive materials must revise the furnished copy of the certified statement only when the information is no longer current.

(3) *Delivery of explosive materials by a common or contract carrier.* When a common or contract carrier will transport explosive materials from a distributor to a distributee who is a licensee or holder of a user permit, the distributor must obtain an executed ATF F 5400.8, Explosives Delivery Record, from the common or contract carrier before relinquishing possession of the explosive materials.

(i) The common or contract carrier must complete Section A of Form 5400.8.

(ii) The distributor must verify the identity of the person accepting possession for the common or contract carrier by examining an identification document (as defined in § 555.11) and noting in Section B of Form 5400.8 the type of document presented. The distributor must complete all other information required on Form 5400.8.

(iii) The distributor must maintain Form 5400.8 in his permanent records in accordance with § 555.121.

(4) *User-limited permit transactions.* A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see § 555.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor must write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

(Approved by the Office of Management and Budget under control number 1140-0079)

Par. 19. Section 555.105 is revised to read as follows:

§ 555.105 Distributions to nonlicensees, nonpermittees, and limited permittees.

(a) *Distributions to nonlicensees and nonpermittees prior to May 24, 2003.* (1) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(2) Except as provided in paragraph (a)(3) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or

nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, ATF F 5400.4, required by § 555.126. Disposition of ATF F 5400.4 will be made in accordance with § 555.126.

(3) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State and the purchaser and the licensee have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (a)(2), (a)(5), and (a)(6) of this section applicable to intrastate transactions occurring on the licensee's business premises.

(4) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of this section are fully met.

(5) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity must verify the identity of the representative or agent of the business entity who is authorized to order explosive materials on behalf of the business entity. Each business entity ordering explosive materials must furnish the distributing licensee prior to or with the first order of explosive materials a current certified list of the names of representatives or agents authorized to order explosive materials on behalf of the business entity. The business entity ordering explosive materials is responsible for keeping the certified list current. A licensee may not distribute explosive materials to a business entity on the order of a person whose name does not appear on the certified list.

(6) Where the possession of explosive materials is transferred at the distributor's premises, the distributor must in all instances verify the identity of the person accepting possession on behalf of the distributee before

relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a common or contract carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor delivering explosive materials must obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and by this part. (See examples in § 555.103(a)).

(7) 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).

(b) *Distributions to holders of limited permits on and after May 24, 2003.* (1) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(2) A licensed importer, licensed manufacturer or a licensed dealer may distribute explosive materials to a holder of a limited permit if such permittee is a resident of the same State in which the licensee's business premises are located, the holder of the limited permit presents in person or by mail ATF Form 5400.4, Limited Permittee Transaction Report (LPTR), and the licensee completes Form 5400.4 in accordance with § 555.126(b). In no event will a licensee distribute explosive materials to a holder of a limited permit unless the holder presents a Form 5400.4 with an original unaltered and unexpired Intrastate Purchase of Explosives Coupon (IPEC), ATF Form 5400.30, affixed. The coupon must bear the name, address, permit number, and the coupon number of the limited permittee seeking distribution of the explosives.

(3) A holder of a limited permit is authorized to receive explosive materials from a licensee or permittee whose premises are located in the same State of residence in which the premises of the holder of the limited permit are located on no more than 6 separate occasions during the one-year period of the permit. For purposes of this section, the term "6 separate occasions" means six deliveries of explosive materials. Each delivery must—

(i) Relate to a single purchase transaction made on one ATF F 5400.4;

(ii) Be referenced on one commercial invoice or purchase order; and

(iii) Be delivered to the holder of the limited permit in one shipment delivered at the same time.

(4) A holder of a user permit may dispose of surplus stocks of explosive materials to a licensee or holder of a user permit, or a holder of a limited permit who is a resident of the same State in which the premises of the holder of the user permit are located. A holder of a limited permit may dispose of surplus stocks of explosive materials to another holder of a limited permit who is a resident of the same State in which the premises of the distributor are located, if the transaction complies with the requirements of paragraph (b)(2) of this section and § 555.126(b). A holder of a limited permit may also dispose of surplus stocks of explosive materials to a licensee or holder of a user permit if the disposition occurs in the State of residence of the holder of the limited permit. (See § 555.103.)

(5) Each holder of a limited permit ordering explosive materials must furnish the distributing licensee prior to or with the first order of the explosive materials a current list of the names of employees authorized to accept delivery of explosive materials on behalf of the limited permittee. The distributee ordering explosive materials must keep the list current and provide updated lists to licensees and holders of user permits on a timely basis. A licensed importer, licensed manufacturer, licensed dealer, or permittee, selling or otherwise distributing explosive materials to a holder of a limited permit must, prior to delivering the explosive materials, obtain from the limited permittee a current list of persons who are authorized to accept deliveries of explosive materials on behalf of the limited permittee. A licensee or permittee may not deliver explosive materials to a person whose name does not appear on the list.

(6)(i) *Delivery at the distributor's premises.* Where possession of explosive materials is transferred directly to the distributee at the distributor's premises, the distributor must obtain an executed Form 5400.4 in accordance with § 555.126(b) and must in all instances verify the identity of the person accepting possession on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(ii) *Delivery by distributor.* Where possession of explosive materials is transferred by the distributor to the

distributee away from the distributor's premises, the distributor must obtain an executed Form 5400.4 in accordance with § 555.126(b) and must in all instances verify the identity of the person accepting possession on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(iii) *Delivery by common or contract carrier hired by the distributor.* Where a common or contract carrier hired by the distributor will transport explosive materials from the distributor to a holder of a limited permit, the limited permittee will, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail. Before the delivery at the distributor's premises of explosive materials to the common or contract carrier who will transport explosive materials to a limited permittee, the distributor must obtain an executed ATF Form 5400.8, Explosives Delivery Record, from the common or contract carrier before releasing the explosive materials. Form 5400.8 must contain all of the information required on the form and by this part. At the time of delivery the common or contract carrier, as agent for the distributor, must verify the identity of the person accepting delivery on behalf of the distributee, note the type and number of the identification document and provide this information to the distributor. The distributor will enter this information in the appropriate section on Form 5400.4. Form 5400.8 must be attached to the distributor's copy of the Form 5400.4 and retained in his permanent records in accordance with § 555.121.

(iv) *Delivery by common or contract carrier hired by the distributee.* Where a common or contract carrier hired by the distributee will transport explosive materials from the distributor to the holder of a limited permit, the holder of the limited permit will, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail. Before the delivery at the distributor's premises to the common or contract carrier who will transport explosive materials to the holder of a limited permit, the distributor must obtain an executed ATF Form 5400.8, Explosives Delivery Record, from the common or contract carrier before releasing the explosive materials. Form 5400.8 must contain all of the

information required on the form and by this part. Form 5400.8 must be attached to the distributor's copy of the Form 5400.4 and retained in his permanent records in accordance with § 555.121.

(7) 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 holder of a limited permit, 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).

(Approved by the Office of Management and Budget under control number 1140-0075)

Par. 20. Section 555.106 is amended by:

- a. Revising paragraph (a);
- b. Removing the word "or" at the end of paragraph (c)(3);
- c. Removing the period at the end of paragraph (c)(4) and adding in its place a semicolon;
- d. Adding new paragraphs (c)(5), (c)(6), and (c)(7); and by removing "§ 555.105(g)" in paragraph (d) and adding in its place "§ 555.105(a)(7) or (b)(7)" to read as follows:

§ 555.106 Certain prohibited distributions.

(a) A licensee or permittee may not distribute explosive materials to any person except—

- (1) A licensee;
- (2) A holder of a user permit; or
- (3) A holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.

* * * * *

(c) * * *

(5) Is an alien, other than an alien who—

- (i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101));
- (ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) Has been discharged from the armed forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

* * * * *

Par. 21. Section 555.108 is amended by removing the word "permittee" wherever it appears in paragraph (a) and adding in its place the phrase "holder of a user permit."

Par. 22. Section 555.110 is added to subpart F to read as follows:

§ 555.110 Furnishing of samples (Effective on and after January 24, 2003).

(a) *In general.* Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate must, when required by letter issued by the Director, furnish—

- (1) Samples of such explosive materials or ammonium nitrate;
- (2) Information on chemical composition of those products; and
- (3) Any other information that the Director determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

(b) *Reimbursement.* The Director will reimburse the fair market value of samples furnished pursuant to paragraph (a) of this section, as well as reasonable costs of shipment.

(Approved by the Office of Management and Budget under control number 1140-0073)

Par. 23. Section 555.121 is amended by removing the word "subpart" in paragraph (a)(2) and adding in its place the word "part" and by revising paragraph (b) to read as follows:

§ 555.121 General.

* * * * *

(b) ATF officers may enter the premises of any licensee or holder of a user permit for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 555.24). Section 843(f) of the Act requires licensees and holders of user permits to make all required records available for examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensees and permittees (including holders of limited permits) to submit all reports and information relating to all required records and their contents, as the regulations in this part prescribe.

* * * * *

Par. 24. Section 555.125 is revised to read as follows:

§ 555.125 Records maintained by permittees.

(a) *Records maintained by permittees prior to May 24, 2003.* (1) Each permittee must take true and accurate physical inventories that will include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee must take a special inventory—

- (i) At the time of commencing business, which is the effective date of the permit issued upon original qualification under this part;
- (ii) At the time of changing the location of his premises to another region;
- (iii) At the time of discontinuing business; and
- (iv) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance) and the duplicate retained by the permittee. If a special inventory required by paragraphs (a)(1)(i) through (iv) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a)(1)(i) through (iv) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 555.127.)

(2) Each permittee must, not later than the close of the next business day following the date of acquisition of

explosive materials, enter the following information in a separate record:

- (i) Date of acquisition;
- (ii) Name or brand name of manufacturer;
- (iii) Manufacturer's marks of identification;
- (iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.);
- (v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc., and size (length and diameter or diameter only of display fireworks)); and
- (vi) Name, address, and license number of the persons from whom the explosive materials are received.

(3) Each permittee must, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 555.124(c).

(4) Each permittee must maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed in § 555.126.

(5) The regional director (compliance) may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records must submit a letter application to the regional director (compliance) and must describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

(b) *Records maintained by permittees on and after May 24, 2003.* (1) Each holder of a user permit must take true and accurate physical inventories that will include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee must take a special inventory—

- (i) At the time of commencing business, which is the effective date of the permit issued upon original qualification under this part;
- (ii) At the time of changing the location of his premises;
- (iii) At the time of discontinuing business; and
- (iv) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional

director (compliance) and the duplicate retained by the permittee. If a special inventory required by paragraphs (b)(1)(i) through (iv) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. The record of the yearly inventory, other than a special inventory required by paragraphs (b)(1)(i) through (iv) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 555.127.)

(2) Each holder of a limited permit must take true and accurate physical inventories, at least annually, that will include all explosive materials on hand required to be accounted for in the records kept under this part.

(3) Each holder of a user permit or a limited permit must, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

- (i) Date of acquisition;
- (ii) Name or brand name of manufacturer;
- (iii) Manufacturer's marks of identification;
- (iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.);
- (v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc., and size (length and diameter or diameter only of display fireworks)); and
- (vi) Name, address, and license number of the persons from whom the explosive materials are received.

(4) Each holder of a user permit or a limited permit must, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 555.124(c).

(5) When a record book is used as a permittee's permanent record the permittee may delay entry of the required information for a period not to exceed seven days if the commercial record contains all of the required information prescribed by paragraphs (b)(3) and (b)(4) of this section. However, the commercial record may be used instead of a record book as a permanent record provided that the record contains all of the required information prescribed by paragraphs (b)(3) and (b)(4) of this section.

(6) Each holder of a user permit or a limited permit must maintain separate records of disposition of surplus stocks of explosive materials to holders of a

limited permit as prescribed in § 555.126.

(7) The regional director (compliance) may authorize alternate records to be maintained by a holder of a user permit or a limited permit to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records must submit a letter application to the regional director (compliance) and must describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1140-0030)

Par. 25. Section 555.126 is amended by:

- a. Revising the section heading;
- b. Adding a new heading to paragraph (a);
- c. Redesignating paragraphs (a) through (f) as (a)(1) through (a)(6);
- d. Removing “§ 555.105(c)” in redesignated paragraph (a)(2) and adding in its place “§ 555.105(a)(3)”;
- e. Removing “paragraph (d)” in redesignated paragraph (a)(3) and adding in its place “paragraph (a)(4)”;
- f. Adding a new paragraph (b); and
- g. Revising the parenthetical text at the end of the section to read as follows:

§ 555.126 Explosives transaction record for distribution of explosive materials prior to May 24, 2003 and Limited Permittee Transaction Report for distribution of explosive materials on and after May 24, 2003.

(a) *Explosives transaction record for distribution of explosive materials prior to May 24, 2003.*

* * * * *

(b) *Limited Permittee Transaction Report for distribution of explosive materials on and after May 24, 2003.* (1) A licensee or permittee may not distribute explosive materials to any person who is not a licensee or permittee. A licensee or permittee may not distribute explosive materials to a limited permittee unless the distributor records the transaction on ATF Form 5400.4, Limited Permittee Transaction Report.

(2) Before distributing explosive materials to a limited permittee, the licensee or permittee must obtain an executed Form 5400.4 from the limited permittee with an original unaltered and unexpired Intrastate Purchase of Explosives Coupon (IPEC) affixed. Except when delivery of explosive materials is made by a common or

contract carrier who is an agent of the limited permittee, the licensee, permittee, or an agent of the licensee or permittee, must verify the identity of the holder of the limited permit by examining an identification document (as defined in § 555.11) and noting on the Form 5400.4 the type of document presented. The licensee or permittee must complete the appropriate section on Form 5400.4 to indicate the type and quantity of explosive materials distributed, the license or permit number of the seller, and the date of the transaction. The licensee or permittee must sign and date the form and include any other information required by the instructions on the form and the regulations in this part.

(3) One copy of Form 5400.4 must be retained by the distributor as part of his permanent records in accordance with paragraph (b)(4) of this section and for the period specified in § 555.121. The distributor must mail the other copy of Form 5400.4 to the Bureau of Alcohol, Tobacco, Firearms and Explosives in accordance with the instructions on the form.

(4) Each Form 5400.4 must be retained in chronological order by date of disposition, or in alphabetical order by name of limited permittee. A licensee may not, however, use both methods in a single recordkeeping system. Where there is a change in proprietorship by a limited permittee, the forms may continue to be filed together after such change.

(5) The requirements of this section are in addition to any other recordkeeping requirement contained in this part.

(Approved by the Office of Management and Budget under control number 1140-0078)

Par. 26. Section 555.128 is amended by adding the phrase “or new permittee” after the phrase “new licensee” in the first sentence.

Par. 27. Section 555.141 is amended by adding two new sentences at the end of paragraph (a)(1) to read as follows:

§ 555.141 Exemptions.

(a) * * *
 (1) * * * For example, regulations issued by the Department of Transportation addressing the security risk of aliens transporting explosives by commercial motor or railroad carrier from Canada preclude the enforcement of 18 U.S.C. 842(i)(5) against persons shipping, transporting, receiving, or possessing explosives incident to and in connection with the commercial transportation of explosives by truck or rail from Canada into the United States. Questions concerning this exception

should be directed to ATF's Public Safety Branch in Washington, DC.

* * * * *

Par. 28. Section 555.142 is amended by revising the section heading; by revising paragraphs (a) through (d); by adding a new paragraph (f); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.142 Relief from disabilities (effective January 24, 2003).

(a) Any person prohibited from shipping or transporting any explosive in or affecting interstate or foreign commerce or from receiving or possessing any explosive which has been shipped or transported in or affecting interstate or foreign commerce may make application for relief from disabilities under section 845(b) of the Act .

(b) An application for relief from disabilities must be filed with the Director by submitting ATF Form 5400.29, Application for Restoration of Explosives Privileges, in accordance with the instructions on the form. The application must be supported by appropriate data, including the information specified in paragraph (f) of this section. Upon receipt of an incomplete or improperly executed application for relief, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered abandoned.

(c)(1) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(2) Except as provided in paragraph (c)(3) of this section, the Director will not grant relief if the applicant—

- (i) Has not been discharged from parole or probation for a period of at least 2 years;
- (ii) Is a fugitive from justice;
- (iii) Is a prohibited alien;
- (iv) Is an unlawful user of or addicted to any controlled substance;
- (v) Has been adjudicated a mental defective or committed to a mental institution, unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored; or

(vi) Is prohibited by the law of the State where the applicant resides from receiving or possessing explosive materials.

(3)(i) The Director may grant relief to aliens who have been lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least 2 years if he determines that the applicant has a compelling need to possess explosives, such as for purposes of employment.

(ii) The Director may grant relief to the persons identified in paragraph (c)(2) of this section in extraordinary circumstances where the granting of such relief is consistent with the public interest.

(d) A person who has been granted relief under this section is relieved of all disabilities imposed by the Act for the disabilities disclosed in the application. The granting of relief will not affect any disabilities incurred subsequent to the date the application was filed. Relief from disabilities granted to aliens will be effective only so long as the alien retains his or her lawful immigration status.

* * * * *

(f)(1) Applications for relief from disabilities must include the following information:

(i) In the case of a corporation, or of any person having the power to direct or control the management of the corporation, information as to the absence of culpability in the offense for which the corporation, or any such person, was indicted, formally accused or convicted;

(ii) In the case of an applicant who is an individual, two properly completed FBI Forms FD-258 (fingerprint card), and a written statement from each of three references who are not related to the applicant by blood or marriage and have known the applicant for at least 3 years, recommending the granting of relief;

(iii) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, immigration status, and criminal record;

(iv) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding one year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of *nolo contendere* or plea of guilty or finding of guilt by the court;

(v) In the case of an applicant under indictment, a copy of the indictment or information;

(vi) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(vii) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's Certificate of Release or Discharge from Active Duty (Department of Defense Form 214), Charge Sheet (Department of Defense Form 458), and final court martial order;

(viii) In the case of an applicant who, having been a citizen of the United States, has renounced his or her

citizenship, a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States was in a state of war (*see* 8 U.S.C. 1481(a)(5) and (6)); and

(ix) In the case of an applicant who is an alien, documentation that the applicant is an alien who has been lawfully admitted to the United States; certification from the applicant including the applicant's INS-issued alien number or admission number, country/countries of citizenship, and immigration status, and certifying that the applicant is legally authorized to work in the United States, or other purposes for which possession of explosives is required; certification from an appropriate law enforcement agency of the applicant's country of citizenship stating that the applicant does not have a criminal record; and, if applicable, certification from a Federal explosives licensee or permittee or other employer stating that the applicant is employed by the employer and must possess explosive materials for purposes of

employment. These certifications must be submitted in English.

(2) Any record or document of a court or other government entity or official required by paragraph (f)(1) of this section must be certified by the court or other government entity or official as a true copy.

(Approved by the Office of Management and Budget under control number 1140-0076)

Par. 29. Section 555.165 is amended by designating the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 555.165 Failure to report theft or loss.

* * * * *

(b) On and after January 24, 2003, any licensee or permittee who fails to report a theft of explosive materials in accordance with § 555.30 will be fined under title 18 U.S.C., imprisoned not more than 5 years, or both.

Signed: March 14, 2003.

Bradley A. Buckles,

Director.

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