DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[ATF No. 2002R–341F]

RIN 1140–AA00 and 1140–AA20

Implementing the Safe Explosives Act

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

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') is finalizing two Department of Justice (''Department'') interim final rules (''IFRs'') implementing the Safe Explosives Act. This rule formally ends those rules' interim status, responds to public comments from 2003 on the IFRs, rescinds ATF Ruling 2003–5 issued in response to IFR comments, and makes certain revisions to IFR provisions in response to the comments. They clarify when federal licensees/permittees must report changes in responsible persons and authorized employees; eliminate verifying identity of persons accepting delivery on behalf of distributees; and amend regulatory exemption language governing aspects of transporting explosive materials.

DATES: This rule is effective October 26, 2026.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at *ORA@atf.gov,* by mail at Office of Regulatory Affairs; Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 99 New York Avenue NE; Washington, DC 20226; or by telephone at (202) 648–7070.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The Safe Explosives Act (''SEA''), Title XI, Subtitle C of Public Law 107–296, of the Homeland Security Act of 2002 (November 25, 2002) (''HSA''), amended the federal explosives laws in 18 U.S.C. chapter 40 to, among other things: (1) include a federal licensing/permitting requirement for all explosive materials purchased or received on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new ''limited permit'' for certain types of explosives purchasers.

On March 20, 2003, ATF published an interim final rule in the **Federal Register** implementing the SEA, Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296, 68 FR 13768 (Mar. 20, 2003) (''IFR 1''). On September 11, 2003, ATF published another interim final rule in the **Federal Register**, Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296—Delivery of Explosive Materials by Common or Contract Carrier, 68 FR 53509 (Sep. 11, 2003) (''IFR 2''), which removed the requirement set forth in IFR 1 that all common/contract carriers making deliveries on or after May 24, 2003, complete ATF Form 5400.8, Explosives Delivery Record (''Form 5400.8''), prior to taking possession of explosive materials for delivery to a federal explosives licensee/permittee. This final rule adopts the regulations set forth in both interim final rules (collectively, ''IFRs'') with minor technical amendments for purposes of clarity and some modifications in response to comments received.

B. Summary of the Major Provisions of This Rule

The SEA and its implementing regulations created important benefits to public security and safety. Prior to the SEA, ATF performed background checks on licensee/permittee responsible persons (''RPs''), but not on other employees who were authorized to possess explosive materials in the course of their employment. The SEA introduced a requirement that ATF also perform background checks on employees authorized to possess explosive materials to ensure that these employees are not prohibited by law from shipping, transporting, receiving, or possessing explosive materials.[1] This requirement was added to enable ATF to prevent a prohibited person, who otherwise might be hired if no background check was performed, from gaining access to and possessing explosives while employed by an explosives licensee/permittee. Moreover, the required background checks were introduced to help to ensure that criminals and other prohibited persons are not permitted to obtain explosive materials for illicit use. Thus, the SEA, as implemented through the two IFRs, introduced preventative tools to increase public safety and security.

The SEA also added that all persons who wish to acquire, but not deal in, explosive materials must obtain, at minimum, a ''limited permit.'' Further, the SEA added a requirement that ATF inspect all licensee/permittee storage facilities. This mandate was introduced to authorize ATF to verify that explosive materials are stored in accordance with the regulations and that stored explosive materials do not pose a threat to public safety. These changes were also implemented via the two IFRs in 2003.

This final rule adopts most provisions from IFRs 1 and 2 without change. However, this final rule does modify the verification requirements that apply when explosive materials are delivered via common/contract carrier. IFR 1 required common/contract carriers to verify the identity of the person accepting delivery on behalf of the distributee, verify that the person was authorized to accept on behalf of the distributee, note the type and number of the identification document furnished by the person, and report that information to the distributor. When IFR

[1] The Attorney General is responsible for enforcing the SEA. The Attorney General has delegated the responsibility for administering and enforcing the SEA and federal explosives laws to the Director of ATF, subject to the direction of the Attorney General and Deputy Attorney General. *See* 18 U.S.C. 847; 28 CFR 0.130(a).

1 was issued, explosives and transportation industry members informed ATF that these requirements placed an undue burden on common/contract carriers, and drivers were concerned that the requirements would be overly time consuming and potentially cause them to be held personally liable if the explosives were delivered to unauthorized persons.[2]

ATF acknowledged these concerns in two subsequent documents, issuing ATF Ruling 2003–5 in May 2003 and IFR 2 in September 2003. Pursuant to 27 CFR 555.22, which allows ATF to approve alternative procedures or variations from requirements, Ruling 2003–5 created a variance from the IFR 1 requirement to verify the identity of the person accepting explosive materials on behalf of a limited permittee. The ruling authorizes a variance from the requirements of § 555.105(b)(6)(iii) for federal explosives licensees/permittees distributing explosive materials to limited permittees via common/contract carrier. As an alternative method or procedure, such distributors may verify receipt of the explosive materials by telephone, facsimile, email, or other means within three business days after shipping the materials, in lieu of requiring the common/contract carrier to verify the identity of the individual accepting delivery of the explosives. In such cases, the distributor must note on ATF Form 5400.4, Limited Permittee Transaction Report (''Form 5400.4''), when delivery occurred and when they contacted the distributee. The ruling, however, did not remove the regulatory requirement from § 555.105(b)(6)(iii) and did not address the identity verification requirements for common/contract carriers when delivering to licensees/user permittees. IFR 2 removed the requirement from § 555.103(b)(2)(ii) that common/contract carriers must verify the identity of persons accepting on the licensee/user permittee distributee's behalf but also did not remove the requirement from § 555.105(b)(6)(iii).

The remaining requirements that the recipient's identity be verified by the common/contract carrier or the distributor when such carriers delivered to a limited permittee remained a concern for industry. Industry members raised burden issues and expressed concern about reconciling the ruling and the regulatory provision, as well as concerns about the different requirements for different distributees, in public comments ATF received on both IFRs 1 and 2. Having considered the concerns expressed in the comments, ATF is issuing this final rule to remove the remaining IFR 1 verification and reporting requirement for common/contract carriers and to rescind ATF Ruling 2003–05 and its variance.

II. Background

Title XI of the Organized Crime Control Act of 1970 (''OCCA''), Public Law 91–452, 84 Stat. 922 (1970), added chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials) to title 18 of the U.S. Code.[3] This act established the foundational federal framework for regulating manufacturing, distributing, and storing explosive materials. One of title XI's stated purposes was to reduce the ''hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.'' Public Law 91–452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. *See* 18 U.S.C. 847. Congress and the Attorney General have delegated that responsibility to the Director of ATF (''Director''), subject to the direction of the Attorney General and the Deputy Attorney General.[4] *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Accordingly, ATF has promulgated regulations implementing title XI in 27 CFR part 555.

The Safe Explosives Act (''SEA''), Title XI, Subtitle C of Public Law 107–296, 116 Stat. 2135, 2280, of the HSA (November 25, 2002), amended the federal explosives laws in 18 U.S.C. chapter 40 to, among other things, (1) include a federal licensing/permitting requirement for purchasing and receiving explosive materials on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new ''limited permit'' for certain types of explosives purchasers. In general, the provisions of the HSA became effective 60 days after the date enacted, on January 24, 2003.

A. Provisions of SEA Effective January 24, 2003

Pursuant to section 4 of the HSA, the following provisions of the SEA became effective on January 24, 2003, the general effective date provision for the entire HSA:

- Adding three categories of persons (citizen renunciants, aliens with certain exceptions, and persons dishonorably discharged from the Armed Forces) who may not lawfully ship, transport, receive, or possess explosive materials (HSA sec. 1123(a), (b));
- Specifying that it violates the law if a prohibited person ships or transports explosives or materials for explosives, or receives or possesses explosives or materials for explosives that have been shipped or transported, in or affecting interstate or foreign commerce (HSA sec. 1123(b)(3));
- Providing ATF with the authority to require licensed manufacturers, licensed importers, and persons who manufacture or import explosive materials or ammonium nitrate to provide ATF with samples, information on chemical composition, and other information relevant to identifying the product (HSA sec. 1124);
- Adding to the types of property which it is a crime to maliciously damage or destroy, or attempt to do the same, particularly when tied to explosives, property owned, possessed by, or leased to any institution or organization receiving federal financial assistance (HSA sec. 1125);
- Expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons if the applicant is found not to be likely to act in a manner dangerous to public safety and that such relief is not contrary to the public interest (HSA sec. 1126); and
- Adding a new theft-reporting violation, providing felony penalties for a licensee/permittee who fails to report a theft of explosives within 24 hours of discovery (HSA sec. 1127).

B. Provisions of SEA Effective May 24, 2003

Pursuant to section 1122(i)(1) of the HSA, the following provisions of the SEA became effective on May 24, 2003, 180 days after the date the HSA was enacted:

- Requiring each person receiving explosives to obtain a federal license/permit (HSA sec. 1122(b));
- Creating a new type of permit, the ''limited permit'' (HSA sec. 1122(c)(1)(A));

[2] *See* ATF Ruling 2003–5 (May 23, 2003), *Distribution of Explosives to Limited Permittees, https://www.atf.gov/media/19706/download* [*https://perma.cc/3RCR-SDKR*].

[3] Some provisions of 18 U.S.C. chapter 40 still refer to the ''Secretary of the Treasury.'' However, the HSA transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2)(A); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this rule refers to the Attorney General where relevant.

[4] In Attorney General Order Number 6353–2025, the Attorney General has delegated authority to the Director to issue regulations pertaining to matters within ATF's jurisdiction, including under OCCA, the National Firearms Act, and the Gun Control Act. ATF's jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

- Providing that only licensees and holders of user permits must post their licenses and permits and make them available for inspection (HSA sec. 1122(g));
- Requiring applicants to include specified identifying information for employees authorized to possess explosive materials, as well as fingerprints and photographs of "responsible persons," in applications for licenses and permits (HSA sec. 1122(c)(1)(B));
- Requiring ATF to conduct background checks on responsible persons and employees authorized to possess explosive materials (HSA sec. 1122(h));
- Extending the time for ATF to act on an application for a license/permit from 45 days to 90 days (HSA sec. 1122(e)); and
- Authorizing warrantless inspections of explosives storage for applicants of limited permits and holders of limited permits (HSA sec. 1122(f)).

C. Interim Rules

On March 20, 2003, ATF published IFR 1, implementing the SEA. 68 FR 13768. The IFR 1 comment period ran through June 18, 2003. On September 11, 2003, ATF published IFR 2, which removed the requirement from IFR 1 that common/contract carriers complete Form 5400.8 prior to taking possession of explosive materials for delivery to a licensee/user permittee, regardless of whether the carrier was hired by the distributor or distributee. 68 FR 53509. ATF believed that this requirement was unduly burdensome and unnecessary due to Department of Transportation ("DOT") and Transportation Security Administration ("TSA") regulations that became effective after IFR 1 was published.[5]

Once the DOT and TSA rules were published, certain employees of motor, water, air, and rail carriers were no longer subject to 18 U.S.C. 842(i) while commercially transporting explosives. Rather, these employees became subject to DOT and TSA security threat assessment standards. To evaluate relevant security threat assessments, DOT and TSA began to collect specific information to ensure that employees of common/contract carriers transporting explosives do not pose a security threat. Thus, ATF determined that there was a significantly diminished need to collect similar information via Form 5400.8 to ensure that explosives were not handed to prohibited persons for possible diversion to criminal or terrorist use. However, ATF continued to require that distributors verify the identity of persons accepting explosive materials on behalf of the common/contract carriers and required distributors to record the name of the common/contract carrier and the full name of the driver in their permanent records. The comment period for IFR 2 closed on October 14, 2003.

III. Analysis of Comments and Decisions for IFR 1

In response to IFR 1, ATF received 20 comments. Comments were submitted by explosives industry members; mining, ski, and transportation associations; model hobby rocket enthusiasts; and individuals. Most commenters expressed specific concerns regarding the interim regulations, which are addressed below.

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

Effective May 24, 2003, the SEA required ATF to conduct background checks on RPs and employees authorized to possess explosive materials, upon request by a licensee/permittee. The regulations at 27 CFR 555.57(b) therefore specify that all persons who have been issued licenses/permits since May 24, 2003, "must report to the Chief, Federal Explosives Licensing Center, any change in responsible persons or employees authorized to possess explosive materials."

Comments Received

Three commenters expressed concerns regarding the phrase "any change." An explosives industry technical association stated that the reporting requirement should apply only when a new RP or "possessor employee" is added.

Another commenter, a trade association for ski resorts, asked whether the reporting requirement applies to both additions and deletions to a permittee's list of authorized employees. The commenter requested that deletions be limited to employees not eligible for rehire so that employers would not have to delete and then re-add the same seasonal employees that return year after year.

Similar concerns were raised by an explosives industry representative organization. This commenter contended that the phrase "any change" was very broad and could be interpreted to mean retirement, resignation, dismissal, reassignment, or promotion. The commenter believed that ATF intended the reporting requirement to apply only when a new RP or employee, not previously reported to ATF, is authorized to possess explosive materials, and suggested that the regulation be amended to reflect this.

ATF Response

ATF acknowledges commenters' concerns about IFR 1's reporting requirements for changes in RPs and employees authorized to possess explosive materials. ATF recognizes that the commenters may be interpreting "any change" to mean they must report only new RPs and employees authorized to possess explosive materials because § 555.57(b) does not specify the method for reporting other changes in employment. However, there is a public safety risk and potential harm to the licensee/permittee of not reporting RPs or employees who are no longer authorized by the licensee/permittee. Former RPs have, in some such cases, removed all other persons from the licensee/permittee or put the licensee/permittee out of business, and formerly authorized employees, in some such cases, have acquired explosives in the name of the licensee/permittee, also causing them to incur charges for such purchases. Due to the risks that former RPs or former employees authorized to possess explosive materials could pose if not reported to ATF and removed from authorized actions, ATF intended that the regulations at § 555.57(b) require a licensee/permittee to report to ATF (1) new RPs or employees authorized to possess explosive materials, (2) RPs that cease to be employed by, or otherwise vacate their positions as RPs with, the licensee/permittee, and (3) any employee authorized to possess explosive materials that leaves or otherwise ceases to be an employee of, or ceases to need to possess explosives as part of their employment with, the licensee/permittee.

Accordingly, this final rule amends § 555.57(b) to clarify that the licensee/permittee must report each new and each removed RP to the Chief, Federal Explosives Licensing Center ("FELC"),[6] within 30 days of adding or removing the RP. The licensee/permittee must report each new RP by submitting ATF

[5] *See* Hazardous Materials: Enhancing Hazardous Materials Transportation Security, 68 FR 23832 (May 5, 2003) (DOT interim final rule); Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement, 68 FR 23844 (May 5, 2003) (DOT interim final rule); Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 68 FR 23852 (May 5, 2003) (DHS interim final rule).

[6] On August 11, 2014, ATF issued a final rule titled "Technical Amendments to Regulations," which, among other things, updated this position title in § 555.57 and wherever it appeared in 27 CFR part 555. 79 FR 46690.

Form 5400.13A/5400.16 (now changing to Form 5400.27), Explosives Responsible Person Questionnaire (''Form 5400.13A/5400.16''), but may just notify ATF in writing when they remove an RP. This final rule also amends § 555.57(c) to clarify that the licensee/permittee must report each new and each removed employee authorized to possess explosive materials to the Chief, FELC, within 30 days of adding or removing the employee or the employee's authorization to possess explosive materials for that licensee/permittee. The licensee/permittee must report each new employee authorized to possess explosive materials by submitting ATF Form 5400.28, Explosives Employee Possessor Questionnaire (''Form 5400.28''), but may just notify ATF in writing when the licensee/permittee wants to remove an employee. Finally, the rule amends § 555.57(d) to clarify that new RPs and employees authorized to possess explosive materials may possess explosive materials as part of their job duties from the time they are hired, as long as the licensee/permittee submits the required form to add them, along with all accompanying items, as required by the regulations, and unless or until the Chief, FELC, notifies the licensee/permittee that the individual is prohibited from doing so.

B. eZ-Check System

The SEA mandates that each person who wishes to acquire explosives, whether in interstate or intrastate commerce, obtain a federal explosives license/permit. In general, the interim regulations at § 555.103(b)(1)(ii) provide that a licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials must verify the license/permit status of the distributee prior to releasing the explosive materials to them. Section 555.103(b)(2)(i) requires that, prior to or with the first order of explosive materials, the distributee must provide the distributor with a certified copy of the distributee's license/permit.

With respect to firearms, ATF has established a system that federal firearms licensees (''FFLs'') may voluntarily use to verify the validity of a license held by another FFL. This system, the FFL eZ-Check system, is accessed via ATF's website. The eZ-Check system is popular with FFLs and is an efficient method of verifying license status. ATF believed a similar system would be useful for verifying the explosives license/permit status of persons ordering explosives. Accordingly, in IFR 1 ATF requested comments on the feasibility and utility of such a system and whether it should be used in conjunction with the procedures set forth in the regulations.

Comments Received

Two commenters addressed this subject and endorsed establishing an eZ-Check-type system for explosives licenses/permits.

ATF Response

Although this rule does not establish or mandate the use of such a system, ATF separately agreed with the commenters and developed a federal explosives licensee/permittee eZ-Check system. Since 2017, ATF has made available to federal explosives licensees/permittees an eZ-Check system on its website. Although creating the eZ-Check system was responsive to the comments on this topic, it did not affect the regulations. As a result, ATF is not making any changes in this final rule in response to these comments.

C. Relief From Disabilities

Prior to the SEA, federal law authorized ATF to grant relief from prohibitions that disable a person from distributing, receiving, possessing, and shipping or transporting explosives. However, this authority applied only to prohibited persons disabled because they were under indictment for or convicted of a felony. The SEA amended 18 U.S.C. 845(b), expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons if ATF finds that the applicant is not likely to act in a manner dangerous to public safety and that granting such relief is not contrary to the public interest. The Attorney General delegated this authority to the Director, and IFR 1 implemented this provision of the law in 27 CFR 555.142.

Section 555.142 also specifies categories of persons to whom the Director generally will not grant relief unless there are extraordinary circumstances or a compelling need, where granting such relief is consistent with the public interest. Such categories of persons generally presumed ineligible for relief include persons who have not been discharged from parole or probation for at least two years, fugitives from justice, prohibited aliens, persons who are unlawful users of or addicted to any controlled substances, persons adjudicated as ''mental defective'' or committed to a mental institution (with certain exceptions), and persons prohibited by the law of the state where the person resides from receiving or possessing explosive materials. Section 555.142 also provides that 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 two years if the Director determines that the applicant has a compelling need to possess explosives, such as for purposes of employment.

Comments Received

Four commenters expressed concerns regarding the provisions of § 555.142. One commenter argued that there is a group of individuals for whom granting relief from disability is in the public interest, for whom there is a compelling need to possess explosives, and for whom special processing of relief from disability applications is warranted. The commenter stated that each year, ski resorts employ citizens of Australia, New Zealand, France, and Canada to work in the U.S. as ski patrollers. According to the commenter, many of these employees are highly skilled and experienced avalanche-control workers who return to the same resorts in the U.S. year after year to work specifically in avalanche control.

The commenter contended that the expertise and skill these international employees provide to the ski industry and the resulting benefit to public safety warrant them having relief from disability. The commenter requested that ATF allow these employees to apply for relief from disability before they arrive in the U.S. for the season, with some provision that approving their seasonal visa would act as the final step in their clearance to possess explosives at resorts and to work in avalanche control. In addition, the commenter stated that once such employees are granted relief from disability, they should not be required to reapply for relief for subsequent ski seasons or, alternatively, they should have to reapply for relief from disability only every three to five years. The commenter added that if its suggested revisions to the regulation do not appear workable, an expedited relief from disability process should be established to accommodate these employees.

Another commenter, a professor who works in the mining engineering arena, expressed similar concerns. The commenter stated that the commenter's university has developed an international reputation for explosives engineering and has had many foreign students and scholars visit its department over the past 20 years. According to the commenter, several students have only student visas and, in light of the SEA, are unable to take any ''hands-on'' explosives classes or do research in explosives. The commenter noted that some students had applied for relief from disabilities in accordance with the regulations, but that the application process is very lengthy. Accordingly, the commenter recommended ''a relief process that only takes a couple of weeks'' or ''a guided step-by-step process given on the web with an example so that applicants have something to go by.''

Except as provided in § 555.142(c)(3), the regulations specify that the Director will not grant relief if the applicant is prohibited by the law of the state where the applicant resides from receiving or possessing explosive materials. A third commenter argued that because Congress has granted DOT authority to preempt state and local requirements as to transporting hazardous materials, the requirement that the Director not grant relief if there is conflict with state law should apply only in very limited circumstances. A fourth commenter expressed similar concerns and stated that the requirement should apply only to aliens handling explosives incidental to, and in connection with, the commercial export of explosives by rail or truck to Canada from the U.S.

ATF Response

ATF disagrees that the regulations need to be revised as suggested. As described above, the Director may grant relief to an alien who has been lawfully admitted to the U.S. if the Director determines that (1) the alien is not likely to act in a manner dangerous to public safety, (2) granting such relief is not contrary to the public interest, and (3) the alien has a compelling need to possess explosives, such as for employment. To receive relief, the alien must submit ATF Form 5400.29 (now 5400.31), Application for Restoration of Explosives Privileges (now Request for Relief from Explosives Disability) (''Form 5400.29''), and include certain additional documentation.

The SEA does not require that relief applications be submitted from a location within the U.S. Therefore, an alien who has been lawfully authorized to enter the U.S. may submit the alien's relief application from a location outside the U.S. before arriving in the U.S. However, in submitting a relief application, whether from a location within or outside the U.S., the alien must be able to show that they have been lawfully admitted to the U.S. (*See* § 555.142(f)(1)(ix)).[7] In addition, the alien must provide certification that they are legally authorized to work in the U.S., or other purposes for which they are required to possess explosives; certification from an appropriate law enforcement agency in 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/permittee or other employer (including a university or college) stating that the applicant is employed by the employer and must possess explosive materials for purposes of employment.

The regulation at § 555.142(d) states that any person who has been granted relief is relieved of all disabilities disclosed on the application for relief. This paragraph further states that the relief from disabilities granted to aliens will be effective only so long as the aliens retain their lawful immigration status. Therefore, provided that aliens have not failed to disclose any prohibitive disabilities in their initial relief applications, do not incur any new disabilities, and retain lawful immigration status on each subsequent or intermittent return to the U.S., the aliens would not be required to reapply for relief.

In response to commenters requesting an expedited process or step-by-step instructions, ATF has detailed instructions in Form 5400.29 (now 5400.31) that identify additional documents that aliens must include with their applications. Further, ATF also provides detailed information on completing a relief application on its website.[8] While considering and reviewing each application, ATF relies not only on the information provided with the application, but also on information provided by other sources to verify that the information received with the application is accurate. Processing delays often occur as a result of an incomplete or improperly completed relief application package; ATF's inability to contact, locate, or schedule in-person interviews with persons identified within the relief application; and delays in responses from other federal, state, or foreign government law enforcement agencies. Public safety requires that ATF obtain information from other agencies and through personal interviews; any expedited processes or shortened timelines could negatively affect ATF's ability to obtain vital information. Despite these requirements, ATF attempts to process relief applications as quickly as possible, and in less than the 120 days that applicants are told to expect. Therefore, ATF declines to adopt the commenter's suggestion to develop an expedited relief process for foreign visitors studying at academic institutions. However, due to some confusion expressed about when aliens may begin the relief request process, ATF is amending § 555.142(f)(1)(ix) to clarify that aliens can begin the request process before they enter the U.S., although it cannot be completed until they have been lawfully admitted.

The other commenters suggested that ATF, when evaluating relief from explosives disability applications, should disregard state prohibitions as they relate to persons transporting explosive materials within the U.S. and under the regulation of DOT. The commenters refer to a specific example where DOT was authorized to exempt specific state transportation laws that regulate the transportation of hazardous materials. Federal law, at 18 U.S.C. 845(a)(1), exempts from ATF regulation any aspect of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and that are regulated by DOT or the Department of Homeland Security (''DHS''). In other words, if DOT or DHS have issued regulations on safety or security aspects of transporting explosive materials by those means, ATF will not also issue regulations on that topic. Following the publication of IFR 1, DOT and DHS published regulations generally exempting persons from the application of 18 U.S.C. 842(i) while they are commercially transporting explosives.[9]

ATF believes the provision at 27 CFR 555.142(c)(2)(vi), which generally prohibits granting relief if the person is prohibited by the law of the state where the person resides from receiving or possessing explosive materials, is an effective and appropriate interpretation of the ''public interest'' standard of 18 U.S.C. 845(b)(2). It is not in the public interest to expend federal resources to investigate and act on a relief application if the applicant is barred from possessing explosives in his or her state of residence. In addition, ATF believes it is appropriate to recognize the state's interest in determining the categories of persons who may lawfully possess explosives while residing within that state. ATF declines to second-guess state officials by

[7] Although an alien may begin the application process to request a relief from disability while still outside the United States, they cannot receive the relief until they have been lawfully admitted. Certain steps of ATF's assessment process must also occur after the alien has been admitted to the United States.

[8] *See* ATF, *Apply for Relief from Federal Explosives Disabilities* (Mar. 13, 2025), *https://www.atf.gov/explosives/tools-services-explosives-industry/current-licensees/apply-relief-federal-explosives-disabilities* [*https://perma.cc/P26U-HC48*].

[9] *See* footnote 5, *supra.*

conducting investigations of individuals who have categorically been prohibited from receiving and possessing explosives under state law.

ATF also believes the contentions of these commenters relating to DOT preemption of state law are not relevant to relief from disability applications. To the extent that prohibited persons receive or possess explosives during aspects of transporting them that are regulated by DOT and relate to safety and security, the preemption provisions of 18 U.S.C. 845(a)(1) would apply, and such possession in these circumstances would not be prohibited under this chapter. Because it is not relevant if a person transporting explosives during aspects covered by DOT regulations is prohibited from possessing explosives, the person does not need relief from ATF to possess explosives while under the DOT regulations. As a result, ATF neither disregards nor considers state prohibitions as they relate to persons transporting explosive materials within the U.S. under DOT's regulation.

For these reasons, ATF declines to adopt these commenters' recommendations relating to relief applicants and state law disabilities.

D. Limited Permittee Transaction Report, ATF Form 5400.4

Prior to the SEA, intrastate purchasers of explosives could acquire explosives without a federal license/permit but needed to complete ATF Form 5400.4, Explosives Transaction Record (''Form 5400.4''). The form required the intrastate purchaser to certify that the purchaser was not a prohibited person. Effective May 24, 2003, ATF revised the Explosives Transaction Record form and retitled it as Limited Permittee Transaction Report. Limited permittees complete the form when purchasing explosive materials from licensees/permittees within their state of residence. Among other things, the form requires that the limited permittee provide information regarding their intended use of the explosive materials. ATF stated in IFR 1 that the form also provides an option for the distributor to document information concerning the manufacturer's or importer's identification marks and the size of the explosives to be distributed. In addition, ATF solicited comments as to whether this optional information should be mandatory.

Comments Received

Three commenters expressed concerns with respect to Form 5400.4. One contended that ATF's use of the same form number, Form 5400.4, for two different information collections was confusing and that ATF should have issued a new information collection utilizing a new form number. Specifically, the commenter stated, ''Over the last 30 years, the explosives industry has become very familiar with the present Form 5400.4, completing the form almost 23,000 times annually.'' The commenter added that the new Form 5400.4 would be ''completed by a different population of explosive users, have different content, and have different subsequent procedures than the present form.''

With respect to the revised Form 5400.4, the commenter acknowledged that recording identification marks could be helpful to law enforcement officials in tracing explosives. However, the commenter recommended against a requirement to identify the size of explosives. According to the commenter, ATF could look up the identification marks in the inventory records, taking only a few minutes, while it would take the regulated community hours to record the same information on the form.

Another commenter recommended that the option for the distributor to document information concerning identification marks and explosives size be removed from the form or, as an alternative, clearly highlighted as not being required by law. According to the commenter, IFR 1 did not show how this information would benefit ATF nor did it provide data or information on why the optional information was added to the form.

A third commenter expressed concern regarding the availability of the revised Form 5400.4. This commenter stated that the form was not available until shortly before the time designated for compliance. Although the form could be obtained by downloading copies from ATF's website, the commenter argued that a large number of explosives distributors were located in areas where they might not have access to the internet. Accordingly, the commenter stated that ATF should allow licensees additional time to comply with use of the form. Similar concerns were raised by another commenter.

ATF Response

ATF declines to assign a different form number to the Limited Permittee Transaction Report. Over the 20-plus years since the interim rules were issued, ATF has seen no evidence that using the old explosives transaction form number for the new Limited Permittee Transaction Report has caused confusion among industry members, nor have there been any enforcement problems associated with the use of the form number.

ATF agrees that ATF can readily locate information regarding the size of the explosives listed on Form 5400.4 in other required explosives records at the premises. Therefore, entry of this information on the form will remain optional. ATF also agrees with the suggestion that the form should clearly note that this information is optional. As a result, Form 5400.4 was revised in 2003 to prominently include the term ''optional'' next to the ''size'' column heading on the form.

ATF recognizes that the revised Form 5400.4 was not made available to the public until immediately prior to the effective date of the applicable SEA provisions. This was primarily due to the short time frame to implement the SEA. The new forms were made available as soon as possible, and ATF took steps to inform the industry of new or revised requirements that affected their conduct of business.[10]

Regarding the topic of entering the identification marks on the Limited Permittee Transaction Report, ATF has determined that it will remain optional to complete this section of the form because ATF can readily locate information regarding the identification marks listed on the report in other required explosives records at the premises. Form 5400.4 was revised to show that this information is optional.

E. Employee Possessor Questionnaire, ATF Form 5400.28

The interim regulations at 27 CFR 555.45 specified that license/permit applications postmarked on or after March 20, 2003, must be accompanied by Form 5400.28. Prior to May 24, 2003, responsible persons, *i.e.,* applicants and others who had the authority to direct the policies of the applicant with respect to explosive materials, were required to answer on this form whether they fell within any of the categories of persons prohibited from possessing explosive materials. The interim regulations also provided that on and after May 24, 2003, Form 5400.28 (which was retitled in 2003 as the Employee Possessor Questionnaire and has since been retitled in 2021 as the Explosives Employee Possessor Questionnaire), must be completed by each individual who will possess explosive materials in the course of his or her employment. Employees

[10] *See* ATF Explosives Industry Newsletter (May 2003), *https://www.atf.gov/media/28951/download* [*https://perma.cc/PY78-9YTW*], and ATF Explosives Industry Newsletter (December 2003), *https://www.atf.gov/media/29071/download* [*https://perma.cc/988D-WNY6*].

completing the Form 5400.28 must provide appropriate identifying information, including residence address and name of employer, and must declare whether they fall within any of the categories of persons prohibited from possessing explosive materials. Beginning from that same time in 2003, RPs no longer completed Form 5400.28 because the identifying information for RPs was collected on ATF Form 5400.13/5400.16 (now changing to Form 5400.13), Application for an Explosives License/Permit (''Form 5400.13/5400.16''). In 2023, ATF received approval from the Office of Management and Budget (''OMB'') to collect the identifying information for RPs on Form 5400.13A/5400.16 (now Form 5400.27) and no longer collects this information on Form 5400.13/5400.16 (now Form 5400.13).

Comments Received

Two commenters expressed concerns regarding Form 5400.28. One commenter contended that using the same form number for a completely different information collection was confusing and that ATF should have used a different form number for the Employee Possessor Questionnaire. The commenter also argued that the new Form 5400.28 is not necessary for ATF's performance of its duties. According to the commenter, ''The FEL [federal explosives law] entitles ATF to obtain 'the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials [18 U.S.C. 843(a)]' from a license or permit applicant.'' The commenter added that the FEL does not give ATF explicit authority to obtain the extensive information required by the new Form 5400.28.

The second commenter expressed similar concerns, stating that ''ATF should only ask for the minimum identifying information necessary in order to properly conduct the background check to determine qualification.'' The other commenter also claimed that approximately one half of the information required on the form was unnecessary for ATF to perform its duties and recommended that ATF obtain only the names and appropriate identifying information of employees authorized to possess explosive materials, and do so through the license/permit application form instead.

ATF Response

ATF does not believe that using an existing form number for the Explosives Employee Possessor Questionnaire, Form 5400.28, has caused confusion or hindered proper execution of the form. Form 5400.28 has been in use since May 2003, and ATF has not been apprised of any logistic or administrative problems as a result of retaining the number Form 5400.28 for this form. Therefore, ATF is not adopting the suggestion that ATF change the form number.

Additionally, ATF does not agree with the commenters' assertion that Form 5400.28 seeks to collect more than the minimum identifying information necessary to efficiently and appropriately carry out ATF's statutory mandate to conduct background checks on employees authorized to possess explosive materials. The commenters did not provide any specifics on the identifying information in the Form 5400.28 fields that they believe is unnecessary. The SEA amended several provisions of the federal explosives laws, and Form 5400.28 is directly related to implementing these provisions. For example, the SEA (1) added in 18 U.S.C. 842(i) new categories of persons prohibited from receiving or possessing explosive materials; (2) required in section 843(a) that all applicants for a license/permit submit the names of, and appropriate identifying information regarding, all employees who will be authorized by the applicant to possess explosive materials; and (3) required in section 843(h)(1) that ATF determine if any RP or employee authorized to possess explosive materials is a prohibited person under section 842(i). Further, 18 U.S.C. 847 authorizes the Attorney General to issue rules and regulations she deems reasonably necessary to implement the law.

ATF uses Form 5400.28 to assist in background checks and the application process. Some of the requested information is applicable to specific prohibiting factors, such as the U.S.-issued alien registration number if an employee is not a U.S. citizen. ATF requires this and other requested information to address the broad range of circumstances that may be encountered when conducting background checks. A thorough and accurate background check ensures public safety and security by keeping explosives out of the hands of felons and other prohibited persons. In addition, obtaining thorough information results in quicker background checks so employers can be assured they are not placing explosives in the hands of prohibited persons.

With regard to the commenter's statement that certain information could be obtained from the license/permit application rather than through Form 5400.28, ATF does not agree. Form 5400.28 is the only document where this information is requested from an employee being authorized to possess explosive material. Although ATF asks for similar information for RPs, that reporting pertains only to RPs, not employees. Accordingly, ATF does not believe that Form 5400.28 is duplicative, and this final rule does not adopt the commenters' recommendation.

F. Rocket Motors

The SEA requires that all persons receiving explosives on or after May 24, 2003, obtain a federal explosives license/permit. In addition, even before the SEA, licensees/permittees were required to comply with the provisions of part 555 including, among other things, storage and other safety requirements, as well as record-keeping and theft-reporting. In the past, ATF took the position that these requirements of the SEA and part 555 applied to ammonium perchlorate composite propellant (''APCP''), including when APCP is used as a component of a rocket motor. (A rocket motor consists essentially of APCP, black powder, or other low explosives encased by a cardboard, plastic, or metallic cylinder.)

On March 16, 2009, the U.S. District Court for the District of Columbia vacated ATF's classification of APCP as an explosive as defined under 18 U.S.C. 841(d). *Tripoli Rocketry Ass'n, Inc.* v. *ATF,* No. 00–0273, 2009 WL 10737191 (D.D.C. Mar. 16, 2009). On July 17, 2009, ATF issued an open letter to all federal explosives licensees/permittees informing them that rocket motors that contain only APCP are no longer regulated under the federal explosives laws; that no one is required to obtain a federal explosives license/permit to manufacture, import, purchase, distribute, transport, or receive APCP; and that these types of rocket motors are not subject to regulatory requirement under 27 CFR part 555.

1. Rocket Motors and Rocket Propellants Are Not Explosives

Comments Received

Five commenters argued that rocket motors and rocket propellants (including APCP) are not explosives and should not be regulated by ATF. One of the commenters stated, ''[e]xtensive testing by [the National Association of Rocketry Standards and Testing Committee] of ammonium perchlorate involving irradiation by radio waves, high temperatures (>100 °C), physical shock, static discharge (several thousand volts), and unconfined burning has not revealed any explosive-like properties. Furthermore, the burn rate for ammonium perchlorate is well below that considered to be deflagration.''

ATF Response

The definition of explosive materials as it pertains to APCP and rocket motors was not affected by the enactment of the SEA. Under 18 U.S.C. 841(d), the term ''explosives'' is defined as ''any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion.'' The definition states that the term ''includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.'' ATF is also required under the law to publish an annual list of items that fall within the definition of explosives. Beginning with the publication of the first ''Explosives List'' in 1971, ATF classified APCP as an explosive. This classification was based upon the statutory definition of ''explosives,'' which contemplates that items can ''function by explosion'' either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, ATF classified it as an explosive. The SEA had no impact on this definition or classification, so at the time the IFRs were published, APCP remained an explosive.

In 2006, three years after the IFRs were published, ATF addressed the subject of rocket motors in a final rule, Commerce in Explosives-Hobby Rocket Motors, 71 FR 46079 (Aug. 11, 2006) (''hobby rocket motors rule''). In this rule, ATF affirmed and reinstated into its regulations an exemption for rocket motors containing 62.5 grams or less of APCP and other explosive propellants. In 1981, ATF exempted from regulation Class C explosives, which included ''common fireworks'' and certain other explosives designated by DOT regulations, one of which was originally termed ''toy propellant devices and toy smoke devices'' that contained a ''small charge'' of slow-burning propellant or smoke-producing powder. DOT subsequently renamed these devices ''model rocket motors.'' However, between 1996 and 1998, when ATF updated its regulations to reflect various DOT revisions, it inadvertently removed the exemption language. Despite this administrative error, ATF continued to exempt sport rocket motors containing 62.5 grams or less of propellant, and in the 2006 final rule, it reinstated the exemption in 27 CFR 555.141(a)(10). The exemption is for model rocket motors that consist of APCP, black powder, or other similar low explosives, contain no more than 62.5 grams of total propellant weight, and are designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing. *Id.*

However, as discussed above, on March 16, 2009, the U.S. District Court for the District of Columbia vacated ATF's classification of APCP as an explosive as defined under 18 U.S.C. 841(d). *Tripoli Rocketry Ass'n, Inc.,* 2009 WL 10737191. Accordingly, APCP is no longer classified by ATF as an explosive material, and rocket motors that consist solely of APCP, irrespective of the total APCP weight contained therein, are no longer regulated by ATF.

Notwithstanding the court's decision on APCP, black powder and other low explosives used to manufacture and assemble rocket motors continue to be subject to ATF regulations. As noted above, ATF exempts single-use rocket motors or reload kits containing 62.5 grams or less of black powder or other low explosives or propellants. However, persons purchasing, storing, or engaging in the business of importing, manufacturing, or dealing in these materials (other than APCP) remain subject to the federal explosives laws and regulations.

2. Model Rockets/Rocket Motors Containing APCP Are ''Propellant-Actuated Devices'' and, as Such, Are Exempt From ATF Regulation

Propellant-actuated devices manufactured, imported, or distributed for their intended purposes are exempt from explosive regulations pursuant to 27 CFR 555.141(a)(8). Prior to amendment in 2009,[11] the term ''propellant-actuated device'' was defined in § 555.11 as ''[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.'' In applying that regulatory definition, ATF classified certain specific aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges as propellant-actuated devices. The comments discussed below were submitted during the time this definition was still in effect. It has since been revised.

Comments Received

Two commenters asserted that model rocket motors met the definition of a propellant-actuated device and, as such, were exempt from ATF regulation. According to one of the commenters, the intended purpose of model rocket motors is not to function by explosion. Rather, their intended purpose is to propel a model rocket. The second commenter stated the following:

[P]ropellant actuated devices are exempted from BATFE regulation. As any first year aeronautical student can tell you, rocket motors function by the expulsion of propellant mass according to the mass equation[—]

$F = -c\ (dm_e)/(dt)$

They do not explode. Under these definitions, rocket motors are exempt from BATFE regulation.

ATF Response

The definition of a propellant-actuated device was not affected by the enactment of the SEA. The comments regarding rocket motors' status as a propellant-actuated device were submitted when ATF's regulations did not address rocket motors as propellant-actuated devices. The question of whether a rocket motor is a propellant-actuated device is now moot. ATF amended the definition of ''propellant actuated device'' in the 2009 propellant rule to exempt from the term ''hobby rocket'' motors consisting of APCP, black powder, or other similar low explosives, regardless of amount, and rocket-motor reload kits that can be used to assemble hobby rocket motors containing APCP, black powder, or other similar low explosives, regardless of amount.

3. Exemption of Rocket Motors Containing 62.5 Grams or Less of Propellant

Comments Received

As stated above, at the time of the interim final rule in 2003, ATF had exempted from regulation rocket motors containing 62.5 grams or less of explosive propellant, including APCP. One commenter requested that ATF continue this exemption, stating that ''[a]ll of my rockets have been, and will be within that limit.'' Another commenter indicated that the 62.5-gram exemption threshold should be increased in order to launch larger model rockets.

[11] Commerce in Explosives—Amended Definition of ''Propellant Actuated Device,'' 74 FR 1878 (Jan. 14, 2009) (''2009 propellant rule'').

ATF Response

The passage of the SEA did not affect ATF's exemption of rocket motors containing 62.5 grams or less of propellant. This final rule maintains the existing regulatory exemption.

In the hobby rocket motors rule, published August 11, 2006, ATF explained its historical determination of using 62.5 grams as an appropriate threshold for the amount of propellant exempt from explosive regulations. 71 FR 46079. In keeping with guidelines published by the National Fire Protection Association, and with regulations promulgated by the predecessor of the Consumer Product Safety Commission, and at the request of both the National Association of Rocketry (''NAR'') and Estes Industries, ATF determined that 62.5 grams was an appropriate ceiling for what could be considered a ''small charge'' of propellant for these ''toy'' devices. 71 FR 46084. As explained in that same rulemaking, ATF believes that rockets utilizing motors containing 62.5 grams of propellant or less have a shorter range and are less likely to be used as weapons against a particular target without detection. In addition, rockets powered by motors containing 62.5 grams of propellant or less have less power to cause significant damage when used against a target. ATF further believes that rocket motors containing more than 62.5 grams of propellant pose a significant threat to public safety because they can be modified for use as weapons. The 62.5-gram limit achieves a reasonable balance between ATF's goal of allocating its resources in the most efficient and effective manner and its goal of maintaining public safety. Therefore, ATF will not revisit the weight threshold for the exemption of rocket motors at this time.

4. Model Rocket Propellant Is Not a Threat to Public Safety or Homeland Security

Comments Received

One commenter argued that model rocket propellant should not be regulated because it does not pose a significant risk to public safety and is not a threat to homeland security. According to the commenter, due to the cost and limited use of hobby rocket propellent in ''toy'' rockets, criminals are not going to buy hobby rocket motors for nefarious activities. Since hobby rocket motors do not have guidance systems and warheads, they are, according to the commenter, useless as weapons.

ATF Response

ATF already addressed the issue of the potential for model rocket propellants to pose a risk to homeland security when it published the 2009 propellant rule (described above), affirming ATF's long-standing policy of 62.5 grams as an appropriate threshold for exempting rocket model propellant from explosive regulations. Therefore, further discussion of this issue is unnecessary.

5. IFR 1 Fails To Recognize Its Economic Effects on Businesses

Comments Received

Two commenters argued that IFR 1 will have a significant economic impact on businesses. One commenter stated that many people are unable to get a permit due to storage requirements and would need to purchase land to build a magazine, which is beyond what a typical person can afford. The commenter argued that permitting, storage, and other requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocketry hobbyist. Furthermore, the commenter asserted that reduced participation in the hobby will have a negative effect: ''Businesses will die. They've already started collapsing.''

The second commenter challenged ATF's certification, pursuant to the Regulatory Flexibility Act, that IFR 1 would not have a significant impact on a substantial number of small entities. The commenter stated that commercial shipping companies will not ship hobby rocket motors because the interim rule requires that these companies ensure their employees who handle explosive materials are not prohibited persons under the law. According to the commenter, shipping companies do not want to risk fines or criminal prosecution if a prohibited person might have access to explosives in the process. This makes the cost of shipping rocket motors more expensive.

ATF Response

ATF disagrees with the commenters' assertion that the interim regulations were likely to result in significant reduction in participation by rocketry hobbyists, which, in turn, would have had a negative effect on small businesses. A review of NAR Board of Trustees' meeting minutes dated February 6, 2004 (on file with ATF), stated that the organization's membership base had remained statistically flat for the preceding three years, even though IFR 1 was issued and became effective nearly one year before that period ended. In addition, a review of NAR's meeting minutes dated July 28, 2008, indicated that its membership was holding between 4,500 and 4,600 and that membership dues income was stable. These figures showed no decrease in numbers during the time in which APCP was regulated, before ATF's classification was overturned. In August 2009, the NAR Board of Trustees stated that membership had increased to 4,750.[12] Further, NAR's Board meeting minutes from February 2013 noted that membership had risen to over 5,670.[13] As of 2025, NAR's website states that it has over 9,000 members.[14] Although ATF has no specific data on rocketry sales, ATF has seen no evidence that participation in the sport has declined or that small businesses were negatively impacted by IFR 1. ATF acknowledges that the increase in NAR membership numbers after 2009 may have been partly due to the removal of APCP as a regulated explosive material, but, as noted above, even when APCP was still regulated, NAR membership remained steady following the promulgation of IFR 1. This suggests that IFR 1 did not in fact negatively impact small businesses such as those dealing in model rockets.

The commenter's concern regarding the interim rule's requirements for shipping companies to ensure that prohibited persons are not handling explosives is also moot. In IFR 2, published in 2003, ATF made clear that as a result of the publication of certain rules by DOT and DHS, employees of motor, water, air, and rail carriers were no longer subject to the provisions of 18 U.S.C. 842(i) regarding prohibited persons while they are engaged in the commercial transportation of explosives.

ATF also disagrees with the underlying premise of the comment asserting that many rocketry hobby enthusiasts would leave the sport, in part as a result of burdensome storage requirements of the SEA. ATF notes that the SEA made no changes to the requirements for proper storage of regulated explosives as they relate to participants within the rocketry hobby or the explosives industry. All such persons have been required to properly store regulated explosive materials since the inception of the federal explosives

[12] NAR, *Board of Trustees' Meeting Minutes* (Aug. 6–7, 2009).

[13] NAR. *Board of Trustees' Meeting Minutes* (Feb. 21–22, 2013).

[14] NAR, *About the National Association of Rocketry, https://www.nar.org/content.aspx?page_id=22&club_id=114127&module_id=667398* (last visited July 23, 2025) [*https://perma.cc/8Y8V-CX89*].

regulations in January 1971. The federal explosives regulations relating to the proper storage of regulated explosives can be found at part 555, subpart K—Storage.

ATF also disagrees with the same commenter's assertion that the costs of licensing or permitting would be prohibitive. Even prior to enactment of the SEA, persons wishing to obtain explosive materials from out-of-state sources or to transport materials in interstate commerce were required to obtain an ATF license/permit, and those wishing to engage in the business of manufacturing, importing, and dealing regulated rocket motors were required to obtain the appropriate ATF license. In contrast, persons could acquire explosive materials in the state where they resided, including rocket motors containing greater than 62.5 grams of propellant, without needing to obtain a federal explosive license/permit. The enactment of the SEA and the implementing regulations primarily affected only these latter persons engaging in intrastate acquisitions and transportation of explosive materials, including rocket motors containing greater than 62.5 grams of propellant. With these persons in mind, Congress created the limited permit, which allows a person to acquire explosive materials up to six times per year and transport the materials within their own state. This permit costs $25 for the original permit for a one-year period and is renewable each year for $12. It is unlikely that these minimal costs will be so onerous as to cause a significant percentage of hobbyists to abandon their rocketry activities.

6. Burdens of the Permit and Storage Requirements on Model Rocket Hobbyists

The SEA requires that any person receiving, shipping, transporting, or causing the transportation or distribution of explosive materials on or after May 24, 2003, obtain a federal license/permit. A federal explosives license is required to authorize continual explosives distributions. A federal explosives permit authorizes a person to distribute only surplus explosives stock; it does not authorize the distribution of explosive materials as a matter of continual business operations. There are two types of explosives permits: (1) a ''user permit,'' which allows the holder to transport, ship, or receive explosive materials in interstate or foreign commerce; and (2) a ''limited permit,'' which allows the holder to receive explosive materials only within his or her state of residence on no more than six separate occasions during the one-year period of the permit. Although applicants for a federal explosive license/permit have always been required to have a place of storage for explosive materials, the SEA amended 18 U.S.C. 843(b)(4), to require that ATF, prior to issuing a license/permit, verify by inspection ''that the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe.''

Comments Received

Several commenters expressed concerns regarding the impact of permit and storage requirements on the model rocket hobby. A couple of commenters indicated that the compliance requirements for rocket motors containing more than 62.5 grams of propellant were overly burdensome and would result in reduced participation in the hobby. One commenter stated that, since obtaining a permit would require a background check, fingerprints and photographs, and interviews, hobbyists would quit the hobby rather than apply for the permit.

A few commenters stated that rocket model hobbyists would be unable to obtain a federal permit because of storage requirements and the fees associated with obtaining a permit. In particular, they stated that many cities would not allow explosives to be stored in a residential area. According to one commenter, purchasing land and constructing an explosives magazine was not a viable option. Another commenter stated that he had had an explosives license since 1997 and had never been required to have storage [15] but indicated that storage was not an issue for him because ''I manage my acquisition of 'explosives' [rocket motors] so that I never have excess stock.'' According to the commenter, the effect of the interim rule would be that he would either obtain an explosives magazine or not renew his license.

Another commenter stated the limited permit was not useful because many states did not have a vendor that sold high-power rocket motors. Rocket model hobbyists would therefore be required to obtain a user permit (to acquire and transport explosive materials interstate), which would be cost prohibitive.

Lastly, one model rocket hobbyist stated that he was in the process of applying for a user permit. The commenter noted that he was having difficulty completing the application because it requested information that did not pertain to rocket hobbyists. For example, the commenter stated that he was not in the business of selling explosives and, as such, did not have ''business hours.''

ATF Response

ATF disagrees that the compliance requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome. As previously stated, the propellants contained within model rocket motors has been regulated by ATF since 1971 (including APCP until March 2009). Therefore, since 1971, any person receiving rocket motors containing more than 62.5 grams of propellant in interstate commerce was required to obtain a federal explosives license/permit and maintain all appropriate storage and records for their rocket motors. Moreover, ATF no longer classifies APCP as an explosive, and thus rocket motors consisting solely of APCP (regardless of the weight of the APCP) are not currently subject to regulation by ATF.

Individuals do not appear to be discouraged in pursuing the rocket model hobby despite requirements that they undergo a background check and submit fingerprints and photographs as part of obtaining a federal explosives license/permit. Membership in groups such as the NAR has increased over time since implementation of the SEA, as discussed in section III.F.5 of this preamble. With passage of the SEA, Congress made clear that all persons acquiring non-exempt explosive materials must obtain a license/permit from ATF and submit information to enable ATF to conduct background checks. ATF believes that the information it requires applicants to submit is part of a reasonable process that helps to ensure that prohibited

[15] Explosives regulations were first issued by the IRS (before ATF was created as a bureau) in 1971 and codified at 26 CFR part 181; those regulations included the requirement that all applicants for an explosives license/permit have a place of storage. *See Title 26—Internal Revenue,* 36 FR 658 (Jan. 15, 1971). That storage requirement has remained in effect continuously since then, although ATF's explosives regulations have since moved to 26 CFR part 555. However, ATF also allows applicants to use a contingency storage agreement to meet this requirement. *See, e.g.,* ATF Explosives Industry Newsletter at 2 (Jan. 2014), *https://www.atf.gov/media/29021/download;* ATF Form 5400.13/5400.16 (now becoming Form 5400.13), Application for Explosives License or Permit (which has included a contingency plan option since at least 2003), *https://www.atf.gov/rules-and-regulations/form-and-information-collection-notices/application-explosives-license-or-permit-atf-f-5400-13/5400-16.* These contingency storage agreements are between the applicant (including renewal applicants) and an active licensee/permittee, who agrees to provide the applicant access to their magazine if the applicant needs to store explosives. The commenter might have been referring to this practice.

persons do not gain access to explosive materials.

ATF also believes that the storage requirements are not overly burdensome or inappropriate. Prior to the SEA, the federal explosives laws and regulations required that all persons store explosive materials in conformity with the regulations at part 555. *See* 18 U.S.C. 842(j); 27 CFR 555.29. These provisions remain unchanged post-SEA enactment. Additionally, ATF storage regulations in 27 CFR part 555, subpart K, have always prohibited any person from storing explosives within a residence or dwelling, and require that all persons store explosives in accordance with the tables of distances to inhabited buildings, highways, passenger railways, and other magazines. Compliance with the federal explosives laws and regulations confers no right or privilege for persons to store explosives contrary to state or local laws that may impose additional storage requirements. Other than a new verification and a requirement for inspection prior to issuing a federal explosives license/permit, neither the SEA, the SEA interim regulations, nor this final rule changed the storage requirements. Congress added the verification requirement to provide tighter security over explosive materials and to ensure that storage requirements are being met.

Though ATF is cognizant of the cost of a new explosives storage magazine, ATF has provided the industry with alternate means of storing explosive materials in place of individually purchased and owned storage magazines. These alternatives include shared storage arrangements, off-site storage, and club and association storage arrangements. *See* ATF Explosives Industry Newsletter at 2–3 (Jan. 2014); ATF Form 5400.13, Application for Explosives License or Permit. As a result, ATF does not believe that the requirement to obtain and substantiate the proper and secure storage of explosive materials is overly burdensome or inappropriate.

Although some rocketry enthusiasts without in-state access to rocket motors would need to obtain a user permit to go out of state to acquire and transport explosive materials, ATF notes that persons, including rocket model hobbyists, acquiring or transporting regulated explosive materials from out-of-state sources have already been required since 1971 to obtain a federal explosives license/permit. The fee for a user permit, which is valid for three years, is $100, or about $33.33 per year. 27 CFR 555.43. The user permit fee has remained unchanged since 1998. *See* 27 CFR 55.43; Commerce in Explosives (95R–036P), 63 FR 44999, 45002 (Aug. 24, 1998).

To defray costs, rocketry enthusiasts may join or form rocketry clubs. These clubs can be set up to take responsibility for obtaining all appropriate licenses or permits, as well as storage. Notably, in such club arrangements, the club may not ''distribute'' explosives to its members; rather, one of the club's RPs must oversee all explosives activities of its members. In addition, the club members may incur the cost of membership dues, but as members they may participate in their hobby without having to individually bear the costs of complying with storage, licensing, or permitting requirements. Sharing the cost of compliance reduces the cost and burden to any individual club member. Accordingly, ATF disagrees that fees to obtain the appropriate license/permit are overly burdensome or cost prohibitive.

Another commenter stated that he was having difficulty completing the explosives permit application because it appears that some portions may not pertain to his proposed activities. ATF is aware that some individuals may have questions regarding proper completion of the form. Therefore, ATF FELC's telephone number and address are included with each application packet. Additionally, ATF's website contains general information regarding the application process.

7. Exemption for Black Powder in Small Quantities

Comments Received

One commenter suggested that an exemption be given for small amounts of black powder for use in model rocket ejection systems, *i.e.,* to deploy the parachute. The commenter stated that he uses about 20 to 30 grams of black powder per year to release the parachute on his model rockets.

ATF Response

ATF cannot grant an exemption for small quantities of black powder used in model rockets because black powder is an explosive material. In exempting up to 50 pounds of commercially manufactured black powder, Congress limited the exemption to that black powder intended for use solely in sporting, recreational, or cultural purposes in antique firearms and antique devices. 18 U.S.C. 845(a)(5); 27 CFR 555.141(b). However, rocket motors and other rocket component parts (*e.g.,* parachute ejection systems) are not antique firearms or antique devices, and, therefore, the black powder used in these devices does not fall under this statutory exemption. The implementation of the SEA had no effect on the black powder exemption specified at 18 U.S.C. 845(a)(5) and therefore it is not within ATF's statutory authority to grant the requested exemption.

G. Warrantless Inspections

The SEA authorized warrantless inspections of places of storage maintained by federal explosives licensees, permittees, and applicants for limited permits. 18 U.S.C. 843(f). Regulations that implement this provision of the law are in 27 CFR 555.24.

Comments Received

One commenter objected to warrantless inspections, stating that ''[w]arrantless searches of any sort are prohibited by the constitution. This phrase should be struck for that reason.''

ATF Response

ATF declines to adopt the commenter's suggestion to strike from the regulations the reference to warrantless inspections. Contrary to the commenter's assertion, the U.S. Supreme Court has held that only ''unreasonable searches'' without a warrant are prohibited, and therefore some warrantless searches of business, residences, and private property are constitutional. ''The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' '' *United States* v. *Knights,* 534 U.S. 112, 118–19 (2001) (citing *Wyoming* v. *Houghton,* 526 U.S. 295, 300 (1999)).

The Court has specifically recognized the validity of warrantless regulatory inspections of business premises when they are limited in time, place, and scope and when there is express statutory authority to conduct such inspections. For instance, in *United States* v. *Biswell,* 406 U.S. 311 (1972), a pawnbroker licensed under the Gun Control Act of 1968 (''GCA'') sought to exclude evidence obtained during a warrantless inspection of his business premises. The pawnbroker alleged that the provision of the GCA authorizing warrantless searches of business premises was unconstitutional under the Fourth Amendment. The Supreme Court upheld the warrantless inspection, noting that close scrutiny of the traffic in firearms is essential to prevent violent crime and to assist the states in regulating firearms within their borders. *Id.* at 315. The Court also stated that inspections for compliance with the requirements of the GCA posed limited threats to the pawnbroker's justifiable expectations of privacy because of pervasive federal regulation of the firearms industry. *Id.* at 316.

The Supreme Court also has recognized the validity of warrantless searches of residences and private property. In *Griffin* v. *Wisconsin,* 483 U.S. 868 (1987), the Court held that the warrantless search of a probationer's residence was ''reasonable'' because it was conducted pursuant to a valid regulation governing probationers. *Id.* at 880. The Court's holding was based on the proposition that the government operation of a probation system, like its supervision of a regulated industry, presents ''special needs'' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements. *Id.* at 875–76.

Such ''special needs'' have been extended to drug testing of students and federal employees. Citing *Griffin,* the Supreme Court has explained:

> [I]n certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. Therefore, in the context of safety and administrative regulations, a search unsupported by probable cause may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.

Bd. of Educ. v. *Earls,* 536 U.S. 822, 829 (2002) (internal citations and quotations omitted). Applying this standard, the Court in *Earls* found a school's drug testing policy constitutional because of the student's diminished expectation of privacy in school and the school's interests in the testing.

The lower federal courts also have applied the ''special needs'' to an individual's property outside of the home. In *Palmieri* v. *Lynch,* 392 F.3d 73 (2d Cir. 2004), the court noted that warrantless searches have been allowed when conducted under a regulatory scheme where there was a reduced expectation of privacy. *Id.* at 79. Applying the test outlined in *Earls,* the Second Circuit held that the special needs exception applied to an individual's property surrounding his home because of the government's interest in regulating construction on protected wetlands, the minimal intrusion at issue, and the individual's diminished expectation of privacy, which resulted from a combination of the plain view doctrine and the individual's voluntary application for a permit to build on wetlands and notice that the process would require some form of on-site inspection. *Id.* at 81–83.

One of the purposes of Title XI of the OCCA is to reduce hazards to individuals and property arising from the misuse and unsafe or insecure storage of explosive materials. In furtherance of Congress's intention to provide tighter security over explosive materials, the SEA amended the OCCA to include provisions that authorize warrantless inspections of places of storage of applicants for federal explosives licenses/permits, 18 U.S.C. 843(f), and that require the Attorney General, prior to issuing a license/permit, to verify by inspection that ''the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe,'' *id.* 843(b)(4). ATF's authority to conduct an inspection and examination of a licensee's/permittee's premises pursuant to 18 U.S.C. 843(f) is generally limited to normal business hours, even where a permittee may not have business hours.

Just as the courts have recognized the governmental interest in regulating probationers and construction on wetlands, there is a substantial government interest in regulating the storage of explosive materials, including those stored in a residential area: explosives present a substantial and immediate threat to all people in the vicinity, and the government accordingly has a substantial interest in reducing that threat.

Licensees/permittees who voluntarily seek the privilege to receive and possess explosives, a highly regulated activity, accept the legal responsibility of complying with federal explosives laws. As discussed, the SEA and implementing regulations explicitly provide for warrantless inspection of storage locations to ensure public safety, and such inspections are limited to both normal business hours and the storage location. Through the application process, applicants learn of their responsibilities in storing the explosives and keeping accurate acquisition and disposition records. Applicants are required to confirm that they understand these requirements. Accordingly, applicants are aware that by voluntarily taking on this responsibility, they have a reduced expectation of privacy in the records they are required to maintain and in the storage location.

An individual applicant is responsible for choosing the storage location. The indoor storage of explosives in, or directly adjacent to, a residence or dwelling is generally prohibited and will only be allowed if the applicant applies to ATF for and is approved a variance from the storage regulations to do so.[16] If an applicant chooses to store explosives at or near a residence and is granted a variance by ATF to do so, the applicant is aware that the storage area will be inspected as provided by law, which includes the possibility of a warrantless inspection.

The leading case on the ''closely regulated'' or ''pervasively regulated'' industry exception to the warrant requirement of the Fourth Amendment is *New York* v. *Burger,* 482 U.S. 691 (1987). The Court held that the automobile junkyard industry was a ''closely regulated'' business and that a warrantless inspection was reasonable and thereby comported with the Fourth Amendment. *Id.* at 712.

The *Burger* analysis has four parts. As a threshold matter, a court examines the nature and extent of government regulation of the relevant industry to determine whether the industry is in fact ''closely regulated.'' *Id.* at 703–05. Then, if the industry is indeed closely regulated, a warrantless inspection will be constitutional if (1) there is a substantial government interest that informs the regulatory scheme giving rise to the inspection, (2) the warrantless inspection is necessary to further the regulatory scheme, and (3) the regulatory scheme includes a constitutionally adequate substitute for a warrant, such as by giving regulated parties notice that inspections will occur and defining the scope of the inspections. *Id.* at 708–12.

At the threshold, the explosives industry is ''closely regulated.'' In *Burger,* the Court determined that junkyards were pervasively regulated because the provisions regulating the industry were extensive: operators could not engage in the industry without first obtaining a license, including meeting registration

[16] *See* 27 CFR 555.22, 555.208(b)(1), 555.210(b)(1), 555.211(b)(1); ATF Ruling 2002–3, *Indoor Storage of Explosives in a Residence or Dwelling* (Aug. 23, 2002), *https://www.atf.gov/explosives/docs/ruling/2002-3-indoor-storage-explosives-residence-or-dwelling/download* [*https://perma.cc/668W-XQEN*]; ATF Ruling 2002–4, *Indoor Storage of Explosives in Business Premises Directly Adjacent to a Residence or Dwelling* (Aug. 23, 2002), *https://www.atf.gov/explosives/docs/ruling/2002-4-indoor-storage-explosives-business-premises-directly-adjacent/download* [*https://perma.cc/2PHV-7VZ7*].

requirements and paying a fee; they had to maintain acquisition and disposition records and make the records and inventory available for inspection; they had to display their registration number at the place of business; and they were subject to criminal penalties, losing the license, or receiving civil fines for not complying. *Id.* at 704–05. In addition, the Court noted that the regulatory scheme's duration was also relevant to the ''closely regulated'' inquiry. *Id.* at 705.

Federal explosives regulations, enforced by ATF and other agencies, are just as extensive as the regulatory scheme in *Burger.* The regulations touch all aspects of the industry, including storing and inventorying, licensing, permitting, and record-keeping, consumer and occupational safety, transporting, and environmental impact, among others. In addition, the explosives statute and regulations include all characteristics that the Court itemized for junkyards in *Burger,* including licenses, records, inspections, and penalties. And as to duration, the federal government has regulated explosives since at least the Federal Explosives Act of 1917, Public Law 65–68, 40 Stat. 385 (Oct. 6, 1917) (previously codified at 50 U.S.C. 121–144), which was significantly amended in 1941, *see* Act of Dec. 26, 1941, Public Law 77–381, 55 Stat. 863 (Dec. 26, 1941). Although the Federal Explosives Act was repealed by OCCA in 1970, *see* 84 Stat. at 960, OCCA simultaneously replaced it with 18 U.S.C. chapter 40, which continues to regulate explosives, and which was modified by the SEA in 2003. Given the extent and duration of explosives regulation, the explosives industry is a closely regulated industry within the meaning of *Burger.* Indeed, the regulatory scheme governing the explosives industry is entirely analogous to that regulating the firearms industry, *see e.g., United States* v. *Fillman,* 162 F.3d 1055, 1057 (10th Cir. 1998) (finding 18 U.S.C. 842(i) of the explosives statute ''*in pari materia* with 18 U.S.C. 922(n),'' a provision of the Gun Control Act of 1968)), which industry has already been found to be a pervasively regulated industry, *see United States* v. *Biswell,* 406 U.S. 311 (1977). Because the explosives industry is ''closely regulated,'' the question is then whether the regulatory scheme satisfies the remaining three requirements of *Burger.* It does. Regarding the first requirement, there is a substantial government interest in ensuring that explosives do not fall into the hands of prohibited persons, are not lost or stolen or used in terrorist activities, and are stored and transported in ways that minimize risk to public safety. Regarding the second requirement, inspecting licensee/permittee operations and records is necessary to further these substantial government interests because doing so allows ATF to observe the explosives, assess how they are stored, compare them with records to ensure all explosives are accounted for, and ensure the regulatory safeguards are being met. Finally, regarding the third requirement, federal explosives laws at 18 U.S.C. 842 and 843(f) and 27 CFR part 555 provide an adequate substitute for a warrant because they clearly describe the responsibilities of federal explosives licensees; define the scope of ATF's inspection authority; and place licensees/permittees on notice of the fact and frequency of inspections. The explosives industry thus also satisfies these last three steps in the *Burger* test, such that warrantless inspections are reasonable.

The federal explosives laws were patterned after the GCA, and the warrantless inspection provisions of 18 U.S.C. 843(f) are substantially similar to those of the GCA upheld as constitutional by the Supreme Court in *Biswell.* As with explosives licensees/permittees, firearms licensees whose business premises and places of storage are located in a residence or private property are subject to warrantless inspection. *See, e.g., United States* v. *Cerri,* 753 F.2d 61 (7th Cir. 1985). The rationale set forth in the *Biswell* case is applicable to federal explosives licensees/permittees. The inspections conducted to ensure that explosive licensees/permittees are complying with federal law and the regulatory scheme, are non-criminal in nature and are minimal in that they are limited to the places where records and explosives are stored. Under these circumstances, there is a limited invasion of privacy, and no violation of the Fourth Amendment.

H. Transportation Issues

1. Regulatory Exemption Language Should Track Statutory Language

Comments Received

Under 18 U.S.C. 845(a)(1), ''aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security'' are exempted from the federal explosives laws (except for specified plastic explosives and bombing and arson offenses). To avoid any confusion regarding the impact of the interim rule implementing the SEA on the transportation and shipping of explosives, several commenters recommended that the regulatory language at 27 CFR 555.141(a)(1) track the text of the statute.

ATF Response

ATF believes that amending the regulatory language to reflect that of the statute will improve clarity for regulated parties. Therefore, ATF is revising the regulation at § 555.141(a)(1) to read as, ''[a]spects of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security.''

2. Explosives Delivery Record, ATF Form 5400.8

In the preamble of IFR 1, ATF stated that, on and after May 24, 2003, all common/contract carriers, prior to taking possession of explosive materials for delivery to a federal explosives licensee/permittee (including a limited permittee), were to complete Form 5400.8 (68 FR at 13771). The implementing regulations required all distributors to document and certify certain identifying information of the individual accepting possession of the explosive materials for the common/contract carrier.

Comments Received

A few commenters expressed concerns regarding the delay in issuing the form and its availability. They stated that the form was not available to the public until approximately two weeks before the effective date. Furthermore, the commenters disagreed with ATF's recommendation at the time that licensees download the form and make copies of it until they received their supply of the forms. The commenters contended that many explosives distributors are located in remote areas where they may not have access to the internet. One commenter stated that these distributors might not be able to obtain, or might have difficulty in obtaining, the form as a result.

Furthermore, the same commenter added that, subsequent to publication of IFR 1, DOT and DHS published interim final rules that affected the transportation exception at 18 U.S.C. 845(a)(1).[17] According to the commenter, ''DOT/DHS rules now occupy the field of transporter qualification and credentialing . . . . Consequently, Form 5400.8 has no effect.'' The commenter urged ATF to eliminate those aspects of the form that

[17] *See* footnote 5, *supra.*

impose obligations on individuals who have been qualified to transport commercial explosives pursuant to DOT's regulations.

ATF Response

ATF recognizes that the revised Form 5400.8 was not made available to the public until immediately prior to the effective date of the applicable SEA provisions. This was due primarily to the short time frame for implementation of the SEA. ATF made the new forms available as soon as possible and took steps to inform the industry of new or revised requirements that affected their conduct of business.

ATF's publication of IFR 2 on September 11, 2003, made Form 5400.8 obsolete. In that IFR, ATF amended ATF regulations to remove the procedures related to the use of Form 5400.8 in transactions among licensees, user permittees, and limited permittees. ATF explained its conclusion that the information required on Form 5400.8 was not needed to trace delivery of explosives to a common/contract carrier. 68 FR 53511. Furthermore, in light of rules published by DOT and DHS, ATF concluded there was no longer a significant reason to collect all of the information required by the form. Instead, ATF stated that it was continuing certain verification requirements (addressed in comment responses in section III.H.3 of this preamble) but was instead allowing distributors to record the relevant information in their permanent records, which are subject to inspection. ATF stated that it did not believe that elimination of the form would result in diversion of explosive materials to criminal or terrorist use. *Id.* Because Form 5400.8 has been obsolete since 2003, ATF believes this issue was resolved through IFR 2, and the comments were addressed through that process.

3. Transporter Obligations To Verify Identity of Person Accepting Delivery

The SEA mandated that all persons who wish to acquire explosive materials, whether in interstate or intrastate commerce, must obtain a federal explosives license/permit. IFR 1, which implemented the SEA, required distributors to verify certain information prior to relinquishing possession of explosive materials.

As implemented by IFR 1, § 555.103, which regulates transactions among licensees/user permittees, included in paragraph (b)(2)(ii) a requirement that distributees must provide the distributor a list of individuals authorized to accept delivery on behalf of the distributee and keep it updated. In addition, this paragraph prohibited a distributor from transferring explosive materials to any person whose name does not appear on the current version of that list. These requirements continue to remain in effect. In addition, § 555.103(b)(2)(ii) required that, in all instances, the distributor was required to verify the identity of the person accepting possession of explosive materials on behalf of the distributee by examining an identification document before relinquishing possession.

As written in IFR 1, these last two requirements (distributor must not transfer to unauthorized person and must verify identity of person accepting) also applied to common/contract carriers of explosive materials, because they could be deemed to be filling both the role of distributee when accepting possession of explosive materials from a licensee/user permittee and the role of distributor when transferring possession of explosive materials to a licensee/user permittee. Therefore, a few months after IFR 1, ATF issued IFR 2, which amended § 555.103(b)(2)(ii) to explicitly except common/contract carriers from the requirement to verify the identity of the accepting person during deliveries to licensees/user permittees. It did so by adding ''except as provided by paragraph (b)(3) of this section'' before the phrase ''in all instances.'' Paragraph (b)(3) was titled ''Delivery of explosive materials by common or contract carrier.'' The exception for common/contract carriers from the § 555.103(b)(2)(ii) requirement to verify the identity of persons accepting explosive materials on behalf of licensee/user permittee distributees is still in effect.

Section 555.103(b)(3), as implemented in IFR 1, also specifically required that prior to relinquishing explosive materials, distributors had to verify the identity of the person accepting possession on behalf of the common/contract carrier and required the common/contractor carrier to complete Form 5400.8 (discussed in section III.H.2 of this preamble) for this purpose. A similar requirement also existed in § 555.105, Distributions to limited permittees, in § 555.105(b)(6)(iii)–(iv). The requirement in both §§ 555.103 and 555.105 for the distributor to verify the identity of the common/contract carrier and driver remains in effect, but IFR 2 removed the requirement to use Form 5400.8 in both.

In addition, as implemented by IFR 1, § 555.105(b)(6)(iii) required that, if the common/contract carrier was hired by the distributor, then the common/contract carrier was required to verify the identity of the person accepting delivery on behalf of the limited permittee distributee and provide that information back to the distributor. This requirement was premised on ATF's view, at the time of IFR 1, that the common/contract carrier was acting as an agent of the distributor.

However, shortly after IFR 1 became effective on March 20, 2003, and before the comment period for IFR 1 closed, ATF issued ATF Ruling 2003–5 [18] on May 23, 2003, to reduce the identity verification burden placed by § 555.105(b)(6)(iii) on common/contract carriers when transporting to limited permittees. Ruling 2003–5 provided an alternate method for meeting the identity verification obligations in deliveries to limited permittees from those in the regulation, and allowed the distributors, rather than the common/contract carriers, to verify that the explosive materials were received by limited permittees no later than three business days after shipment. This change was further reinforced by ATF guidance.[19] Both the regulatory requirement for common/contract carriers to verify the recipient's identity and the ruling's alternative option for distributors to verify instead remain in effect.

Comments Received

In 2003, several commenters raised concerns about carrier obligations under these provisions as implemented through IFR 1. These commenters argued that the requirement for carriers to verify the identity of the person accepting possession of explosive materials was burdensome, impractical, and created potential liability issues for carriers. One commenter expressed concerns that it would be both burdensome and impractical for carriers, in either a distributor or a distributee role, to be prohibited from receiving or relinquishing explosive materials unless they had a current list of persons authorized to accept such materials. This commenter stated that the carrier would not be able to verify, at the time the explosive materials are loaded in the vehicle, the identity of the person who would later accept delivery because the carrier would not have that person's identification to match against the list provided to the distributor. The commenter added that the carrier driver could not be presumed to later check the identification against the list at the time of delivery. The commenter stated

[18] *See* footnote 2, *supra.*

[19] ATF Explosives Industry Newsletter at 6 (June 2005), *https://www.atf.gov/media/28996/download.*

that ATF would therefore need to provide instructions on how identification credentials would be exchanged to enable the distributor to verify the accepter's identity before delivery.

Another commenter also described the impracticalities of requiring a carrier, in a distributor role, to verify the identity of the person accepting the explosive materials. This commenter stated it was not always possible for carriers to verify the identity of the person accepting possession because of the complex and various methods of distribution and transportation used by the industry. They asked ATF to clarify how identification credentials were to be exchanged between the distributor and the distributee to meet these obligations.

One commenter recommended an alternative method in which the distributees (rather than the carrier or the distributor) would be required to confirm delivery of an explosives shipment via common carrier by the end of the next business day after the explosives were delivered. If the distributee did not confirm delivery by the end of the next business day after the scheduled delivery date, distributors would be required to check the status of the shipment with the distributee by the end of the second business day after the scheduled delivery.

A third commenter raised concerns that focused on the similar requirements of § 555.105(b)(6)(iii). This commenter stressed that the time and complications involved in requiring carrier drivers to verify identity would cause delays that would seriously compromise both the ''just in time'' delivery system relied upon by manufacturers and retailers, and one of the central principles of hazardous materials transportation safety—*i.e.,* minimizing travel time. The commenter also noted that delays in delivery were contrary to the hazardous materials regulations and provided some examples of delays caused by the named recipient being out sick, no longer employed, or married with a different last name, thereby preventing delivery until the situation was resolved.

Although ATF issued Ruling 2003–5, described above, to provide an alternative method to the carrier verification requirements for limited permittee transactions in § 555.105(b)(6)(iii), this commenter contended that the ruling did not address the larger issue that distributors were still required to verify the identity of recipient licensee/user permittee distributees under § 555.103(b)(2)(ii), even though almost all such transfers were performed by carriers. This comment was made before IFR 2 was issued a few months later, in which § 555.103's requirement was addressed. The commenter concluded by stating that ATF's interim regulations ''impose burdens on transporters of explosives regulated by the DOT.'' In addition to concerns that verification would be overly time consuming, commenters were also concerned that they could be held personally liable for delivering explosives to persons not authorized to receive them.

Several commenters argued that ATF did not have the authority to impose the requirement that carriers, whether common or private, verify and confirm the identity of the person accepting on behalf of a distributee. Lastly, where regulations required that a distributor have a current list of the names of ''persons'' authorized to accept delivery, one commenter asked that ATF clarify whether ''person'' means ''person'' as defined in the law (18 U.S.C. 841(a)) or if it refers to an ''individual.''

ATF Response

ATF acknowledges that the regulations at §§ 555.103(b)(2)(ii) and 555.105(b)(6)(iii), as implemented through IFR 1, placed additional duties on common/contract carriers by requiring them to verify identity and delivery. Therefore, as mentioned above, after issuing IFR 1 in March 2003, ATF issued Ruling 2003–5 in May 2003 and IFR 2 in September 2003 to address these concerns.

With regard to § 555.103, ATF agrees with the commenter's contention that Ruling 2003–5 did not address the issue that distributors were still compelled to verify the identity of individuals accepting explosives on behalf of licensees/user permittees because Ruling 2003–5 provided an alternative only to requirements in § 555.105. However, ATF believes that IFR 2 resolved this commenter's concern with the requirement in § 555.103(b)(2)(ii). IFR 2 amended § 555.103(b)(2)(ii) to except common/contract carriers from the identity and delivery verification requirements when delivering to licensee/user permittee distributees by adding ''except as provided in paragraph (b)(3)'' before the distributor's requirement to verify the identity of the person accepting delivery ''in all instances.'' IFR 2 also amended paragraph (b)(3) of the section, covering deliveries made via common/contract carrier, to remove the requirement for the common/contract carrier to verify the identity of the person authorized to accept delivery of the explosive materials on behalf of licensee/user permittee distributees.

For clarity, ATF notes that these amendments did not affect the distributor's requirement under § 555.103(b)(2)(ii) to verify the identity of the individual accepting the explosive materials on behalf of the distributee prior to relinquishing them when the distribution occurs ''by distributor''—directly between the distributor and the distributee or their authorized person, whether at the distributor's premises or via delivery by the distributor or their employee (not involving a common/contract carrier). That requirement remains in effect.

With regard to § 555.105, Ruling 2003–5 allowed a variance from the requirement under § 555.105(b)(6)(iii) that a common/contract carrier must verify the identity of persons accepting delivery on behalf of a limited permittee distributee. Specifically, Ruling 2003–5 allowed an alternative method by which distributors of explosives, rather than the carriers, could verify no later than three business days after shipment that the limited permittee distributee received the explosive materials. The ruling did not remove the requirement from the regulation, however, and the provision at § 555.105(b)(6)(iii), still requires that carriers, if hired by a distributor, verify the identity of the person accepting the delivery on behalf of the distributee and provide that information back to the distributor. ATF agrees with commenters that the existence of this regulatory provision along with the variance in Ruling 2003–5 is not the clearest way to address the situation.

ATF, therefore, sees merit in making further clarifying amendments to §§ 555.103(b) and 555.105(b) in light of the above comments and pursuant to discussions with industry members. In this final rule, ATF is amending these sections in a manner that provides greater consistency, reduces burden on common/contract carriers and distributors, and still addresses Congress's concern that the explosives regulations provide for substantial security. Specifically, the final rule amends §§ 555.103 and 555.105 to make clearer the verification procedures applicable under the following circumstances: (a) distribution of explosive materials by distributor; and (b) distribution of explosive materials via common/contract carrier. The revised regulations thus differentiate between two clear circumstances, improving on the somewhat confusing current divisions between four circumstances.

With regard to distributions effected ''by distributor''—at the distributor's premises or by distributor delivery—this final rule does not change the requirement in either §§ 555.103 or 555.105 that the distributor must verify the identity of the distributee, or the person accepting on the distributee's behalf. This rule makes the following edits with regard to ''by distributor'' distributions in both sections for clarity: (1) to combine distributions at the distributor's premises and via distributor delivery into one set where they have previously been split, and (2) to change the word ''person'' to ''individual'' in response to comments requesting that ATF clarify which requirements apply to a ''person'' (which by definition can include a corporation, etc.) versus an ''individual'' (which does not include corporations or other entities).

However, this final rule eliminates any remaining requirement in either section for a distributor or a common/contract carrier to verify the identity of a person accepting possession on the distributee's behalf when distributions occur via common/contract carrier. This rule also makes the following edits, parallel to those for ''by distributor'' distributions, with regard to ''via common/contract carrier'' distributions in both §§ 555.103 and 555.105 for clarity: (1) to combine carriers hired by distributor and carriers hired by distributee into one set where they have previously been split, and (2) to change the word ''person'' to ''individual'' in response to comments requesting that ATF clarify which requirements apply to a ''person'' (which by definition can include a corporation, etc.) versus an ''individual'' (which does not include corporations or other entities).

Under this rule, when the distribution occurs via a common/contract carrier, the distributor must still verify the identity of the carrier's driver and record that information, as before. However, the rule removes the requirements for the common/contract carrier or the distributor (as previously required by IFR 1 or alternatively by Ruling 2003–5, respectively) to verify the accepting person's identity or to verify that the delivery occurred. Removing the common/contract carrier requirement to verify will now apply consistently to distributions involving licensee/user permittee distributees and ones involving limited permittee distributees, rather than having differing requirements for each.

For security and law enforcement reasons, ATF believes it would be best to have verification occur for all distributions. However, ATF recognizes the need to balance those concerns with the verification limitations inherent in common/contract carrier deliveries. ATF considers there to still be value in verifying identity whenever feasible, so ATF continues to retain the verification requirements for ''by distributor'' distributions and the identity verification requirements for common/contract carrier drivers.

Although removing the requirement to verify distributee identity when the distribution occurs via common/contract carrier presents a risk, ATF believes that this approach to such deliveries is preferable to the two-part option suggested by one of the commenters and will more smoothly fit into standard business practices. Some of the risk arising from not verifying in these cases can be offset by the fact that the distribution will occur at the distributee's premises, where certain actions will naturally occur as part of standard business practices and other obligations. For example, the distributee has a vested interest in ensuring that it receives the explosive materials it ordered and paid for, and already, as a matter of standard business practice, will check to ensure delivery occurred. If it does not receive the expected delivery, the distributee will reach out to the distributor and/or carrier to notify them that the delivery did not occur and find out what happened. This will help ensure that any potential diversion of the explosives for criminal or other improper purposes does not go unnoticed and can instead be reported to the proper authorities.

Furthermore, the distributee also already has the responsibility of ensuring that it designates individuals authorized to accept explosives on its behalf and provides a list of authorized individuals to the distributor. ATF still considers this an important accountability step in light of the statute's requirement that explosives be distributed only to licensees/permittees. So, the requirement that distributors must verify that they are distributing to an authorized individual when they do so directly (not via a common/contract carrier) remains, even when the distributor is delivering to the distributee, because both ends of the equation in this situation (unlike in situations involving common/contract carriers) have an obligation in this regard. However, the distributee also has a responsibility on its end to ensure that an authorized person is present and accepts the delivery, even when a common/contract carrier is delivering. In addition, the distributee must still record the delivery in its acquisition record, which helps ensure the delivery went to the permitted person.

In response to other comments, ATF also concurs that the regulation at § 555.103(b)(2)(ii) should be clarified with regard to individuals accepting on the distributee's behalf. This section would better achieve the objectives of the SEA by changing the term ''persons'' in this section to ''employees and responsible persons'' (the term ''responsible person'' is defined, and ATF is therefore not changing the word ''person'' to ''individual'' in this context). The language in § 555.103 is being amended accordingly in this final rule.

4. Definition of ''Possess'' as It Applies to Transportation

Comments Received

In IFR 1, ATF stated its belief that it is essential that Form 5400.8 be executed in all instances when licensees/permittees transfer possession of explosive materials to a truck driver who is not an employee of the distributor. Completing Form 5400.8 would ''help ensure that explosives are not placed in the hands of prohibited persons for possible diversion to criminal or terrorist use.'' 68 FR 13772. This requirement was in effect until May 24, 2003. After that date, ATF continued to require common/contract carriers taking possession of explosive materials, whether hired by the distributor or distributee, to complete Form 5400.8. But ATF no longer required employees of purchasers to complete the form. 68 FR 13771.

Two commenters interpreted ATF's requirements to mean that persons who transport explosives are ''possessors.'' They both argued that federal law makes a clear distinction between those who transport and those who receive or possess explosive materials, with one of these commenters noting that, ''Congress would not have distinguished these classes of persons if they were deemed to be one and the same.'' Both commenters believed that persons who transport explosives should not be considered possessors and should not be subject to the disqualifications imposed by 18 U.S.C. 842(i). One commenter stated that ''ATF should affirmatively renounce its interpretation that persons engaged in transportation in commerce also 'possess' explosives'' within the meaning of federal explosives law.

ATF Response

ATF agrees that Congress did not intend the terms ''transport or ship'' and ''receive or possess,'' as applied to persons, to have identical meanings. However, ATF disagrees with the commenters' conclusions that these terms must necessarily apply to completely separate and exclusive groups of persons. Rather, both of these terms can apply to the same person at the same time. For example, a person who manufactures explosive materials, places them on a vehicle, and drives this vehicle to another location in order to use the materials both ''possesses'' and ''transports or ships'' the materials. Therefore, ATF is not adopting the suggestion that ATF generally interpret these terms as having exclusive applications to different groups of persons. Additionally, common/contract carriers are exempted from provisions of the SEA that are regulated by DOT or DHS. *See* 18 U.S.C. 845(a)(1).

As stated above, ATF amended ATF regulations with the publication of IFR 2, making Form 5400.8 obsolete.

5. Selective Application of Statutory Provisions

Comments Received

ATF regulations at 27 CFR 555.26(a) provide that, ''[n]o person, other than a licensee/permittee knowingly may transport . . . any explosive materials.'' Two commenters claimed that there is some confusion as to whether common carriers are required to obtain a permit to transport explosives. One commenter argued that this confusion is based, in part, on information ATF provided on its website regarding implementation of the SEA. The commenter argued that ''If the permit requirements of the statute and regulations are not being applied [to commercial transportation], ATF needs to clarify if it is because the transportation exception [in the federal explosives law] is effective . . . or because ATF has chosen not to exercise its authority.''

ATF Response

Both the statute at 18 U.S.C. 845(a)(1) and the regulations at 27 CFR 555.141(a)(1) make clear that a common/contract carrier that is regulated by DOT, and whose explosives activities are limited to commercial transportation, is not required to obtain a federal explosives license/permit. Therefore, ATF is not amending the regulation.

I. Safe Storage and Retaining Records

The regulations at § 555.121 provide that licensees/permittees must keep records pertaining to explosive materials in permanent form (*e.g.,* commercial invoices, record books). Such records must be kept on the business premises for five years from the date a transaction occurs or until the licensee/permittee discontinues business or operations.

Comments Received

A commenter expressed concerns about protecting personally identifiable information (''PII'') in the required records. The commenter noted that ATF did not provide guidance on how to store or protect mandated records that contain PII, which created privacy concerns, particularly when, the commenter explained, those records are delivered to the custody of a private entity. The commenter did not explain why they thought PII might be delivered to the custody of a private entity, but ATF notes that it does not require records be transferred to anyone other than ATF. The commenter requested that ATF provide information on safekeeping and eventually destroying the required records. Another commenter expressed similar concerns.

ATF Response

ATF has not been granted authority under the federal explosives law to mandate that licensees and permittees maintain their required explosives records in accordance with particular security specifications. The SEA had no effect on, nor did it initiate any changes relating to, the federal record-keeping requirements in regard to securing PII or other security procedures for records. As a result, ATF is unable to implement the commenters' suggestions. However, it would be prudent for industry members to develop internal controls on securely storing the required records as a matter of good business practice, given that such records are subject to inspection.

J. License/Permit Requirements for Treatment, Storage, Disposal Facilities

Section 555.102(b)(2) provides that, on and after May 24, 2003, permittees are not authorized to engage in the business of selling or distributing explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees/permittees in accordance with §§ 555.103 and 555.105.

Comments Received

One commenter stated that the U.S. Environmental Protection Agency (''EPA'') used the term ''dispose/disposing'' in the context of EPA disposal time and tracking requirements triggered once a licensee/permittee declares explosive materials to be a hazardous waste. As a result, the commenter explained, it would create confusion for ATF to use the same terms when referring to handling surplus stocks of explosive materials. The commenter stated that this overlap would suggest that EPA-regulated treatment, storage, and disposal facilities (''TSDFs'') must also obtain an explosives license/permit to dispose of hazardous waste explosives. The commenter also stated that EPA had regulated the disposal of ''reactive'' wastes, which include explosives, since 1976 and that TSDFs were subject to stringent permitting requirements.

The commenter raised this question to EPA, which, according to the commenter, suggested that ATF use terms such as ''surplus or recycling,'' rather than ''dispose/disposing,'' to distinguish between usable explosives being returned to stock at some other location and explosives that have been declared waste and are destined for permanent destruction.

ATF Response

Federal explosives laws and regulations require that any person intending to acquire explosive materials must first obtain a federal explosives permit. Therefore, unless subject to an exemption, a TSDF receiving explosive materials is required to be permitted under 27 CFR part 555.

Regarding the suggestion that ATF use terms such as ''surplus or recycling,'' rather than ''dispose/disposing,'' to distinguish between usable explosives being returned to stock at some other location and explosives that have been declared waste and are destined for permanent destruction, ATF notes that the regulation authorizing permittees to ''dispose of surplus stocks of explosive materials to other licensees or permittees'' dates back to 1971. ATF has no record of any previous complaints or confusion within the explosives industry regarding the use of the terms ''dispose'' or ''disposition'' in federal explosives laws or regulations. ATF also has no record of the EPA or any other government agency expressing concern over any potential confusion in relation to these terms in federal explosives laws or regulations, or any potential for these terms to be confused with any related terms established in the laws or regulations that fall within their enforcement jurisdictions. Accordingly, ATF is not adopting the commenter's suggestion.

K. Possessing Explosives Prior to Completing a Background Check

Effective May 24, 2003, the SEA required ATF to conduct background checks on the individuals listed on license/permit applications as RPs and employees authorized to possess explosive materials. The law requires ATF to determine whether any of the RPs or employees are prohibited persons under 18 U.S.C. 842(i) and to notify the employer of the determination.

Comments Received

A commenter requested that ATF clarify whether employees for whom background check paperwork has been submitted may possess explosives prior to ATF's response and until notification is received from ATF that such employee is prohibited from possessing explosive materials. Because ski resort business is highly seasonal, the commenter contended that ''[l]imitations on the ability of an employee to possess explosives while awaiting a letter of clearance from ATF—unless brief, expedited processing deadlines were put in place—could put our avalanche control operations at risk.''

ATF Response

ATF recognizes that industry members often have a limited time in which to staff positions that require an employee to possess explosives. ATF strives to process background check requests and issue appropriate letters to explosives companies and individuals in a timely manner. Despite these efforts, processing necessarily takes time, and requiring proprietors to wait for a response from ATF prior to allowing a newly hired employee to possess explosives would place a significant burden on the industry.

To address this burden, and in response to the comments raising concerns about such a burden, ATF has decided to amend § 555.57 to clarify that it will exercise its discretion under 18 U.S.C. 843(d) to refrain from seeking to revoke the license/permit of a licensee/permittee that employs prohibited persons under certain narrow circumstances. In particular, so long as the licensee/permittee has complied with the requirement to report any new RP or any newly hired or rehired employees authorized to possess explosive materials to ATF's FELC within 30 days after the date they were hired or otherwise placed in the position; and so long as neither the licensee/permittee nor the relevant RP knows, or has reason to know, that the new RP or employee is prohibited from possessing explosives, ATF will not revoke the license/permit on the basis that the licensee/permittee employed a person who, upon completing the relevant background check, was determined to be a prohibited person under section 842(i). For clarity, ATF notes that this safe harbor would cease to be available if the licensee/permittee continues to employ a new RP or employee in a role that requires possessing explosive materials after learning that the new RP or employee is in fact a prohibited person, whether the licensee/permittee learns that information through the results of a background check or otherwise.

L. Meaning of ''Possess''

As explained in IFR 1 (68 FR 13772–73), 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. Where direct physical control over explosive materials is absent, a person has constructive possession where they knowingly have the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others.

Comments Received

Various comments addressed the meaning of ''possess'' in the regulations. According to one commenter, although the term ''possess'' or one of its derivatives is used 59 times in the interim regulations, the term was not defined. This commenter believes this term should be defined because its meaning ''bears so greatly on maintaining compliance'' with the laws and regulations.

Another commenter, an organization, similarly asked for a definition or clarification on the meaning of ''possess,'' explaining that many of its members are involved in support activities (*e.g.,* consultants, suppliers) where they may come into contact with commercial explosives and could be considered possessors. The commenter stated that prior to the SEA, these members would not have needed to obtain an explosives license/permit, but that it was now unclear whether they would be considered ''possessors'' under the interim rule. This commenter contended that ATF had provided inconsistent answers, ''especially as it relates to the distinction between receivers and possessors.''

The second commenter likewise argued that ATF had sent mixed messages as to whether persons such as blasting consultants, emergency response services, and commercial motor carriers, would be considered possessors and therefore need a permit. The commenter stated that ''in some cases, ATF is equating 'receive' to 'possess,' and in others ATF is not'' and explained their belief that none of these types of persons needs an explosives permit from ATF unless the person purchases explosives. In their view, not only did federal explosives law clearly intend a distinction between ''possess'' and ''receive,'' but also, ATF had enforced the laws for over 30 years in a manner that distinguished between the two terms.

A third commenter, which represents the crushed stone, sand and gravel—or aggregate—industries, also noted confusion regarding the meaning of ''possess'' in the context of who would be regarded as a ''responsible person.'' Such persons are required to be listed on a license/permit application and undergo a background check. ATF had previously stated that possession may be either actual or constructive. According to this commenter, ''the term 'constructive possession' was so open-ended and vague that a strict interpretation applied by [ ]ATF could result in costly compliance action by the commenter's member companies for little, if any, benefit.'' The commenter further argued that ''it is not the intent of Congress to require background checks for every corporate officer or director of a company.'' All three commenters asked that ATF provide more specific guidance to the industry on the meaning of ''possess'' and who or what is covered in certain situations.

ATF Response

Although no definition of ''possess'' exists in the federal explosives statutes, the terms ''possess'' and ''possession'' have long been defined by the courts in both civil and criminal contexts, which ATF has used to provide guidance to the industry. *See, e.g., United States* v. *Van Horn,* 277 F.3d 48, 54–55 (1st Cir. 2002) (''Under settled law, possession may be actual or constructive, sole or joint . . . . Constructive possession is commonly defined as the power and intention to exercise control, or dominion and control, over an object not in one's 'actual' possession . . . . Constructive possession exists when a person knowingly has the power and intention at a given time to exercise dominion and control over an object, either directly or through others.'') (internal citations omitted).

Relying on such case law, ATF has long construed the terms ''possess'' or ''possession'' as applying to an employee who is either in actual or constructive possession of the materials. On Form 5400.13/5400.16 (now becoming Form 5400.13) and Form 5400.28, ATF explains that actual possession exists ''when a person is in immediate possession or control of explosive materials (*e.g.,* an employee who physically handles explosive materials as part of the production process; an employee who handles explosive materials in order to ship, transport, or sell them; or an employee such as a blaster, who actually uses explosive materials).'' The forms also explain that constructive possession exists ''when an employee lacks direct physical control over explosive materials, but knowingly has the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others (*e.g.,* 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; or an employee transporting explosive materials from a licensee to a purchaser).''

Whether a person ''possesses'' explosive materials, either actually or constructively, has a bearing on determining whether one is an employee authorized to possess explosive materials, but not on whether one falls under the definition of ''responsible person.'' ATF believes the third commenter mistakenly applied standards for employees authorized to possess explosive materials to RPs. The SEA, at 18 U.S.C. 841(s), defines ''responsible person'' as ''an individual who has the power to direct management and policies of the applicant pertaining to explosive materials.'' ATF regulations (§ 555.11) further clarify that this term includes ''partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.''

ATF recognizes that the industry would like more specific guidelines regarding applicability of requirements regarding employees authorized to possess explosive materials as they pertain to industry members' particular situations. ATF published guidance in the May 2003 edition of the ATF Explosives Industry Newsletter [20] and maintains information on the ATF website.[21] Unfortunately, it is impossible for ATF to formulate a general rule that would address every potential situation involving an employee authorized to possess explosive materials that may arise in the industry. Each licensee/permittee must make a good-faith effort to determine which of its employees qualifies as an employee authorized to possess explosive materials. There may be situations in which, after consulting the above resources, an industry member still has questions or needs clarification on an issue involving an employee authorized to possess explosive materials. ATF field personnel are available to answer questions, and ATF will continue to respond to such requests and provide written responses to the industry on a case-by-case basis. Although ATF acknowledges that the meaning of ''possess'' has a bearing on whether a person needs to comply with federal explosive law and regulations, ATF believes the terms ''possess'' or ''employee authorized to possess explosive materials'' are sufficiently clear and therefore declines to define these terms.

ATF also agrees that the terms ''receive'' and ''possess'' are not synonymous with respect to the federal explosives regulations. With limited exceptions (for example, common/contract carriers transporting explosive materials), federal explosives laws and regulations require that any person receiving or possessing explosive materials must have a federal explosives license/permit. Although it is generally the case that all individuals receiving explosives also possess those materials, it is not necessarily the case that all persons in possession have ''received'' materials as the term is applied for purposes of complying with the regulations. For example, a person transporting explosive materials at a work site on behalf of their employer possesses the explosives, but they would not be considered to have ''received'' the materials for licensing, record-keeping, or other purposes under part 555.

It is important to note that such a distinction does not apply to those who acquire explosives unlawfully. Such individuals would likely have ''received'' and will be in ''possession'' of these materials under the law. For example, a person not employed by a licensee/permittee who purchases explosives in an illicit transaction or an employee authorized to possess explosive materials who steals explosives from an employer's explosives magazine would have received and would possess such materials.

Commenters stated that ATF has provided inconsistent guidance regarding which types of industry workers (*e.g.,* blasting consultants, emergency response services, and commercial motor carriers) receive or possess explosives, and, therefore, require a license/permit under part 555. However, it is not feasible for ATF to formulate a general rule or attempt to develop a significant number of examples that would address every potential ''receipt'' versus ''possession'' situation that may arise in the industry. For ATF to determine which types of persons or entities receive or possess explosive materials (*e.g.,* emergency responders, consultants, waterfront facilities), each scenario and its attendant circumstances must be examined. For example, an industry consultant in one scenario may purchase explosives for demonstration purposes, whereas a consultant in another scenario may provide instruction without ever purchasing or possessing explosives. Therefore, ATF will continue to make such determinations individually, considering factors and circumstances pertinent to each case.

M. Safely Handling Explosives and Record-Keeping Manual

Comments Received

One commenter recommended that the final rule include a provision that requires explosives licensees/permittees to maintain a written handling and record-keeping manual onsite that would contain the necessary paperwork and records required by ATF, as well as require employee training and procedures to ensure explosive materials are under custody of authorized personnel at all times. According to the commenter, when they visited locations where explosives were handled, the commenter frequently observed mishandling of explosive materials. The commenter cited examples such as magazines left open, residual and unused explosives left throughout the facility, and areas ready for blasting left unattended for long periods. Additionally, they observed that required records could be difficult to locate when ATF was conducting renewal or compliance inspections. The commenter stated that these situations were extremely dangerous and provided unauthorized individuals access to explosives.

ATF Response

Federal explosives laws generally grant the Attorney General the authority to prescribe rules and regulations necessary to carry out the provisions of 18 U.S.C. chapter 40. 18 U.S.C. 846. ATF has accordingly prescribed

[20] *Other Frequently Asked Questions,* ATF Explosives Industry Newsletter (ATF, Washington, D.C.), May 2003, at 5, *https://www.atf.gov/file/56531/download* [*https://perma.cc/9WAQ-UYBD*].

[21] *See* ATF, *Who is a ''responsible person''?* (Apr. 23, 2025), *https://www.atf.gov/explosives/qa/who-%E2%80%9Cresponsible-person%E2%80%9D* [*https://perma.cc/K8MN-LMRG*]; ATF, *Who is a ''possessor of explosives''?* (Sep. 28, 2018) *https://www.atf.gov/explosives/qa/who-%E2%80%9Cpossessor-explosives%E2%80%9D* [*https://perma.cc/2FHQ-QNJA*].

regulations on various aspects of an explosive licensee's/permittee's business activities. ATF believes that the most effective regulations are those that address possessing, transferring, transporting, and shipping explosives, and ATF prioritized such regulations to ensure that prohibited persons do not possess explosives and that explosives are safely stored, shipped, transported, and possessed. ATF regulations contain requirements that licensees/permittees must meet to properly and safely store and manage explosives and to create and maintain required records, among other provisions, and ATF inspects operations to assess compliance with these important public safety components. Implicit in these requirements is a need for licensees/permittees to develop training and procedures to ensure that their employees comply with ATF's requirements. Including an additional regulatory requirement that licensees/permittees must develop and manage employee conduct, training, and procedures in a particular way as mandated by ATF would essentially duplicate this preexisting need without adding any further public benefit. Such a requirement would also be costly and difficult to enforce because ATF would have to review employee manuals, monitor employee training, or otherwise spend resources that could be better directed towards enforcing requirements with greater public benefits. In addition, because the explosives industry consists of more than 25 sectors, each with its own operational needs and using different types of explosives and in different ways, it is unrealistic for ATF to attempt to regulate procedures, training, and employee conduct at a detailed level. ATF would have to develop more than 25 sector-specific regulations for such practices, constantly update them as technology and explosives composition change for each industry sector, and also adjust for innovations in industry practice. ATF does not have the resources to do the research and constant monitoring of changes in technology, explosives, and more, or the necessary testing to go along with it. Nevertheless, ATF works closely with industry members not only to ensure compliance with all regulations under part 555, but also to address voluntary safety and security measures.[22] In addition, ATF inspects licensee/permittee operations and records to ensure compliance with part 555 requirements.

ATF encourages persons with information relating to unsafe or unsecured explosives practices to contact their nearest ATF field office, whose information can be found on ATF's website. In addition, there are other federal and state government agencies, in addition to many notable groups within the explosives industry, that have prepared explosives-related publications that address the safe handling and use of explosive materials.

N. Errors in Regulatory Text

Comments Received

The interim regulation at § 555.106(c), introductory text, reads as follows:

(c) A licensee shall not distribute any explosive materials to any person knowing or having reason to believe that the person . . .

According to a commenter, ''[c]urrent rules state that 'persons' are subject to the receipt disqualifications at 18 U.S.C. 842(d) when the statutory applicability is to an 'individual.' ATF should correct this error to be consistent with the FEL [federal explosives law].''

ATF Response

The IFRs did not affect the applicability of § 555.106(c) to persons, as noted by the commenter, and therefore this issue is not within the scope of the notice. In any event, by using the term ''person,'' rather than ''individual,'' the regulation reflects the fact that, under federal law, it is unlawful for a person to assist any prohibited ''person,'' including an individual or a legal entity such as a corporation, to receive or possess explosives. *See* 18 U.S.C. 2, 842(i). Therefore, ATF is not adopting the commenter's suggestion.

O. IFR Costs and Benefits Section

To implement the SEA, IFR 1 incorporated new requirements into ATF explosives regulations and included an accompanying cost-benefit analysis. Those requirements went into effect over 20 years ago with the publication of IFR 1 and have remained in effect. The costs stemming from these requirements were addressed in the IFR and became, for the purposes of standard economic analyses, sunk costs for industry after ten years. This section of the preamble is responding to comments that were submitted in 2003 on the IFR 1 cost-benefit analysis, and therefore affect only the IFR 1 projected costs through 2012. However, because time has passed since the IFRs were issued, ATF now has historical data on some of the elements originally projected in 2003. To respond to these comments as accurately as possible, ATF is therefore responding to these comments using actual historical data where available.

For IFR 1 or IFR 2 requirements that are being revised through this final rule, ATF has included a new cost-benefit analysis covering those current costs in section VI.A.2 of this preamble. Therefore, the responses in this section do not include any new costs arising from this final rule. Specifically, ATF notes that IFR 2 covered only verification of delivery by common/contract carriers, and economic comments pertaining to IFR 2 were on that topic. However, ATF is removing that verification requirement via this final rule, so costs related to that issue are updated and addressed in the cost-benefit analysis in section VI.A.2 of this preamble.

1. Population of User Permittees and Limited Permittees

To implement the SEA, IFR 1 required that all persons (at the time of publication) who used explosives as part of their operations, but who were not otherwise licensed/permitted at the time, would thereafter have to obtain a license/permit prior to obtaining additional explosives. The SEA had created a new type of permit, a limited permit, that was intended to provide an easier option for such ''non-permittees'' to comply with the new licensing/permitting requirement. Therefore, in IFR 1, ATF estimated that 20,000 non-permittees would obtain a limited permit, which ATF concluded would mean that they could purchase explosives (at most) six times per year. In addition to obtaining a limited permit, ATF estimated that these new permittees would also need to undergo an inspection for an additional related cost.

Comments Received

One public commenter suggested that some non-permittee users of explosives—who would have had to acquire a license/permit as a result of the new SEA requirements—might have applied for a user permit instead of a limited permit because six purchases in a year might not have been sufficient for all non-permittees. This commenter broke out the estimated 20,000 applicants into two groups: suggesting that half (10,000) of the estimated affected population would apply for a limited permit and half (10,000) would apply for a user permit. The commenter also noted that there would be additional downstream effects (beyond

[22] *See, e.g.,* ATF, *Explosives Safety and Security* (Mar. 13, 2025), *https://www.atf.gov/explosives/tools-services-explosives-industry/current-licensees/explosives-safety-and-security* [*https://perma.cc/NVX4-B7W9*].

inspections) from increasing the number of permittees, such as appeals of adverse background checks and applications for relief of disabilities.

ATF Response

ATF agrees with the commenter that some of the non-permittees might have chosen to acquire user permits beginning in 2003 instead of limited permits. In addition, because ATF has historical data on the numbers of permit applications, ATF has used this data to re-calculate the types of permits the affected population would have acquired in response to IFR 1 (rather than using estimated projections, as occurs in regulatory analyses conducted when a rule is issued)—if the 2003 cost-benefit analysis had included both kinds of permits.

To calculate the increase in user permits that could have been attributed to the SEA/IFR 1 requirement, ATF first ascertained a baseline of annual applications it received before the requirement. Because there is no means of determining which user permit applications stemmed from preexisting requirements versus those created by the SEA/IFR 1, ATF used the historical number of user permit applications it received from 2000 to 2002 to establish the pre-SEA average annual baseline. The annual average number of user permit applications during those three years was 2,074. Therefore, ATF uses the 2,074 average historical number as the baseline for purposes of responding to this comment. Any increment above 2,074 user permit applications in a given year as is treated as stemming from the SEA/IFR 1 requirement. Table 1 shows the number of permit applications received during the 2000–2002 baseline period, and the resulting average. Note that ATF did not receive any limited permit applications during that time because the limited permit was a new type of permit added pursuant to the SEA/IFR 1. Table 2 provides the total number of applications ATF received for limited and user permits from 2002–2012. Table 2 also includes the estimated total number of permittees that may have applied for either a user permit or a limited permit due to the SEA requirement.

TABLE 1—HISTORICAL USER PERMIT DATA AND BASELINE AVERAGE

Fiscal year (FY)	Limited permit applications	All user permit applications
2000	n/a	1,985
2001	n/a	1,798
2002	n/a	2,438
Average		2,074

TABLE 2—HISTORICAL LIMITED/USER PERMIT DATA, NET TOTAL PERMIT INCREASES

Fiscal year (FY)	Limited permit applications received (new)	User permit applications received	Net user permits received over pre-SEA baseline	Combined increase in permits attributed to SEA
2003	745	5,692	3,618	4,363
2004	748	2,460	386	1,134
2005	641	2,066	0	633
2006	466	2,636	562	1,028
2007	377	3,116	1,042	1,419
2008	280	2,239	165	445
2009	230	3,065	991	1,221
2010	259	2,967	893	1,152
2011	180	3,025	951	1,131
2012	182	4,199	2,125	2,307

Although ATF concurs that there were additional, ancillary effects arising from implementing this SEA licensing/permitting requirement in IFR 1, the majority of these effects are discussed in responses to specific comments in the rest of section III.O of this preamble, below. ATF notes that these effects stem from the incremental increase in permit applications. To determine the effect of the incremental increase on activities such as inspections, appeals of adverse background checks, and applications for relief of disabilities, ATF first had to calculate the proportion of affected permits within the historical data on user permits applied for during 2003–2012. ATF did this by subtracting the 2,074 baseline (developed in Table 1 for pre-SEA annual numbers of user permits) from each year's total data on limited/user permit applications and then dividing the number of affected permits by the total number of permits to calculate the proportion affected. Table 3 illustrates the total historical number of limited/user permits; the combined total of affected permits (both limited permits and incremental addition of user permits); and the proportion. Table 3 thus illustrates the increased proportion of permits stemming from the SEA.

TABLE 3—PROPORTION OF SEA-ATTRIBUTED PERMITS FROM TOTAL PERMITS

FY	Total limited/user permits	Attributed limited/user permits	Proportion of SEA-attributed permits (%)
2003	6,437	4,363	68
2004	3,208	1,134	35
2005	2,707	641	24

TABLE 3—PROPORTION OF SEA-ATTRIBUTED PERMITS FROM TOTAL PERMITS—Continued

FY	Total limited/user permits	Attributed limited/user permits	Proportion of SEA-attributed permits (%)
2006	3,102	1,028	33
2007	3,493	1,419	41
2008	2,519	445	18
2009	3,295	1,221	37
2010	3,226	1,152	36
2011	3,205	1,131	35
2012	4,381	2,307	53

ATF used these percentages in its responses to comments below to determine the incremental impact (from the requirement that all persons using explosives must be licensed/permitted) on inspections, RPs, employees authorized to possess explosives, appeals of adverse background checks, and applications for relief of disabilities.

2. Population of Responsible Persons and Employees Authorized To Possess Explosive Materials

In IFR 1, ATF estimated that the requirement for more people to have a permit would result in 100,000 RPs and 1,000 employees authorized to possess explosive materials.

Comments Received

One commenter suggested that ATF underestimated the number and ratio of RPs to employees authorized to possess explosives materials. The commenter requested that ATF use historical data.

ATF Response

ATF partially concurs with using historical data. Although ATF has overall numbers on background checks for explosives RPs and employees authorized to possess explosive materials (''EP'' in this response and Table 4), ATF systems do not separate background checks to differentiate between those pertaining to EPs or RPs specifically. Therefore, based on the overall number of background checks, ATF had to perform further calculations to derive a ratio from the total number of background checks to estimate the proportions of RPs and EPs.

Based on ATF's internal database, ATF determined the average ratio of RPs to EPs is one RP to nine EPs. ATF then used this ratio in Table 4 to update the number of RPs and EPs.

To determine the estimated number of RPs and EPs affected by SEA/IFR 1's licensing/permitting requirement, ATF started with actual data on the number of background checks reported through NICS [23] each year, 2003–2012. Because each permit requires a background check, ATF then applied the annual proportion of permits attributed to the SEA/IFR 1 requirement (Table 3), to the number of background checks each year, resulting in the net number of additional background checks attributed to IFR 1. The first two columns of Table 4 reflect this calculation. Because RPs and EPs both undergo background checks, ATF then determined the number of RP/EP sets associated with the entire number of background checks occurring each year. It then applied the proportions attributable to SEA/IFR 1's requirement from Table 3 to the number of sets per year, resulting in the number of RP/EP sets attributable to IFR 1. The middle two columns of Table 4 illustrate this calculation. The last two columns illustrate how many RPs and EPs were thus affected by this rule (two RPs per set, and 18 EPs per set).

TABLE 4—TOTAL NUMBER OF BACKGROUND CHECKS, PROPORTION ATTRIBUTED TO SEA/IFR 1, ESTIMATED NUMBER OF RP AND EP BACKGROUND CHECKS ATTRIBUTED TO SEA/IFR 1

FY	Background checks	Net background checks due to IFR 1	Sets of RPs/EPs based on background checks	Sets of RPs/EPs attributed to IFR 1	RPs attributed to IFR 1	EPs attributed to IFR 1
2003	30,172	20,451	1,023	693	1,386	12,474
2004	35,421	12,521	626	221	442	3,978
2005	60,417	14,306	715	169	338	3,042
2006	70,686	23,425	1,171	388	776	6,984
2007	62,791	25,508	1,275	518	1,036	9,324
2008	71,599	12,648	632	112	224	2,016
2009	54,254	20,104	1,005	372	744	6,696
2010	67,053	23,945	1,197	427	854	7,686
2011	82,949	29,272	1,464	517	1,034	9,306
2012	78,500	41,337	2,067	1,088	2,176	19,584

3. Appeals of Adverse Background Checks, Applications for Relief of Disabilities, and Number of Inspections

Another cost that ATF calculated in its analysis for IFR 1 was the cost for an inspection. Inspections were included because, upon an initial application for a permit, a non-permittee must undergo a qualification inspection; hence, the number of inspections would increase with the number of new permits. ATF attributed no ancillary costs other than those discussed above to the permitting increase at the time.

Comments Received

One commenter concurred that it was appropriate to include the cost of

[23] NICS is the Federal Bureau of Investigation's National Instant Criminal Background Check System. For more information on NICS and how it conducts background checks, see *https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics.*

inspections but suggested that an increase in permittees would result in additional actions/costs not included in ATF's analysis. The commenter cited appeals of adverse determinations from background checks and applications for relief of disabilities. As for inspections, the commenter concurred with ATF's assessment for inspections.

ATF Response

ATF concurs that additional costs to appeal adverse background-check determinations and request relief from disabilities should have been included in the analysis in IFR 1. ATF therefore includes historical data on these costs in this response to public comments. *See* Table 5. In other words, because these persons would have had to become licensed/permitted due to the IFRs, they would have had to begin undergoing inspections. This increase in inspections would have resulted in additional background checks, which would in turn have resulted in additional appeals from background checks and additional requests for relief from disabilities.

Although the commenter did not raise a concern with the original inspection data, because ATF is updating all the hourly wages and costs for the original IFR 1 cost analysis—such as costs of appeals from background checks and requests for relief from disabilities—as well as the ones suggested by the commenter (*see* section III.O.7 of this preamble), ATF is also including historic data in Table 5 for inspections, appeals from background checks, and requests for relief from disabilities.

TABLE 5—TOTAL NUMBERS OF BACKGROUND CHECK APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

FY	Appeals from background checks	Requests for relief from disabilities	Inspections
2003	1	240	3,631
2004	4	240	1,892
2005	146	270	1,617
2006	188	405	1,367
2007	111	229	1,298
2008	170	235	1,136
2009	164	273	1,116
2010	269	269	1,108
2011	239	239	1,254
2012	193	192	1,602

As mentioned previously, not all historical numbers of permits, background checks, appeals, requests for relief, or inspections are attributable to IFR 1. Applications for permits and actions such as background check appeals and requests for relief from disabilities are all activities that existed prior to implementing the SEA. In other words, the SEA added to the existing permitting programs with background checks and appeals that supplemented the existing programs. Permittees and background checks that would have occurred regardless of implementing the SEA are considered sunk costs and were not included as historical costs arising from implementing the SEA.

During the initial period after implementing the SEA, there was an increase in applications; therefore, only the estimated increase is being attributed to IFR 1. As outlined in Table 3 above, ATF estimated the proportion of limited/user permits attributable to IFR 1. ATF has now applied those same proportions to the Table 5 historical numbers of background check appeals, requests for relief, and inspections. This calculation is reflected in Table 6 as a net increase attributable to IFR 1.

For the purposes of this analysis, ATF assumes that the number of inspections performed equals the number of incremental applications received for permits for 2003 because the increase in applications that year was due to the new requirement and they would all have been initial applications requiring an inspection the same year. For years after 2003, ATF used the historical percentages to calculate a net number of inspections because only a subset of existing permittees undergo compliance inspections in a given year. Table 6 illustrates the estimated net number of background check appeals, requests for relief from disabilities, and inspections attributable to the SEA/IFR 1 permitting requirement.

TABLE 6—SEA/IFR 1-ATTRIBUTABLE INCREASES IN BACKGROUND CHECK APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

FY	Net appeals from back-ground checks	Net requests for relief from disabilities	Net inspections
2003	1	163	4,363
2004	1	85	1,284
2005	35	57	448
2006	62	89	536
2007	45	165	555
2008	30	40	229
2009	61	87	421
2010	96	97	399
2011	84	95	391
2012	102	126	660

4. Other Populations Not Considered by ATF

Comments Received

One commenter listed other requirements not considered as costs in the analyses in IFRs 1 and 2. The commenter attributed these proposed costs to the IFR 1 requirement that common/contract carriers verify the identity of the person accepting delivery of explosive materials and for the distributor to also maintain a list of authorized people. In particular, the commenter suggested that common/ contract carriers would have to complete Form 5400.8 as part of verifying the recipient's identity and that distributors would be charged a service fee for returned shipments if the common/contract carrier was unable to verify the recipient.

The same commenter also noted that a list of persons authorized to receive explosives on behalf of a distributee would likely be identical to the list of persons authorized to order explosives for the same distributee, which was a list already required by the regulations at the time of IFR 1. Therefore, the commenter noted, costs for a list of authorized recipients required by IFR 1 would be minimal, at most.

ATF Response

ATF concurred in 2003 with the public commenter regarding prohibitive costs concerning explosives shipments via common/contract carriers. As a result, ATF alleviated those verification requirements pursuant to Ruling 2003–5 a couple of months after IFR 1, allowing an alternate process by which the distributor would verify receipt directly with the distributee in cases involving limited permittees receiving deliveries via common/contract carriers. ATF then removed the verification requirement for common/contract carrier deliveries to licensees/user permittees a few months later, via IFR 2.

In addition, ATF concurred in 2003 with the commenter's statement that using Form 5400.8 was burdensome, and in IFR 2, ATF removed that requirement as well. Therefore, no additional costs are being calculated now with regard to these previously canceled requirements.

Through this final rule, ATF is removing the last portions of the requirement to verify the identity of individuals accepting explosives deliveries on behalf of limited permittees via common/contract carriers. This results in a new cost-benefit analysis for this rule (rather than an update to the IFR 1 analysis), set forth in section VI.A.2 of this preamble.

As for the costs of maintaining a list of persons authorized to accept delivery of explosives, ATF also concurs with the commenter that the requirement for a list of authorized recipients would essentially be the same list created by the preexisting requirement to maintain a list of persons authorized to order explosives on behalf of the permittee. ATF concurs that the cost to maintain a list of authorized persons would therefore be de minimis. As a result, ATF is not updating costs for the list in response to the comments.

5. Items Outlined as Application or Supporting Documentation Costs

In IFR 1, ATF supplied the following permit application and renewal costs as well as costs for RPs and authorized employees to obtain supporting documentation (such as fingerprints and photographs) to submit with the permit application for their background checks. Table 7 provides the breakdown of such cost items that were included in IFR 1.

TABLE 7—COST ITEMS FOR PERMIT APPLICATIONS AND SUPPORTING DOCUMENTATION

Cost item	Cost	Renewal cost
Fingerprint-based submission	$10.00	
Passport photo	1.50	
Limited permit fee	25.00	12
User permit fee	100.00	50

Comments Received

One commenter (IME–8) concurred with the item costs and commented only that the expenses for renewals over time were not included in the IFR 1 analysis.

ATF Response

ATF disagrees that IFR 1 did not address recurring costs. IFR 1 did include a statement about recurring fees. However, ATF agrees the recurring costs were not illustrated over time. ATF concurs that a ten-year schedule would better illustrate recurring costs and is therefore including them in these responses to public comments. Because the costs include both the specific fees and costs originally included in Table 7 above and the hourly burden of acquiring fingerprints, etc., ATF has combined the updated data on these costs with the updated data on hourly burden and reflected the totals over ten years in Table 12 (in section III.O.7 of this preamble).

6. Hourly Burdens

Comments Received

One commenter made suggestions regarding ATF's estimated hourly burden to perform certain actions, such as obtaining fingerprints, photographs, and documents to support requests for relief from disabilities. This commenter suggested that the time burden to acquire these items, such as traveling to and from a police station to complete fingerprint cards or traveling to and from appointments to obtain photographs, was more than the time calculated for completing the forms themselves. The commenter also included suggested hourly burdens for the time to draft a request for relief from disability and for actions associated with such requests, such as interviews of coworkers, neighbors, or family. The commenter also included suggested hourly burdens to acquire documents or to participate in reference interviews. Further, the commenter suggested that technical advisors would be needed to review and complete an application for a permit.

ATF Response

ATF agrees that the original IFR 1 analysis did not include all the costs identified by the commenter and concurs with including most of them as part of updating the costs in response to these comments. Table 8 reflects the updated hourly burden analysis in response to these comments. To calculate the time to complete a permit application form or a transaction report, ATF used information contained on the actual ATF forms based on testing when the form was developed. ATF used the times provided by the commenter for all the other time costs. However, ATF disagrees with the commenter that technical advisors would be needed to review and complete applications. The application consists of business details that an RP (such as a manager) would know and individual information that the proposed RP or employee authorized to possess explosives would know for the individual's own background checks.

TABLE 8—HOURLY BURDENS TO PERFORM ACTIONS *

Hourly burden action	Estimated hourly burden	Source
Application	0.33	ATF information collection (OMB-approved 1140–0070 (ATF Form 5400.13/5400.16—now Form 5400.13) **).
Managerial application	0.33	Public comment #8 (pg 16).
Renewal application	0.33	ATF information collection (OMB-approved 1140–0022 (ATF Form 5400.14/5400.15—now Form 5400.14)).
Obtain fingerprints	1	Public comment #8 (pg 15).
Obtain photograph	0.5	Public comment #8 (pg 15).
Request for relief from disability	5.92	Public comment #8 (pg 18).
Managerial relief from disability	1	Public comment #8 (pg 18).
Interviews and references of coworkers	2	Public comment #8 (pg 18).
Home interviews	0.51	Public comment #8 (pg 18).
Appeals for adverse background checks	2	Public comment #8 (pg 17).
Limited permit transaction report	0.33	ATF information collection (OMB-approved 1140–0075 (ATF Form 5400.4)).

* Data from ''ATF information collection'' sources comes from the hourly burden reported on the involved forms.
** Form 5400.13/5400.16 (now Form 5400.13) included, in 2003, the information on RPs that has since been split into a separate document (Form 5400.13A/5400.16, now Form 5400.27). However, the hourly burden in this table includes the time the form would have taken with both parts included in 2003.

7. Wages and Costs

Comments Received

One commenter suggested that ATF use a different source for wages than it relied upon in IFR 1. The commenter suggested ATF use Bureau of Labor Statistics (''BLS'') executive and managerial wages for RPs and blue-collar occupation wages for employees authorized to possess explosives. The commenter also suggested other employee wages in support of their statement that technical personnel would be needed to complete application forms (particularly, to develop schematic diagrams as supporting statements for the forms). Furthermore, this commenter suggested that if ATF were to incorporate the costs and wages as proffered by the commenter, this rule would be economically significant, meaning this rule would cost more than $100 million in any one year.

ATF Response

ATF largely concurs with the commenter's suggested wage rates and has adopted the occupations/wages supplied by the commenter to revise the IFR 1 analysis in response to these comments. However, ATF used a rounded calculation of the listed ''total compensation'' as the wages for the occupations supplied by the commenter. ATF used ''total compensation'' so as to include fringe benefit costs that accompany salaries/wages, such as insurance. However, ATF disagreed with the commenter's suggested employee wages for personal reference interviews from individuals who are not employees of the permittee, such as spouses. Because interviews of non-employees are performed during non-work hours, ATF estimated a leisure wage rate based on a methodology from the Department of Health and Human Services (''HHS'').[24] The HHS methodology is to first obtain the average U.S. median non-leisure weekly wage from BLS, and divide it by 40 hours to derive the median hourly non-leisure wage. Step two is to obtain the average U.S. real household income before taxes and after taxes from the Census Bureau and divide the post-tax income by the pre-tax income to determine the net household income rate. Step three applies the net income rate to the median non-leisure hourly rate derived in step one to calculate the hourly leisure wage. Table 9 shows the steps and data used under this methodology to determine the leisure wage.

TABLE 9—CALCULATION OF LEISURE WAGE RATE

Inputs for leisure wage rate	Cost inputs	Source
Median weekly wage	$618	Earnings and occupation: third quarter of 2003: The Economics Daily: U.S. Bureau of Labor Statistics (*bls.gov*).
Median hourly wage	$15	$618/40 hours = $15.
Real household income pre-tax	$43,318	*med-hh-inc2003.pdf* (*census.gov*).
Real household income post-tax	$38,300	Alternative Income Estimates in the United States: 2003 (*census.gov*).
State and federal taxation	88%	$43,318 pre-tax income − $38,300 post-tax income = $5,018 tax. $5,018 tax/$43,318 = 12% of wages as taxes. 100% − 12% = 88% wages post-tax.
Leisure wage	$13.66	$15 median hourly wage * 88% post-tax wage rate = $13.66.
Rounded leisure wage rate	$14	

[24] Jennifer R. Baxter, et al., *Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices* (June 2017), *https://aspe.hhs.gov/sites/default/files/private/pdf/257746/VOT.pdf.*

Table 10 provides the rounded total compensation wage rates for occupations that were suggested by the commenter and that ATF used to reassess the IFR 1 analysis.

TABLE 10—ROUNDED HOURLY WAGE RATES FOR RELATED OCCUPATIONS

Job title	Total compensation	Source
Executive, administrative, and managerial	$47.00	*https://www.bls.gov/news.release/archives/ecec_08262003.pdf.*
Blue-collar occupations	23.00	*https://www.bls.gov/news.release/archives/ecec_08262003.pdf.*
Leisure	14.00	*https://www.census.gov/content/dam/Census/library/visualizations/2006/demo/2003-state-county-maps/med-hh-inc2003.pdf.*

To calculate costs of fees and time associated with the ancillary effects of the SEA/IFR 1 permitting increase (*i.e.,* inspections, appeals, and requests for relief), ATF primarily relied upon historical data. In addition, where relevant, ATF also incorporated hourly burdens and hourly wage rates proffered by the commenter. Table 11 lists the revised per-action costs to comply with IFR 1.

TABLE 11—PER UNIT COST PER ACTION

Item	Individual cost
User permit fee and time (new)	$116
User permit fee and time (renewal)	66
Limited permit fee and time (new)	41
Limited permit fee and time (renewal)	28
ATF inspection time	94
Responsible person costs and time	54
Employee authorized to possess costs and time	41
Appeal of background check costs and time	79
Request for relief from disability costs and time	236

Tables 12 and 13 combine the information from the tables above (in section III.O of this preamble) to show the revised ten-year undiscounted costs of implementing IFR 1, based on input from the comments as discussed above.

TABLE 12—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED LIMITED PERMITS, USER PERMITS, RPS, AND EMPLOYEES

Year	Limited permit applications	Net user permit applications	Responsible persons	Employees authorized to possess	Annual totals
2003	$15,293	$22,388	$74,844	$511,434	$623,959
2004	25,806	0	23,868	163,098	212,772
2005	22,121	51,142	18,252	124,722	216,237
2006	16,077	94,822	41,904	286,344	439,147
2007	13,013	15,040	55,944	382,284	466,281
2008	9,660	90,206	12,096	82,656	194,618
2009	7,935	81,288	40,176	274,536	403,935
2010	8,942	86,566	46,116	315,126	456,750
2011	6,210	193,400	55,836	381,546	636,992
2012	6,279	193,400	117,504	802,944	1,120,127
10-year undiscounted total	131,336	828,252	486,540	3,324,690	4,770,818

TABLE 13—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

Year	Appeals from background checks	Relief from disability	Inspections	Annual totals
2003	79	38,391	410,122	448,592
2004	79	20,060	120,696	140,835
2005	2,765	13,452	42,112	58,329
2006	4,898	21,004	50,384	76,286
2007	3,555	38,940	52,170	94,665
2008	2,370	9,440	21,526	33,336
2009	4,819	20,532	39,574	64,925
2010	7,584	22,892	37,506	67,982

TABLE 13—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS—Continued

Year	Appeals from background checks	Relief from disability	Inspections	Annual totals
2011	6,636	22,420	36,754	65,810
2012	8,058	29,736	62,040	99,834
10-year undiscounted total	40,843	236,867	872,884	1,150,594

As illustrated by Tables 12 and 13, when the costs in the tables are added together, the new undiscounted costs attributable to IFR 1 are $ 5,921,412. Therefore, IFR 1 would not have been economically significant, as it would not have cost the industry $100 million in any given year. IFR 1 has thus not been economically significant since its implementation.

ATF notes that these costs already occurred more than ten years ago and hence have already been incorporated into current industry practices; thus, they are now considered sunk costs. These tables reflect revisions to the costs of the original requirements in IFRs 1 and 2, but they do not reflect any new costs that may arise from regulatory changes being made by this final rule. The cost-benefit analysis for regulatory changes being made in this final rule is in section VI.A.2 of this preamble.

8. Costs of Transportation

Comments Received

One commenter suggested that ATF also include transportation costs, which they estimated at $6.2 million dollars annually, for shipment surcharges that would be added to all explosive material shipments as a result of implementing the SEA.

The commenter also suggested that ATF include transportation costs of an estimated $12.5 million to account for the number of explosives shipments that would be returned to the distributor as a result of common/contract carriers being unable to locate persons at the distributees' premises who were authorized to receive explosive materials.

ATF Response

Examining historic data to which it has access, ATF is unaware of actual costs due to returned explosives shipments, as the commenter suggested would occur. Nor has ATF seen any evidence that surcharges have been added to any explosive materials shipment as a result of compliance with the SEA. Therefore, ATF is not adopting the commenter's suggestions on transportation costs.

9. Costs for Unfunded Mandates

Comments Received

One commenter stated that IFR 1 violated the Unfunded Mandates Reform Act of 1995 and did not account for the cost to comply with state and local explosives regulations that would have been triggered by now needing a federal explosives permit.

ATF Response

The Unfunded Mandates Reform Act does not address the costs of complying with state and local laws or regulations, even when states and localities choose to revise their laws based on changes to federal law. Instead, the Act is concerned with costs to governments of $100 million or more in any one year from complying with the federal regulations. The IFRs did not impose any mandates on state, local, or tribal governments and thus did not create any unfunded mandates covered by the Act. Furthermore, a review of state explosives regulations, including the commenter's state, showed that state requirements are generally based on the type of explosives handled, not whether an individual or company needed a federal explosives permit. For these reasons, ATF has determined that no new permittees had to comply with state or local regulations due to becoming a permittee. Therefore, ATF has not included the cost of compliance with state or local regulations, nor does ATF believe that the SEA implementing regulations violated the Unfunded Mandates Reform Act of 1995.

10. Regulatory Flexibility Act Section

Comments Received

A commenter stated that IFR 1 did not include a regulatory assessment or a regulatory flexibility analysis and that ATF should not finalize the regulations without either analysis.

ATF Response

ATF partially disagrees. ATF conducted a regulatory assessment (or cost-benefit analysis) in section A of the IFR 1 preamble, under the Executive Order 12866 section, and did not find any significant effect on small businesses. *See* 68 FR 13776–78. However, because the IFRs requested comments, ATF has revisited its original cost-benefit analysis in response to comments, as described in this section III.O of the preamble, using historical data and information gathered from public comments. Using that updated information, ATF is also including a revisited regulatory flexibility analysis in this response. Since the IFRs were published, ATF has been able to determine the actual effects of the SEA on businesses, and ATF used that information when it conducted the regulatory flexibility analysis in this response. Based on research on small businesses with reported revenue, ATF is again able to certify that the IFRs did not have a significant impact on small entities.

The provisions of the IFRs affected persons who held a federal explosives license as a manufacturer or importer of, or dealer in, explosive materials. It also affected persons who held federal user permits that authorized them to obtain explosives in interstate or foreign commerce. Users included farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and model rocketry enthusiasts. The IFRs also affected infrequent or occasional users who obtained explosive materials within their state of residence; responsible persons affiliated with federal explosives licensees/permittees; and employees authorized by a licensee/permittee to possess explosive materials in the course of their employment. Finally, the IFRs affected individuals subject to federal explosives disabilities under 18 U.S.C. 842(i).

Based on the number of licenses/permits, there are approximately 9,703 entities affected by this final rule. From these entities, ATF drew a random sample of 376 entities—a sample size that is statistically significant—using a 95 percent confidence level and a confidence interval of 5. ATF then reviewed annual sales data, labor-force information, and the North American Industry Classification System

("NAICS") codes for these entities using the database Dunn and Bradstreet. Based on the small business size standard from the NAICS code definitions, ATF determined that 335 entities in the sample were defined as small and 41 were deemed not small. Of the 335 entities defined as small, no information was found for 191 of the entities, and they were thus considered too small to have any information. From this analysis, ATF is 95 percent certain that between 35 percent to 88.5 percent of the affected population are small entities. The most frequently identified NAICS codes are listed in Table 14.

TABLE 14—TOP 11 NAICS AFFECTED BY THE IFRS

NAICS	Description	Number of companies	Percent of population
453998	All other miscellaneous store retailers (except tobacco stores)	11	9
213112	Support activities for oil and gas operations	9	7
237310	Highway, street, and bridge construction	7	6
237990	Other heavy and civil engineering construction	7	6
424690	Other chemical and allied products merchant wholesalers	6	5
334511	Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing.	5	4
488119	Other airport operations	5	4
713990	All other amusement and recreation industries	5	4
999999	Other similar organizations (except business, professional, labor, and political organizations)	5	4
237130	Power and communication line and related structures construction	4	3
238910	Site preparation contractors	4	3
Percent of NAICs.			54

Based on public comments, ATF updated the cost figures in IFR 1 in the responses to public comments in this section III.O of the preamble. The IFR did not specify its per-entity cost, but based on the costs outlined in the IFR, ATF extrapolated that the per-entity cost of the IFRs would have been estimated at $429.28.[25] Using the updated figures provided by public comments and estimating the anticipated per-entity expenses likely incurred by an entity in any given year, ATF estimates the per-entity cost for IFR 1 was $1,376 per year.[26] Table 15 provides the percent revenue impact the IFR would have had on small entities.

TABLE 15—PERCENT IMPACT ON REVENUE OF SMALL ENTITIES

Percent Impact	Number
0 = X < 1	109
1 = X < 3	34
3 = X < 5	1
5 = X < 10	0
10+	0

Based on the revenues of the sampled small entities with revenue information, the provisions of IFR 1 would have affected those small entities by less than 5 percent of their overall revenue. As a result, the IFRs would not have had a significant impact on small entities.

P. IFR Paperwork Reduction Act Section

In IFR 1, ATF listed 13 new or revised regulations that contained information collection requirements as defined by the Paperwork Reduction Act (68 FR 13779) ("PRA"), with one exception (due to an administrative oversight). But, it did not include any forms involved in the information collections or the following aspects of the information collection requirement: the estimated total annual reporting or record-keeping burden; the estimated average annual burden hours per respondent; the estimated number of respondents; and the estimated annual frequency of responses.

Comments Received

One commenter expressed a concern regarding the manner in which ATF described the information collections in the interim rule. The commenter indicated that it was difficult to provide comments on the information collections because there was no detailed discussion for each information collection, only a reference to the regulations that contained them. According to the commenter, it was unreasonable to expect the public to decipher what ATF was proposing to collect "by such vague references." The commenter stated they had separately viewed at least one form likely involved in these collections and that the hourly burdens in the IFR 1 cost-benefit analysis section were not consistent with the hourly burdens reported on the actual ATF forms used to collect the information (under PRA sections on each form) for the same items.

ATF Response

In response to these public comments, ATF is providing more information about which information collections were affected by IFR 1. ATF has corrected the inconsistency noted by the commenter in the 2003 analysis between the hourly burdens in the analysis and the time reported on the forms. The revised information on these collections is included in the responses to public comments under section III.O.6 (Table 8) of this preamble and uses the hourly burdens as reported on the forms themselves. In addition, this response to comments includes Table 16 below, which correlates the regulatory sections originally listed in IFR 1 with the relevant information collection OMB control numbers, titles, and associated form numbers where applicable. The table itemizes the ICRs by the numbers and titles that were applicable when the IFRs were published in 2003, but also notes where ICRs have since been canceled or combined with others, and where titles or numbers have been changed or are in the process of changing.

[25] The total cost of the interim rule as stated in IFR 1 was $4.3 million divided by 10,000 companies and assumed that the per-entity cost was $429.28. There were no additional costs incurred in IFR 2's provisions, which consisted of a minor transfer of burden.

[26] ATF notes that annual expenses could be lower depending on types and number of applications for which permittees apply.

TABLE 16—INFORMATION COLLECTION REQUESTS AFFECTED BY IFR 1

CFR cited in IR	CFR cited in final rule	OMB control No.	ICR title	ATF form No.
§ 555.33	§ 555.33	1140–0081	Appeals of Background Checks (changing to Appeals of Explosives Background Checks).	n/a.
§ 555.34	§ 555.34	1140–0077 (canceled; content combined under 1140–0075).	Report of Stolen or Lost ATF Forms 5400.30, Intrastate Purchase Explosive Coupon.	n/a.
n/a	§ 555.43(a)(2)	1140–0027 (canceled)	User-Limited Permit	5400.21 (obsolete).
n/a	§ 555.43	1140–0025 (canceled; content combined under 1140–0075).	Limited Permittee Transaction Report	5400.4.
n/a	§ 555.43	1140–0070	Application for Explosives License or Permit (now Application for Explosives License/Permit).	5400.13/5400.16 (now 5400.13).
n/a	§ 555.43	1140–0022	Federal Explosives License (FEL) RENEWAL Application (now Application to Renew Explosives License/Permit).	5400.14/5400.15 (now 5400.14).
n/a	§ 555.45(b) and (c)(2)	n/a	User-Limited Special Fireworks	5400.21 (obsolete).
§ 555.54	§ 555.54	1140–0080	Notification of Change of Mailing or Premises Address (changing to Application to Amend Explosives License/Permit).	5400.33 (form added in 2024; now changing to 5400.17).
§ 555.57	§ 555.57	1140–0074	List of Responsible Persons (now Explosives Responsible Person Questionnaire).	5400.13A/5400.16 (now 5400.27).
§ 555.103	§ 555.103	1140–0079 (now combined under 1140–0075 as to limited permittees).	Transactions Among Licensees/Permittees and Transactions Among Licensees and Holders of User Permits (changing to Explosives Transactions Involving Licensees/Permittees).	n/a.
§ 555.105	§ 555.105	1140–0075	Transactions Among Licensees/Permittees, Limited (now Explosives Transactions Involving Limited Permittees).	5400.4 (moved from 1140–0025).
§ 555.110	§ 555.110	1140–0073	Furnishing of Samples (now Furnishing Explosives Samples).	n/a.
§ 555.125	§ 555.125	1140–0030	Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed under Title 18 U.S.C. chapter 40 Explosives (changing to Records and Data: Importing, Receiving, Storing, Disposing of Explosives (Licensees/Permittees)).	n/a.
§ 555.142	§ 555.142(f)	1140–0076	Relief of Disabilities and Application for Restoration of Explosives Privileges (now Request for Relief from Explosives Disability).	5400.29 (now 5400.31).

IV. Analysis of Comments and Decisions for Interim Final Rule Two (IFR 2)

ATF published IFR 2 on September 11, 2003. 68 FR 53509. As described earlier, IFR 2 removed the requirement that common/contract carriers complete the Form 5400.8 prior to taking possession of explosive materials for delivery to a licensee/permittee, regardless of whether they are hired by the distributor or by the distributee. ATF believed that this requirement was unduly burdensome and unnecessary. However, ATF continued to require that distributors verify the identity of persons accepting possession of explosive materials for common/contract carriers and required distributors to record the name of the common/contract carrier and the full name of the driver in their permanent records.

ATF received four comments in response to IFR 2. The comments were submitted by an explosives industry association, a package distribution company, and two associations representing the trucking industry. All four commenters supported ATF's removal of the requirement that common/contract carriers complete Form 5400.8 prior to taking possession of the explosive materials. This form is now obsolete. The commenters, however, raised other issues in response to IFR 2. These issues are discussed below.

A. Obligations To Verify Persons Accepting Explosives Delivery and ATF Ruling 2003–5

Comments Received

In response to IFR 2, a commenter asked for verification on whether its interpretation of the effect of the amendments under IFR 2 is correct. Under their reading, IFR 2 ''eliminate[s] the requirements for distributors to verify the identity of individuals certified by licensee/user permittee distributees to accept explosives when distribution is accomplished by common carriers, or in the case of individuals certified by distributees who are limited permittees, common carriers hired by the distributee.'' The commenter stated that if their understanding of the exception was incorrect, then ATF should immediately publish a notice to further clarify the requirement(s), and that the publication should also explain how, in the absence of these exceptions, distributors are expected to accomplish the prescribed verification of the respective distributee when neither party is in physical proximity as the transfer of explosives materials takes place.

Even if their interpretation of the exception were correct, the commenter argued there were two issues that remained unresolved. First, there was confusion regarding the delivery of explosive materials to limited permittees by a common/contract carrier hired by the distributor. The commenter argued that this requirement in

§ 555.105(b)(6)(iii) contradicts the variance ATF issued in Ruling 2003–5 absolving carriers of any verification obligations and allowing verification of delivery by a number of alternate means, provided the verification is accomplished within three business days. According to the commenter, even though ATF verbally stated its intent not to overturn the variance provided in Ruling 2003–5, ''these informal means of public notice are wholly inadequate.'' The commenter further stated that the instructions on the ATF website directly contradicted those included in the IFRs, making this issue ''confusing and potentially prejudicial to the regulated industry.''

Another commenter also noted that IFR 2 did not change the requirements specified in § 555.105(b)(6)(iii) that a common/contract carrier, hired by a distributor, verify the identity of the person accepting delivery of the explosives on behalf of the distributee. This commenter asked whether Ruling 2003–5, which authorized a variance from this requirement by allowing the distributor distributing the explosives to verify delivery within three business days, was still in effect.

A third commenter also raised concerns regarding the continued requirements of § 555.103(b)(6)(iii). The commenter argued that situations may arise where the driver would be unable to deliver the explosives, *e.g.,* the person listed on the limited permit is not able to accept delivery of the explosives due to sickness or is no longer employed by the consignee. The commenter stated that if the driver is unable to deliver the explosives due to an inability to comply with the requirement, then ''explosives must remain 'in transportation' longer than necessary'' and that delayed delivery of explosives ''undermines one of the central principles of hazardous materials transportation safety.'' In addition to safety issues, the commenter contended that a delay in the delivery of explosives means that the carrier ''must now figure out how to accommodate the reduction of cargo capacity as this freight remains on the truck and the route is completed.'' The commenter also expressed concern regarding the issue of liability (*i.e.,* that ATF would begin an enforcement action if the driver made mistake in the verification of the person accepting delivery of the explosives).

The commenter asked that the variance allowed by Ruling 2003–5 be incorporated into the regulations because the ''variance, while creating an alternative means of compliance, does not trump the text of the regulation, which as written obligates the common/contract carrier to verify the identity of the person accepting delivery.'' Another commenter echoed the concerns raised by the other commenters and supported the recommendations made by the third commenter.

ATF Response

ATF recognizes that the explosives industry has experienced some confusion with respect to Ruling 2003–5 and IFR 2. IFR 2 was not intended to integrate into the regulations all industry suggestions the agency had received regarding IFR 1. Rather, IFR 2 was primarily intended to respond to industry concerns and newly implemented DOT and DHS regulations regarding transporters of explosive materials. In the interest of proceeding expeditiously, IFR 2 focused on removing the requirement for carriers to complete Form 5400.8 and clarifying § 555.103(b)(2) as applied to deliveries by common carriers.

Ruling 2003–5 was published on May 23, 2003, shortly after publication of IFR 1 and prior to publication of IFR 2. The ruling provides an alternate method from the requirement of § 555.105(b)(6)(iii), which was implemented in IFR 1 and remained unchanged after IFR 2. The ruling allows a distributor to verify via telephone, fax, or email the delivery of explosive materials through a common/contract carrier to a limited permittee, in lieu of the common/contract carrier employee verifying the identity of the person accepting delivery on behalf of the limited permittee and then providing this information to the distributor. Ruling 2003–5 remained in effect after IFR 2 and ATF is unaware of any significant problems having developed in the explosives industry as a result of implementing Ruling 2003–5.

As discussed in section III.H.3 of this preamble, ATF is amending §§ 555.103 and 555.105 in this final rule to make clearer the verification procedures applicable under the following circumstances: (a) distribution of explosive materials by a licensee/permittee; or (b) distribution of explosive materials by a common/contract carrier.

In the final rule, the requirement that a distributor make a positive identification of a distributee remains unchanged if the transfer of explosive materials occurs directly between the licensed or permitted distributor and the distributee at the distributor's premises or is delivered to the distributee by an employee of the distributor. However, under the final rule, there is no longer a requirement for common/contract carriers to identify the individual accepting possession, as implemented by IFR 1. In addition, the final rule also no longer allows a variance for the distributor to verify the delivery, as established in Ruling 2003–5. Instead, the final rule removes the requirement for either the common/contract carrier or the distributor to verify the identity of the individual accepting delivery on the limited permittee's behalf when delivery occurs via common/contract carrier. It therefore removes the burdens and complications inherent in both the IFR 1 provision and the ruling variance, as described by comments. This final rule accordingly helps minimize the number of checks and other actions necessary to complete the transportation process, but still ensures that there is a record of the delivery and that the explosive materials reached the designated limited permittee, thus promoting public safety and facilitating ATF inspections.

Ruling 2003–5 will remain in effect only until the effective date of this final rule, at which time it will be obsolete and rescinded. Accordingly, ATF believes these changes address the commenters' concerns.

B. ''Private'' Carriers and Common/Contract Carriers

As discussed, IFR 2 eliminated the requirement in § 555.103(b)(2)(ii) that common/contract carriers, as distributors, verify the identity of the person authorized to accept the explosive materials when delivering to licensees/user permittees. Furthermore, Ruling 2003–5 authorized a variance from § 555.105(b)(6)(iii), allowing distributors, rather than the common/contract carrier, to verify the identity of the person accepting delivery of the explosive materials on behalf of a limited permittee within three business days of the shipment. Despite these changes, §§ 555.103(b)(3) and 555.105(b)(6)(i) require that if a distributor makes a delivery away from their premises to a limited permittee (not via a common/contract carrier), then the distributor must, in all instances, verify the identity of the individual accepting possession. In other words, distributor employees delivering the explosive materials as agents of the distributor are still required to verify the identity of the individual receiving the explosive materials, whereas common/contract carriers are relieved from such burden.

Comments Received

In addition to a comment received on this topic in response to IFR 1, ATF received a second comment in response to IFR 2. This commenter also contended that employees of ''private'' carriers who perform only functions related to commercial transportation of explosives should be regulated by DOT, not ATF. According to the second commenter, DOT did not distinguish between ''private motor carriers'' and ''common or contract carriers,'' as ATF did, when regulating safety and security of transported items, and the commenter referred to a then-recent DOT rule that, the commenter said, had filled the field for ''private'' carriers.

The commenter contended that ''[t]here is, however, a much larger policy issue at work here.'' According to the commenter, either there is a security risk that necessitates that the common or private carrier verify the identity of the person accepting delivery of the explosive materials, or there is not. The commenter asked ATF to explain why there is a security risk sufficient to impose this requirement upon carriers ''simply because they are 'private' carriers and why such risk does not exist when the transportation is performed by a common carrier. There is no justification for this distinction.''

ATF Response

ATF largely agrees that an employee of an explosives company who delivers explosive materials in commerce (*i.e.,* a private motor carrier) is performing a transportation function similar to that of a driver employed by a common/contract carrier. However, ATF does not agree that such a driver, employed by the distributor, performs only the same function as a driver for a common/contract carrier, and should therefore also be exempt from verifying the identity of the employee/RP accepting delivery of explosive materials. When a common/contract carrier effects the delivery, the carrier is neither an employee nor agent of the distributor and therefore cannot act on behalf of the distributor in confirming that the delivery went to the person identified in the distributor's records. Similarly, the carrier also is not an employee or agent of the distributee and therefore cannot act on the distributee's behalf to confirm delivery was accepted by an authorized person. Furthermore, ATF agrees that the same security and accountability concerns reflected in the SEA apply in both types of delivery and that they should thus both be subject to the same verification requirements. That is why they both existed when IFR 1 was published. But, removing the identity verification requirement when delivery occurs via common/contract carrier is not based on an assessment that the security and accountability concerns do not apply when common/contract carriers deliver explosives. It is instead a recognition that the common/contract carriers are not employees of the distributor and they are not regulated by ATF as long as they simply transport the explosive materials. *See, e.g.,* 18 U.S.C. 845(a)(1) and 27 CFR 555.141(a)(1). As a result of these two factors, it is not feasible to require them to do the verification steps.

This final rule therefore amends §§ 555.103(b) and 555.105(b) to remove the requirement to verify the identity of the authorized employee/RP who accepted possession of the explosive materials on the distributee's behalf when a common/contract carrier delivers them. The risk in these cases is mitigated to some degree by other requirements and by sound business practice. At their premises, for example, the distributee is in the best position to verify that delivery occurred and would already do so as a matter of routine business. The distributee would also already, in the normal course, contact the distributor and/or the common/contract carrier quickly if the delivery did not occur, thereby offsetting some accountability concerns without imposing additional regulatory requirements for distributors or carriers. When the distributor accomplishes the delivery themself, either at their premises or via their own delivery process, there is no need to delay confirmation of the delivery. Additionally, the delivery driver, as an employee or agent of the distributor, can be provided with the current list of persons authorized to accept delivery by the distributee and can confirm as part of the driver's employment that the employee/RP accepting delivery is authorized to do so, thereby fulfilling the goals of any confirmation requirement (such as increased accountability and a reduced risk of diversion) that ATF might otherwise impose. In light of these practices, and based on its experience after more than two decades implementing the SEA, ATF has determined that the verification requirements in §§ 555.103(b) and 555.105(b) have, at most, minimal public safety benefits and impose burdens that outweigh such potential benefits.

C. Carriers of Non-Placarded Loads

Comments Received

One commenter, a large package delivery company, stated that a relatively small percentage of its domestic parcel volume included certain Class 1 explosive substances and articles that DOT regulated as hazardous materials under the hazardous materials regulations (49 CFR parts 171–180) and that the commenter had specifically approved and listed for carriage. Most importantly, the commenter said, it only carried non-placarded quantities of explosives and generally did so on a contract-only basis with approved shippers.

Shortly after publication of IFR 1, the commenter noted that on May 5, 2003, DOT and DHS published interim rules related to the SEA.[27] According to the commenter, the interim rules ''announced that the carriage of non-placarded loads of Class 1 explosive substances and articles did not pose a security threat.'' As a result of these interim rules, the commenter said, carriers of non-placarded loads of Class 1 explosive substances articles, including the commenter itself, were exempt from the prohibited person restrictions of the SEA (18 U.S.C. 842(i)), and ''qualify for the exception of 18 U.S.C. 845(a)(1)'' that exempted certain transportation activities from the SEA.

The commenter argued that because the federal explosives laws did not apply to non-placarded loads of explosive materials, ''there is no requirement for the collection and dissemination of personal data from drivers for carriers such as themselves that are exclusively handling explosives in non-placarded quantities.'' The commenter contended that, in light of DOT's interim rules, ATF's chain-of-custody rationale, described in IFR 2, as to why it collects certain information on Form 5400.8 for purposes of tracing explosives deliveries by a distributor to a common carrier, no longer justified regulating carriers of non-placarded loads of explosive materials. According to the commenter, both the chain-of-custody and section 842(i) rationales for collecting and disseminating information from carriers were based upon what the commenter described as ''the worthwhile policy objective of reducing the diversion of explosives to criminal or terrorist use.'' However, the commenter added that, according to DOT's May 5, 2003, findings, this security objective was satisfied when carriers transported non-placarded loads of explosives. As a result, the commenter concluded, the new chain-of-custody rationale did not appear to justify applying IFR 1 to carriers such as the commenter.

Accordingly, the commenter asked ATF to clarify that carriers of non-

[27] *See* 68 FR 23832, 68 FR 23844, and 68 FR 23852.

placarded loads of explosive materials are exempt from the applicable provisions of §§ 555.103 and 555.105, as amended by IFR 2.

ATF Response

The commenter was correct that the exemption specified in the federal explosives laws under 18 U.S.C. 845(a)(1) applies to the aspects of the safe and secure transportation of explosive materials via railroad, water, highway, or air that are regulated by DOT or DHS. As a result, those persons deemed qualified by DOT or DHS to safely transport explosive materials would be exempt from the provisions of 18 U.S.C. 842(i), even with respect to appropriately non-placarded commercial shipments. *See* 27 CFR 555.141(a)(1).

In IFR 2, ATF stated its conclusion ''that some of the information required on ATF Form 5400.8 is not needed to trace delivery of explosives to a common or contract carrier.'' ATF also stated, in light of that conclusion and the interim rules published by DOT and DHS, that ''there is no longer a significant reason to collect all of the information required by ATF Form 5400.8.'' The amendments in IFR 2 rendered using Form 5400.8 obsolete because ATF concluded that such information would be recorded in the permanent records of distributors. Therefore, although all common/contract carriers no longer need to complete Form 5400.8, they are still subject to requirements in §§ 555.103 and 555.105 under this final rule. The regulations, however, place the responsibility on the distributor to verify the identity of the driver for the common/contract carrier before transferring possession of explosive materials in an effort to ensure accountability for explosive materials.

D. Request To Use Company Identification Card

IFR 2 did not change the requirement that distributors of explosive materials verify the identity of the person accepting possession for the common/contract carrier. In IFR 1, § 555.103(b)(3) required the distributor to examine ''an identification document (as defined in § 555.11).'' The regulation defines ''identification document'' as ''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, a political subdivision . . . which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.'' 27 CFR 555.11. The amendments made in IFR 2 specified that distributors must examine ''such person's valid, unexpired driver's license issued by any state, Canada, or Mexico.''

Comments Received

A common carrier commenter asked ATF to allow drivers to demonstrate proof of identity by means of a carrier company identification card instead of a commercial driver's license. The commenter's request was based on two considerations. First, the commenter contended that verifying an individual's identity could be accomplished by means of documents other than a driver's license. The commenter added that such documentation would most likely be another type of photo identification, and suggested that a carrier-issued identification card, with a picture and other identifying information, that could be independently verified with the carrier company, would be sufficient. They added that this would be particularly true in cases of parcel pick-up, when the driver and shipper already know each other and the driver has other specific identifying attributes, such as a carrier uniform and vehicle, that serve to support the fact that the driver is employed by the carrier.

Second, the commenter stated that requiring drivers to show their driver's licenses raises potential privacy issues (such as exposure of home addresses, dates of birth, and, especially, social security numbers (''SSNs''), though the practice of using SSNs on licenses has since diminished if not ceased entirely). The commenter suggested those privacy issues would be eliminated if ATF allowed the use of an identification card issued by the carrier company.

Another commenter had no objection to de minimis identification requirements, such as presenting a company photo-identification card, but had concerns similar to the first commenter's about ATF's requirement that driver's licenses be used to confirm the identity of the driver. The commenter stated, ''we remain concerned about the potential identity theft that could occur from the collection of information appearing on the [commercial driver's license].''

ATF Response

ATF acknowledges the concerns regarding the privacy of a common/contract carrier employee who is required to present a valid, unexpired driver's license issued by any state, Canada, or Mexico. However, the requirement for a driver of a common/contract carrier to present a driver's license prior to taking possession of explosive materials from a distributor is longstanding and precedes enactment of the SEA. A company-issued photo-identification card would not have met the definition of ''identification document,'' as defined above, which was used in IFR 1. It has been ATF's long-standing position that a distributor generally must verify the identity of an employee of a common/contract carrier and document certain information from the employee's driver's license prior to transferring possession of the explosive materials.

One commenter suggested that a company-issued identification card would be sufficient for the purpose of an explosives distributor verifying the identity of a driver for a common/contract carrier. However, ATF does not have the authority to regulate the manner by which common/contract carriers issue employee identification cards, nor can ATF ensure that a company-issued identification card would meet the standards of security and validation generally associated with government-issued identification documents. A government-issued driver's license, by contrast, is issued after the government agency, through its legal authority, verifies specific vital information, such as the individual's full name and date of birth, and thoroughly reviews the individual's birth certificate, passport, or other legal document. In addition, a driver's license generally contains specific security features that discourage, prevent, or clearly show unlawful alterations to the license.

ATF also finds the commenters' concerns regarding privacy issues unpersuasive. Driver's licenses and other government-issued identification documents are commonly used for a broad range of identification purposes and everyday commercial transactions. ATF is unaware of any significant or widespread privacy impairments associated with these routine uses of government-issued documents. For these reasons, ATF is not adopting this suggestion.

V. Final Rule

The final rule adopts the regulations set forth in both IFRs 1 and 2 with minor technical amendments for purposes of clarity, and some modifications, as described below, in response to comments received.

A. Amendment to § 555.57

As discussed in section III.A of this preamble, ATF is amending § 555.57 in response to commenter concerns that the regulation was unclear as to what type of employment action constitutes a change that licensees/permittees must report to ATF, and uncertainty about the required method of reporting, when to report, and when to submit photographs and fingerprint cards. This final rule revises § 555.57 by clarifying that the licensee/permittee must submit notice of a change and the appropriate identifying information for all new RPs and employees authorized to possess explosive materials to FELC within 30 days after hiring or appointing the person. The amendment also clarifies that licensees/permittees must submit a properly completed Form 5400.13A/5400.16 (now Form 5400.27) to notify ATF of new RPs, and must submit a properly completed Form 5400.28 to notify ATF of new employees authorized to possess explosive materials. In addition to appropriate identifying information for new RPs, the rule clarifies that the licensee/permittee must also submit a photograph and fingerprint card for each RP.

The final rule also clarifies that the phrase ''any change'' includes both adding and removing RPs and authorized employees. Therefore, the rule removes the phrase ''any change'' as not sufficiently clear, and instead clarifies that the licensee/permittee must submit written notice within 30 days after an individual ceases to be an RP or an employee authorized to possess explosive materials on the licensee's/permittee's behalf. This is necessary because of the significant damage a person can cause a licensee/permittee if the person remains authorized after they no longer fill the role of RP or employee authorized to possess explosive materials for that licensee/permittee.

The amended regulation also clarifies that ATF will not seek to revoke a licensee's/permittee's license/permit on the basis that they hired a prohibited person for a role that requires overseeing (as an RP) or possessing explosive materials, provided that: (1) the licensee/permittee has submitted the required form to the Chief, FELC, along with all written documentation and information required by the regulation; (2) neither the licensee/permittee, nor any RP for the licensee/permittee, knows or has reason to know that the new RP or employee authorized to possess explosive materials is prohibited from possessing explosive materials; and (3) the licensee/permittee terminates the new RP or employee or transfers them to a role that does not require possessing or overseeing explosive materials upon learning any information indicating the person is prohibited under 18 U.S.C. 842(i), whether from a background check or otherwise.

B. Amendments to §§ 555.103 and 555.105

ATF's regulations at 27 CFR 555.103 detail the steps that federal explosives licensees/permittees as distributors must take when they distribute explosive materials to licensees/user permittees. Section 555.105 details the steps distributors must take when they distribute explosive materials to limited permittees. As described in detail in sections III.H.3 and IV.A of this preamble, ATF published ATF Ruling 2003–5 to provide an alternative method by which distributors could meet the requirements in § 555.105(b)(6)(iii), which require common/contract carriers to verify the identity of persons accepting explosive materials on behalf of a limited permittee. This alternative allows a distributor to verify that a common/contract carrier has delivered explosive materials to the limited permittee, in lieu of the common/contract carrier making such verification upon delivery and providing this information to the distributor. Although this change was generally well received by the industry, explosives licensees/permittees commented that further regulatory amendments should be implemented for clarity and consistency because the regulatory provision remained as well, and because the ruling did not resolve the same common/contract carrier requirement with regard to licensee/user permittee distributees. Some commenters also felt that the requirement for the distributor to contact the distributee, while less burdensome than the IFR's original requirement, was still somewhat onerous. Shortly after publishing Ruling 2003–5, ATF published IFR 2, which removed the requirement in § 555.103(b)(2)(ii) that the common/contract carrier verify the identity of persons accepting explosive materials on behalf of licensee/user permittee distributees. As commenters thereafter noted, this was an improvement, but still did not fully address all the concerns and potential issues. ATF agrees with commenters, and this final rule makes further clarifying amendments to §§ 555.103 and 555.105 to address those concerns.

In this final rule, ATF is amending these sections to provide greater consistency and reduce burdens on carriers and distributors while still addressing Congress's concern that the explosives regulations provide for substantial security. Specifically, the final rule amends the structure of §§ 555.103 and 555.105 to streamline the verification procedures by distinguishing between two rather than four groups: (a) distribution of explosive materials by a distributor; and (b) distribution of explosive materials via common/contract carrier. This minor structural change combines previously separate paragraphs/requirements on delivery at distributor premises and delivery by distributor's carrier into one paragraph and one set of requirements, and combines previously separate paragraphs/requirements on common/contract carriers hired by distributors and common/contract carriers hired by distributees into another paragraph and single set of requirements.

In this final rule, the requirement that a distributor verify the identity of an individual receiving explosive materials remains unchanged if the transfer of explosive materials occurs ''by distributor''—directly between the distributor and the distributee at the distributor's premises or made via an employee driver of the distributor away from the distributor's premises. This requirement is the same whether the recipient is a licensee/user permittee or a limited permittee. In addition, when delivery is being effectuated via a common/contract carrier, the distributor must still verify the identity of the carrier's driver and record both the carrier and driver information before transferring possession to a common/contract carrier for delivery. This requirement is also the same whether the recipient is a licensee/user permittee or a limited permittee. However, under this final rule, there is now no requirement for common/contract carriers to verify the identity of the individual accepting possession on behalf of the distributee (whether the distributee is a licensee/user permittee or limited permittee), as was established under IFR 1, or for the distributor to contact the distributee to verify delivery as an alternative under Ruling 2003–5. Instead, the identity of the individual accepting on behalf of the distributee will not be verified when delivery occurs via common/contract carrier (whether the distributee is a licensee/user permittee or limited permittee). ATF Ruling 2003–5 is therefore also rescinded by this final rule, effective on the effective date of the rule.

ATF is also amending § 555.103(b)(2)(ii) by changing the term ''persons'' in this section to ''employees and responsible persons.'' And it is amending §§ 555.103 and 555.105 to replace the term ''person'' with ''individual'' where appropriate to indicate a natural person.

C. Technical Amendments

ATF is making a minor technical amendment to § 555.126 to update the OMB approval number for the applicable information collection in that section because some information collections have been combined and are now approved by OMB under a different control number. ATF is also making a technical amendment to § 555.141 so that it accords with statutory language that exempts transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and that are regulated by DOT or DHS. ATF is also making a technical amendment to § 555.142(f)(1)(ix) to clarify that aliens can begin the request process before they enter the U.S., even if the process cannot be completed until they have been lawfully admitted. The current regulatory text is confusing, and some people erroneously interpret it as suggesting that the process may be fully completed before entering the country but nonetheless requires a document they cannot provide until after entering the country. ATF is making the two-stage process more explicit to alleviate this confusion. In addition, ATF is making minor plain language edits within the regulatory provisions being amended in this final rule, including changing ''his'' to ''their,'' simplifying sentences, and making section headings more consistent.

D. Guidance Documents Affected by This Final Rule

In conjunction with these changes, ATF is also rescinding one open letter that is now obsolete: Open Letter to All Federal Explosives Licensees and Permittees (May 16, 2003),[28] reminding of then-new SEA provisions and then-new forms and procedures. ATF will also be revising *ATF Publication 5400.23: Compliance Guidelines for Federal Explosives Licensees and Permittees* (Jan. 2023),[29] to reflect changes implemented in this final rule.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

OMB has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866. ATF certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563.

The benefits of this rule include finalizing interim final rules that have been in effect but in interim status for 20 years; addressing comments from explosives licensees/permittees and transportation carriers that have been unresolved during that time; eliminating confusion arising from a combination of regulation and ruling variance; removing burdensome requirements for explosives distributors and common/contract carriers to verify identity and report delivery confirmation when explosive materials are delivered by common/contract carriers; streamlining and consolidating remaining verification requirements and restructuring regulatory sections to simplify and make consistent currently divergent explosives distribution requirements; enabling licensees/permittees to better incorporate distribution requirements into standard good business practices; exempt from ATF regulation certain types of explosives transportation that would otherwise be redundantly regulated by two or three agencies; and clarify the scope of the term ''any change'' so that licensees/permittees know when to submit change reports, thereby saving them time, reducing confusion, and increasing public safety and business security.

1. Need Statement

This rule finalizes two interim final rules that implemented provisions of the SEA in 2003 and which have been in effect since that time. The SEA amended federal explosives laws in 18 U.S.C. chapter 40 to, among other things: (1) include a federal licensing/permitting requirement for all purchases of explosive materials on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new ''limited permit'' for certain types of explosives purchasers. This final rule adopts the regulations set forth in both IFRs 1 and 2 with two modifications and some minor technical amendments. Costs associated with the IFRs themselves were accounted for in IFR 1, and ATF has responded to comments on, and updated, the IFR cost analysis in section III.O of this preamble. There are no new costs attributable to this final rule with regard to the provisions it is adopting from the IFRs without modification.

As detailed in section V of this preamble, this final rule is making two modifications to the regulatory provisions that were published in IFRs 1 and 2 and that have been in effect since 2003. First, this final rule amends 27 CFR 555.57 to address confusion from commenters about when they must submit notice to ATF of changes to RPs and employees authorized to possess explosive materials, to update the form by which to submit the notice, and to clarify that ATF will not seek to revoke a licensee/permittee's license/permit if they hire a prohibited person for a role that requires overseeing (as an RP) or possessing explosive materials in certain narrowly defined circumstances. This modification does not change the requirements, costs, or burdens associated with IFR 1; instead, it simply clarifies the regulatory text in response to public comments.

Second, this final rule amends §§ 555.103 and 555.105 to remove all remaining requirements from the IFRs and ATF Ruling 2003–5 that common/contract carriers, or distributors in the alternative, must verify the identity of the individual receiving delivery of explosive materials from a common/contract carrier. This modification also does not result in any new costs, and, as discussed above in section V.B of this preamble, ATF estimates that it will result in a deregulatory savings to the industry. Although this rule will rescind the requirement for common/contract carriers or distributors to verify the identity of the individual accepting delivery from a common/contract carrier, ATF does not believe that this change will hamper the ability to trace explosive materials by more than a de minimis amount because distributors must still verify identity when a person receives explosive materials directly from the distributor (at the distributor's business premises or via distributor delivery) and because licensees/permittees are still required to maintain records of transactions that can be checked during ATF inspections. ATF therefore estimates that this change will not pose any threats to public safety.

[28] *https://www.atf.gov/file/84176/download* [*https://perma.cc/A76V-R8DL*].

[29] *https://www.atf.gov/file/61601/download* [*https://perma.cc/D8W3-4LA7*].

2. Savings Arising From Amendments in This Rule

Currently, many distributors distribute explosive materials at their premises, or they use their own employees to deliver explosive materials to their recipients. In such cases, the distributor or their employee delivering the explosive materials verifies the recipient's license/permit, the identity of the individual accepting explosives on the distributee's behalf (including that the individual is on the list of authorized individuals), and delivery. These verification requirements already exist, and this final rule does not generate additional costs for these kinds of distributions.

Similarly, this rule is not changing the existing requirement that distributors must verify the identity of the driver when the explosive materials are being distributed via a common/contract carrier and record that information, along with the carrier's information, in the distributor's distribution record. No additional cost is being incurred as a result of this final rule for this requirement, either.

This final rule gives rise to savings associated with rescinding the remaining IFR 1 requirements (and the ATF Ruling 2003–5 alternative method) to verify the identity of the individual accepting delivery of explosive materials via a common/contract carrier.

Because only licensees can sell or distribute explosives, most of the savings associated with this provision would accrue to licensees. Permittees may distribute only surplus explosives to licensees/permittees (meaning they acquired more explosive materials than they needed). Limited permittees are further limited to distributing to only licensees/permittees that maintain residence in the same state.

To calculate the overall deregulatory savings to the industry, ATF assumes that distributors are explosives licensees distributing to an explosives licensee/permittee (distributee). Based on information within ATF's internal database, there are 3,391 licensees. For the purposes of this analysis, ATF is not including distributions from permittees because those transactions occur only to disburse excess supplies and are infrequent.

Because ATF does not maintain records of transactions by licensees, ATF assumes that transactions occur in an even distribution of 50 percent by distributor transactions (at the distributor's premises or using their own employees for delivery) and 50 percent via delivery by common/contract carrier. Furthermore, ATF estimates the number of transactions that a licensee may have in any given year, based on evidence from ATF's Explosives Industry Programs Branch, as approximately four pages of transactions per year, and estimates there are 39 lines of transactions on a given page. Therefore, ATF estimates that a given licensee would experience around 156 transactions in a given year. Should an even 50 percent of 156 transactions be conducted via a common/contract carrier, ATF estimates an annual average of 78 such deliveries per licensee.

For the purposes of this analysis, ATF assumes, based on the public comments on IFR 1, and industry feedback and practices in the 23 years since then, that common/contract carriers have not been verifying the identity of individuals accepting delivery on behalf of the distributee, as required by IFR 1. Instead, ATF assumes that distributors have been contacting the distributees to verify delivery, pursuant to the alternative option permitted by ATF Ruling 2003–5. Given that assumption, for the purposes of this analysis, ATF estimates it would have normally taken a distributor 15 minutes to perform an initial call to a distributee and 15 minutes for the distributee to answer the initial call, for a combined hourly burden of 30 minutes (0.5 hours). Due to the nature of calling, the distributee might not be able to verify delivery with the initial call, so ATF anticipates a second call might be necessary to verify the delivery.

ATF anticipates that the second call would be similar in nature and take a combined 0.5 hours (15 minutes for the distributor and 15 minutes for the distributee) to confirm delivery. In terms of overall savings in time burden, ATF estimates that the annual hourly savings in time is 78 hours per distributor and 78 hours per distributee, for an industry time burden of 264,498 total industry hours.[30] Because ATF has no information from industry on how often a second call occurs, this estimate is based on an assumption that a second call has been necessary 100 percent of the time.

To calculate the monetized savings, ATF uses 2025 occupational data, the most recent year for which BLS wage rate data is available. According to BLS, the wage for Explosives Workers, Ordinance Handling Experts, and Blasters (47–5032)[31] is a nominal average of $32.04. To account for fringe benefit costs that accompany wages, such as insurance, ATF estimated a private sector load rate by calculating private sector benefits from the BLS and determined that the overall private sector benefits are 43 percent in addition to an hourly wage, or a load rate of 1.43.[32] This brings the $32.04 wage to a loaded wage rate of $46 (rounded). With a population of approximately 3,391 federal explosives licensees, ATF estimates that this provision would result in approximately $12.2 million in savings per year (annually and annualized).[33]

3. Benefits

The SEA and its implementing regulations published in IFRs 1 and 2, as finalized in this final rule, provide important benefits to public security and safety. Prior to the SEA, ATF performed background checks on licensee/permittee RPs, but not on their employees authorized to possess explosive materials. The SEA mandates that ATF perform background checks on RPs to ensure that the RPs are not prohibited from shipping, transporting, receiving, or possessing explosive materials. This enables ATF to prevent a prohibited person, who might otherwise be hired were a background check not instituted, from possessing explosives for an explosives licensee/permittee. Moreover, the required background checks help to ensure that prohibited persons are not permitted to obtain explosive materials for illicit use. By adding background checks for authorized employees, the SEA and the IFRs promoted these benefits.

Furthermore, the SEA 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 stored in accordance with the regulations and that storage of explosive materials does not pose a threat to public safety. Thus, the SEA, as implemented by the IFRs and finalized in this final rule, provides preventative tools to increase public safety and security.

[30] 264,498 total industry hourly burden = 3,391 distributors * 0.5 hours per call (15-minutes for the distributor and 15-minutes for the distributee) * 2 calls per transaction * 78 common/contract carrier transactions per year.

[31] *https://data.bls.gov/oesprofile/?major_group=470000&occupation=475032&measure=01&areas=INDUSTRY,STATE,MSA,* [*https://perma.cc/X7JW-BX9K*].

[32] 1.43 load rate = $46 Total Compensation/ $32.04 Average Wages. *https://www.bls.gov/news.release/archives/ecec_06122026.pdf,* [*https://perma.cc/8WEJ-2TRW*].

[33] $12,166,908 in monetized savings = 264,498 total industry hourly burden * $46 loaded, hourly wage rate.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M–25–20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations.

This rule is finalizing two interim final rules that have been in effect for 20 years and thus do not qualify as new regulations. In addition, this final rule also qualifies as a deregulatory action under Executive Order 14192 because it removes existing requirements for common/contract carriers and explosives distributees to verify identity and authorization status of persons accepting deliveries via common/contract carrier as well as reporting the delivery. This deregulatory action provides an annualized regulatory savings of $1.98 million at 7 and 3 percent discount rates or $119 million undiscounted over the course of the next ten years. It is also a deregulatory action because it exempts from ATF regulation transporting explosive materials via railroad, water, highway, or air that are regulated by DOT or DHS. In addition, these actions are also deregulatory because ATF will be able to consolidate and pare down four existing information collections into one and reduce ATF's collection burden under the Paperwork Reduction Act.

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization of Federal Regulations) requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This final rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

This final rule will not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Director, ATF, has determined that this final rule does not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. Executive Order 12988

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

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601–612), agencies are required to conduct a regulatory flexibility analysis of any final rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This final rule will provide deregulatory savings to the explosives industry of $585 per explosives licensee per year. Licensees will also not accrue additional costs due to this rule. Costs pertaining to the 2003 IFRs are considered sunk costs and are not considered incremental costs to licensees arising from this rule. Therefore, the Director certifies, after consideration, that this final rule would not have a significant economic impact on a substantial number of small entities.

G. Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not likely to have a significant economic impact on a substantial number of small entities under the Small Business Regulatory Enforcement Fairness Act of 1996.

H. Unfunded Mandates Reform Act of 1995

This final rule does not include a federal mandate that might 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 (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

I. Paperwork Reduction Act of 1995

This final rule does not create new information collection requirements or add to the burden of existing ones under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and its implementing regulations (5 CFR part 1320). However, this final rule amends 27 CFR 555.103 and 555.105 by removing the identity verification requirements for common/contract carrier deliveries of explosive materials to limited permittees and by removing the different requirements for two kinds of distributor transfers and two kinds of common/contract carriers. This change will enable a reduction in the burden attributable to an existing Paperwork Reduction Act information collection covering those verification requirements (OMB control number 1140–0075) and will allow ATF to combine existing information collections 1140–0025 and 1140–0077, involving limited permittees, with 1140–0075 (also involving limited permittees). ATF has recently therefore updated 1140–0075 through the Paperwork Reduction Act process (including **Federal Register** notices with public comment periods) and rescinded 1140–0025 and 1140–0077 to reflect the reduced burden.

J. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB's Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria in 5 U.S.C. 804(2) to constitute a major rule. This rule is not a major rule because it 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, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Disclosure

Copies of the interim rules, comments received in response to the interim rules, and copies of this final rule are available through the federal eRulemaking portal at *https://*

www.regulations.gov (search for RIN 1140–AA00 or 1140–AA20).

Severability

ATF has determined that this rule implements and is fully consistent with governing law. However, in the event any provision of this rule, an amendment or revision made by this rule, or the application of such provision or amendment or revision to any person or circumstance, is held to be invalid or unenforceable by its terms, the remainder of this rule, the amendments or revisions made by this rule, and application of the provisions of the rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law. The Supreme Court has explained that where specific provisions of a rule are deemed unlawful, severance is preferred when doing so ''will not impair the function of the [rule] as a whole, and there is no indication that the regulation would not have been passed but for its inclusion.'' *K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988); *see also Sw. Elec. Power Co.* v. *EPA,* 920 F.3d 999, 1033 (5th Cir. 2019) (vacating only challenged portions of a rule). It is the intent of ATF that each and every provision of this regulation be severable from each other provision to the maximum extent allowed by law.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and record-keeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

For the reasons discussed in the preamble, ATF adopts IFR 1, published at 68 FR 13768 on March 20, 2003, and IFR 2, published at 68 FR 53509 on September 11, 2003, both amending 27 CFR part 555, as final rules with the following changes:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Amend § 555.57 by:
■ a. Adding a heading to paragraph (a);
■ b. Removing, in paragraph (a), ''shall file an ATF F 5400.13 or an ATF F 5400.16'' and adding in its place ''must file an ATF F 5400.13'';
■ b. Revising paragraphs (b) and (c);
■ c. Redesignating paragraph (d) as paragraph (e) and revising the newly redesignated paragraph (e);
■ d. Adding a new paragraph (d); and
■ e. Revising the OMB control number parenthetical at the end of the section.

The addition and revisions read as follows:

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

(a) *Change of control.* * * *

(b) *Changes in responsible persons.* (1) Licensees/permittees must report to the Chief, FELC, each responsible person they add to a license/permit, within 30 days after the date they hire that person. The licensees/permittees must submit this report on ATF Form 5400.27 and must also include photographs and fingerprint cards for every new responsible person. Licensees/permittees must also, within 30 days after the date the responsible person leaves or otherwise ceases to be a responsible person for the licensee/permittee, notify the Chief, FFLC, in writing that the individual is no longer their responsible person.

(2) Upon receiving a Form 5400.27, the Chief, FELC, will conduct a background check, in accordance with § 555.33.

(c) *Changes in employees authorized to possess explosive materials.* (1) Licensees/permittees must report to the Chief, FELC, each employee they authorize to possess explosive materials, within 30 days after they hire that employee or authorize them to possess explosives. Licensees/permittees must submit this report on ATF Form 5400.28. Licensees/permittees must also, within 30 days after the date the employee ceases to be an employee authorized to possess explosive materials on behalf of the licensee/permittee, notify the Chief, FFLC, in writing that the individual is no longer an employee authorized to possess explosive materials for the licensee/permittee.

(2) Upon receiving a Form 5400.28, the Chief, FELC, will conduct a background check, in accordance with § 555.33.

(d) *Possessing explosive materials.* ATF will not initiate action to revoke or suspend a license/permit under section 843(d) of the Act on the basis that the licensee/permittee employed a person prohibited under section 842(i) of the Act as a responsible person or in a role that required possessing explosive materials, provided that:

(1) The licensee/permittee has complied with the provisions of paragraphs (b)(1) and (c)(1) of this section, as appropriate;

(2) Neither the licensee/permittee, nor any responsible person for the licensee/permittee, knows, or has reason to know, that the new responsible person or authorized employee is prohibited from possessing explosive materials, either before or at any point during the person's employment; and

(3) Upon learning any information indicating that the responsible person or authorized employee is prohibited from possessing explosive materials, whether from the results of a background check conducted under paragraph (c)(2) of this section or otherwise, the licensee/permittee ceases to continue employing the employed person as a responsible person or in a role that requires possessing explosive materials.

(e) *Records retention period.* Licensees/permittees must retain reports required by paragraphs (b) and (c) of this section as part of their permanent records for the period specified in § 555.121.

(Approved by the Office of Management and Budget under control numbers 1140–0070 (ATF Form 5400.13), 1140–0072 (ATF Form 5400.28), and 1140–0074 (ATF Form 5400.27).)

■ 3. Amend § 555.103(b) by:
■ a. Revising paragraph (b)(2)(ii);
■ b. Removing paragraph (b)(4);
■ c. Redesignating paragraph (b)(3) as paragraph (b)(4), and revising the introductory text of the newly designated paragraph (b)(4);
■ d. Adding a new paragraph (b)(3); and
■ e. Revising the OMB control number parenthetical at the end of the section.

The revisions, additions, and removals read as follows:

§ 555.103 Transactions among licensees/permittees other than limited permittees.

* * * * *

(b) * * *

(2) * * *

(ii) The distributee must also provide the distributor with a current list of the names of employees and responsible 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 the distributor on a timely basis. A licensee/permittee selling or otherwise distributing explosive materials to another licensee/permittee must, prior to delivering the explosive materials, obtain from the distributee a current list of employees/responsible persons the distributee authorizes to accept deliveries of explosive materials on their behalf.

* * * * *

(3) *Distributing explosive materials by a licensee/permittee.* When the distributee takes possession of the

explosive materials at the distributor's premises or via delivery by the distributor, the distributor/distributor's driver must verify the identity of the authorized employee/responsible person accepting possession of the explosive materials on behalf of the distributee, before relinquishing possession. The distributor/distributor's driver must do so by examining the accepting individual's identification document (as defined in § 555.11) and by verifying that the accepting individual is the distributee or is named on the current list of employees/responsible persons provided by the distributee. A distributor may not transfer explosive materials to any individual who is not the distributee or whose name is not on the current list of employees/responsible persons authorized to accept delivery of explosive materials on behalf of the distributee.

(4) *Distributing explosive materials via common/contract carrier.* When a common/contract carrier transports explosive materials from a distributor to a distributee who is a licensee/user permittee, the distributor must take the following actions before relinquishing the explosive materials to the carrier:

* * * * *

(Approved by the Office of Management and Budget under control numbers 1140–0075 and 1140–0079)

■ 4. Amend § 555.105 by:

■ a. Revising paragraph (b)(6)(i);

■ b. Removing paragraph (b)(6)(ii);

■ c. Redesignating paragraph (b)(6)(iii) as (b)(6)(ii), revising the introductory text of the newly designated paragraph (b)(6)(ii), and removing newly redesignated paragraph (b)(6)(ii)(C); and

■ d. Removing paragraph (b)(6)(iv).

The revisions, removals, and redesignations read as follows:

§ 555.105 Distributions to limited permittees.

* * * * *

(b) * * *

(6)(i) *Distributing explosive materials by a licensee/permittee.* When the limited permittee takes possession of the explosive materials at the distributor's premises or via delivery by the distributor, the distributor/distributor's driver must receive from the distributee an executed ATF Form 5400.4 in accordance with § 555.126(b), and must verify the identity of the employee/responsible person accepting possession on behalf of the distributee, before relinquishing the explosive materials. The distributor/distributor's driver must do so by examining the accepting individual's identification document (as defined in § 555.11) and by verifying that the accepting individual is the distributee or is named on the current list of authorized employees/responsible persons provided by the distributee. The distributor must note on Form 5400.4 the name of the distributee or the employee/responsible person accepting possession of the materials on behalf of the distributee, and the type and number of the identification document. The distributor may not transfer explosive materials to any individual who is not the distributee or whose name is not on the current list of employees/responsible persons authorized to accept delivery of explosive materials on behalf of the distributee.

(ii) *Distributing explosive materials via common/contract carrier.* When a common/contract carrier transports explosive materials from the distributor to a limited permittee:

* * * * *

■ 5. Amend § 555.126 by removing ''1140–0078'' in the OMB control number parenthetical at the end of the section and adding in its place ''1140–0075''.

■ 6. Revise § 555.141(a)(1) to read as follows:

§ 555.141 Exemptions.

(a) * * *

(1) Aspects of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security.

* * * * *

■ 7. Amend § 555.142 by:

■ a. Removing, in paragraph (b), the form number and title ''ATF Form 5400.29, Application for Restoration of Explosives Privileges'' and adding in its place ''ATF Form 5400.31, Request for Relief from Explosives Disability''; and

■ b. Revising paragraph (f)(1)(ix) to read as follows:

§ 555.142 Relief from disabilities.

* * * * *

(f) * * *

(1) * * *

(ix) In the case of an applicant who is an alien: documents showing that the applicant is an alien who has been lawfully admitted to the United States; applicant's information, including the applicant's DHS-issued alien registration 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 possessing explosives is required; document from appropriate law enforcement agency of the applicant's country of citizenship certifying that the applicant does not have a criminal record; and, if applicable, document from a federal explosives licensee/permittee or other employer certifying that the applicant is employed by the employer and must possess explosive materials for employment purposes.

(A) These documents must be submitted in English.

(B) Aliens may begin the application process while still outside the United States, including providing documents that show they have a bona fide employment offer or other reason supporting the need to possess explosive materials. However, receiving some of the required documents (such as those showing the alien has been lawfully admitted to the United States) and part of ATF's assessment process cannot occur until the alien is in the United States. As a result, aliens should not expect to receive relief from disability before they arrive in the United States.

* * * * *

Robert Cekada,

Director.

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