

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.