

explosive materials at a given time. Thus, employees who handle explosive materials in the course of their employment would clearly be in possession of those materials. This would include employees who handle explosive materials as part of the production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees, such as blasters, who actually use explosive materials.

Where direct physical control over explosive materials is absent, an employee has constructive possession where he knowingly has the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others. For example, 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 would be in constructive possession of the explosive materials. Likewise, an employee transporting explosive materials from a licensee to a purchaser has constructive possession of the explosive materials, even though the employee may not have direct contact with the explosives.

The criteria for issuing licenses have been revised to provide that a license will not be issued to an applicant if any of the employees authorized to possess explosive materials is described in any paragraph of section 842(i) of the statute. This section lists "prohibited persons" who may not lawfully receive or possess explosive materials including felons, unlawful drug users, and fugitives.

A new provision has been added to require that applicants for limited permits provide a certification with the application stating that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period of the permit. This provision is effective May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.11, 555.34, 555.49, 555.54, and 555.57.

### III. Time Period for Acting on Applications

Current law gives ATF 45 days to act on an application for a license or permit. The Act extended that period to 90 days. This provision is effective on May 24, 2003. Regulations that implement this provision of the Act are in § 555.49.

### IV. Inspection Authority

The Act also amended the licensing criteria to provide that ATF must verify "by inspection" that applicants for user

permits and licenses have places of storage for explosive materials that meet the standards of safety and security set forth in the regulations. This will require an on-site inspection of all new applicants for user permits and licenses issued on and after May 24, 2003, in order to verify compliance with the storage requirements specified in the regulations. The inspection requirement will also apply to renewals for user permits and licenses after the effective date.

The Act does not require an on-site inspection of storage facilities for applicants for limited permits. Instead, it provides that ATF may verify by inspection or by such other means as the Attorney General determines appropriate that the applicant for the limited permit has suitable storage. The Act allows ATF the option to verify storage by means other than an on-site inspection for the first or second renewal of a limited permit, and requires an on-site inspection for the third renewal if an inspection has not been conducted within the previous 3 years. Other means of verification include written certifications, telephone interviews, site plans, magazine description worksheets, and other appropriate means. The above provisions of the Act are effective on May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.24, 555.34, 555.49, 555.54, 555.57, 555.121, 555.125, and 555.126.

### V. Posting of Permits

The Act amended section 843(g) of the Federal explosives laws, 18 U.S.C. 843(g), to provide that only licensees and holders of user permits must post their licenses and permits and make them available for inspection. Thus, holders of limited permits are exempted from this requirement. This provision is effective on May 24, 2003.

Regulations that implement this provision of the Act are in § 555.101.

### VI. Background Checks and Letters of Clearance

#### *A. Voluntary Checks Not Associated With a License or Permit Application*

Effective May 24, 2003, the Act requires ATF to conduct background checks on responsible persons and employees authorized to possess explosive materials upon request by a licensee or permittee. In addition, the law requires ATF to determine whether any of the responsible persons or employees are prohibited persons under 18 U.S.C. 842(i), and to notify the employer of the determination. Also, the

Act requires ATF to issue a letter of clearance to the responsible person or employee, if the results of the background check do not indicate that the person is prohibited from possessing explosive materials. If the results of the background check indicate that the person may be prohibited from possessing explosive materials, ATF must notify the employer of the determination and issue a letter to the employee or responsible person advising of the determination, providing information concerning how the disability may be relieved, and explaining how the determination may be appealed.

Regulations that implement these provisions of the Act are in §§ 555.33. Section 555.33 provides that, if ATF receives from a licensee or permittee the names and appropriate identifying information of responsible persons and employees who will be authorized by an employer to possess explosive materials in the course of employment with an employer, ATF will conduct a background check to determine whether the responsible person or employee is one of the persons prohibited from possessing explosive materials. If ATF determines that the responsible person or the employee does not fall within a prohibited category, ATF will notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance that confirms the determination. As noted in House Report 107-658, ATF will not violate the privacy rights of an employee by disclosing to an employer the reason for the determination that an employee is a prohibited person. The employer will be notified only whether the employee is cleared or may be a prohibited person. Only an employee who ATF has determined is prohibited will receive information regarding the basis for the prohibition.

If ATF determines that the responsible person or employee is prohibited from possessing explosive materials, ATF will notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that: confirms the determination; explains the grounds for the determination; provides information on how the disability may be relieved; and explains how the determination may be appealed. The employer must then take immediate steps to remove the responsible person from his position directing the management and policies of the business or operations as they relate to explosive materials or, as the