

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

H. Section 555.125 (Records Maintained by Permittees)

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

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

I. Elimination of the "User-Limited" Permit

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

II. Licensing Information and Criteria

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

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

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

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