

(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