

example, if a distributee reports a shipment of explosives as lost or stolen, ATF can request the ATF Form 5400.8 from the distributor in order to properly identify the trucking company and the name of the specific employee who initially picked up the explosives. ATF believes that this information, documenting the movement of explosives from the distributor to the carrier, assists in reducing possible diversion of explosives to criminal or terrorist use.

Since 1971, ATF has imposed certain identification requirements upon common or contract carrier employees. For example, ATF has required documentation of the name, resident address, and identifying information of common or contract carrier employees. ATF also has required information related to the employee's driver's license number and identification document. ATF has provided the employees the option, however, to omit the latter information if the driver was "known" to the distributor. In the interim rule, ATF strengthened these requirements to ensure that the driver's identity in each case was properly and adequately documented and verified. ATF believes that this additional information further assists in documenting explosives movement and reduces possible criminal or terrorist diversion.

Based on preliminary comments on the initial interim rule, ATF has concluded that some of the information required on the ATF Form 5400.8 is not needed to trace delivery of explosives to a common or contract carrier. In light of this conclusion, as well as the recent DOT/TSA interim rules, ATF finds that there is no longer a significant reason to collect all of the information required by the ATF Form 5400.8. ATF will continue to require that distributors verify the identity of persons accepting possession of explosive materials for common or contract carriers, and record the name of the common or contract carrier and the full name of the driver. However, ATF will no longer require that this information be recorded on the ATF Form 5400.8. Instead, ATF will allow distributors to record the information in their permanent records. Because all pertinent information will be recorded in a distributor's permanent records, ATF does not believe that the elimination of this form will result in diversion of explosive materials to criminal or terrorist use.

Distributors will be required to verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid, unexpired driver's license issued

by any State, Canada, or Mexico. Distributors must record the name of the common or contract carrier and the full name of the driver in the distributor's permanent records that are required by 27 CFR 555.121. Current regulations governing required records also mandate the recording of, among other things, the date of disposition. See, e.g., 27 CFR 555.124(c)(1).

In the event of an ATF investigation of lost or stolen explosives, ATF has the statutory right to examine the permanent records of Federal explosives licensees and permittees without a warrant under 18 U.S.C. 843(f). Requiring distributors to record the full name of the driver and the name of the common or contract carrier in their permanent records will enable ATF to conduct a trace of explosive materials quickly and efficiently. Therefore, eliminating the Form 5400.8 will decrease the burden on distributors and common and contract carriers, yet the additional information required by that form still will be collected.

Discussion of This Interim Final Rule

This interim final rule removes the procedures set forth in 27 CFR 555.103(b)(3) and 555.105(b)(6)(iii) and (iv), which require transactions among licensees, user permittees, and limited permittees, on and after May 24, 2003, involving delivery of explosive materials by a common or contract carrier, to utilize the ATF Form 5400.8, Explosives Delivery Record. Specifically, this interim final rule removes the procedures related to the use of Form 5400.8, thereby removing any requirement to use the form in any and all explosives transactions on and after May 24, 2003. This interim final rule requires that distributors of explosive materials verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid unexpired driver's license issued by any State, Canada, or Mexico. In addition, distributors must record in the permanent records they are required to keep pursuant to 27 CFR 555.121 the name of the common or contract carrier and the full name of the driver. This rule also provides related clarification to § 555.103(b)(2)(ii).

This rule does not revise provisions related to the required use of ATF Form 5400.8 as described in 27 CFR 555.103(a)(1)(iv) (addressing use of the form in transactions among licensees and permittees prior to May 24, 2003) and in 27 CFR 555.105(a)(6) (addressing use of the form in distributions to nonlicensees and nonpermittees prior to

May 24, 2003). The reasons for this are as follows:

(1) As ATF has explained in its internet postings, immediately after January 24, 2003, ATF suspended until further notice mandatory use of the revised ATF Form 5400.8, Explosives Delivery Record. ATF's internet posting required that, until May 24, 2003, the old form (in use since 1998) continue to be used in transactions as described on the form. See <http://www.atf.gov/forms/pdfs/f54008old.pdf> (ATF F 5400.8 (7-98)).

(2) On and after May 24, 2003, the new ATF Form 5400.8 was required to be used in transactions as described herein. See <http://www.atf.gov/forms/pdfs/f54008may2003.pdf> (ATF Form 5400.8, Revised May 2003).

(3) Upon the publication date of this rule, the form is not required in any transaction whatsoever.

Licensees and permittees who have completed ATF Forms 5400.8 prior to the effective date of this interim final rule should continue to maintain them as part of their permanent records in accordance with section 555.121.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, a Regulatory Assessment is not required. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

B. Executive Order 13132

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

C. Executive Order 12988: Civil Justice Reform

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

D. Administrative Procedure Act (APA)

Because this rule eliminates the use of a particular form while maintaining the