

Employee Possessor Questionnaire

Who needs to complete this form? This questionnaire **MUST** be completed by EACH employee possessor of a Federal explosives licensee or permittee or applicant, unless otherwise provided. (See reverse for definition of employee possessor.)

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| For ATF Use Only |
| RDS KEY: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

Employee Possessor Information and Certification

| Print the Requested Information in Block Letters. | Explosives Applicant Business or Operations Name |
|---|--|
| 1. Last Name | 14. Name and address of explosives business or operations at which you are an employee possessor. |
| 2. First Name | 15. Your position in the explosives business or operations. |
| 3. Middle Name | 16. Federal explosives license/permit number for explosives business/operations. |
| 4. Name Suffix, if any (e.g., sr., Jr., III) | 17a. List All Countries of Citizenship? |
| 5. Other Names Used - Including Maiden Name | If you indicated above you are a United States citizen, skip to question 18. |
| 6. Social Security Number (<i>Voluntary, will help prevent misidentification</i>) □□□□ - □□ - □□□□□□ | |
| 7. Place of Birth (City and State - or - City and Foreign Country) | 17b. What is your U.S.-issued alien number or admission number? |
| 8. Date of Birth (Month/Day/Year) □□/□□/□□□□ | The following questions must be answered with a "YES" or "NO". (See the "Note" at the bottom of the page.) |
| 9. Race/Ethnicity (Check one or more boxes) | Yes or No |
| American Indian or Alaskan Native <input type="checkbox"/> Hispanic <input type="checkbox"/> | 18. Are you a fugitive from justice? |
| Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> | 19. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance? |
| Black or African American <input type="checkbox"/> White <input type="checkbox"/> | 20. Have you ever been convicted in any court of a felony , or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence, including probation? (See Definition 1, Exception 1.) |
| 10. Sex (Check one box) Male <input type="checkbox"/> Female <input type="checkbox"/> | 21. Are you under indictment or information in any court for a felony , or any crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 1.) |
| 11. Home Telephone Number (Include area code) | 22. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution? |
| 12. Work Telephone Number (Include area code and extension) | 23. Have you ever been discharged from the Armed Forces under dishonorable conditions? |
| Home Address | |
| 13a. Street Address | 24. Have you ever renounced your United States citizenship? |
| 13b. Apt. Number 13c. City | 25. Are you an alien in the United States? If "YES," attach an explanatory statement showing that you are a lawful permanent resident. (See Definition 3, Exception 2.) (Generally, if you are an alien [except for a lawful permanent resident alien], you cannot possess explosive materials.) <input type="checkbox"/> Statement Attached. |
| 13d. State - or - Province, Foreign Country | |
| 13e. Zip Code / Postal Code □□□□□□ - □□□□□□ | |

Under the penalties imposed by Federal law, I, _____, certify under the penalty of perjury that the answers on this questionnaire are true, accurate and complete. (Print Your Full Name)

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|----------------|------|
| Your Signature | Date |
|----------------|------|

*Note: A copy of this form may be used for your renewal submission. See instruction #2 and #3. I certify, under penalties of perjury, that my answers on form are true, accurate and complete.

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| Your Signature (For second submission) | Date |
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Instructions

- 1. Who must fill out and complete this form?** EACH employee possessor, as defined below, MUST personally complete this questionnaire form and certify that the answers are true, correct, and complete. This form is not required to be completed by Employee Possessors whose sole responsibility is transporting explosives in commerce.
- 2. To whom do I submit this form?** You must complete and submit this form to your employer (*applicant for license/permit*). The employer will submit this form, along with the application, to ATF. If this form is being submitted AFTER a license or permit has been issued in order to ADD you as an employee possessor, then the form must be accompanied by a signed letter from the licensee or permittee requesting that you be added as an employee possessor. If this form is being submitted for at least a second time, in relation to the same license/permit renewal, the employee possessor may follow instructions 3 below and the form should be sent to: ATF, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.
- 3. Resubmission of form upon 3-year renewal of license/permit.** The person completing the form may choose to resubmit a photocopy of their original ATF Form 5400.28 provided the information has not changed. You must certify that all the answers are still true, accurate and complete by signing and dating the form.
- 4. Why is this form required?** 18 U.S.C., Chapter 40, was amended by the Safe Explosives Act of 2002 (the Act). The Act made it unlawful for certain persons to ship, transport, receive, or possess explosive materials. The Act also made it unlawful to distribute explosive materials to certain persons. Information you provide on this form will allow ATF to determine whether you, an employee possessor in the explosives business or operations, are prohibited from shipping, transporting, receiving, or possessing explosive materials. 18 U.S.C. § 842(d), (i).
- 5. Should documentation be attached to clarify a response to a question or item?** Providing additional documentation to clarify a response to a specific question or item on the front of this form could help prevent a delay in processing your Employer Possessor Questionnaire. Please ensure that your name is on any attached documents(s). In addition, if your employer is renewing a Federal explosives license or permit, ensure that the employer's current license or permit number is on any attached documents.
- 6. How do I obtain additional forms?** The form can be downloaded from ATF's website in Adobe PDF format at www.atf.gov/forms/index.htm. The form can be ordered using ATF's Online Distribution Center Order Form at www.atf.gov/dcof/index.htm. The form can also be ordered by calling ATF's Distribution Center at (301) 583-4696.
- 7. What do I do if I am prohibited from possessing explosives as indicated above?** If you are prohibited from possessing explosives, you may request relief from your Federal explosives disability by filing an ATF Form 5400.29, Application for Restoration of Explosives Privileges. This form can be downloaded from ATF's website at www.atf.gov/forms/index.htm or may be obtained by calling (202) 648-7110. Please be advised that you cannot possess explosives until such time that relief from Federal explosive disabilities may be granted. For example, if you are a nonimmigrant alien, you should answer "yes" to question 25, and you are prohibited from possessing explosives. You may file a relief application, but you cannot possess explosives until such time that ATF may grant you relief.
- 8. Need assistance in completing the form?** Please review information online concerning this form at www.atf.gov, contact the National Licensing Center at (404) 417-2750, or contact your local ATF office.

ATF Form 5400.28 is used to determine the eligibility of the employee possessor to possess explosives materials. Under Federal explosives laws it is unlawful for certain prohibited persons to possess explosives. See 18 U.S.C. § 842(d) and (i). 18 U.S.C. § 845 (a)(1) provides that these prohibitions do not apply to any "aspects of transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the United States Department of Transportation or the Department of Homeland Security." The Department of Transportation and the Transportation Security Administration have exercised their regulatory authority concerning employee qualifications to transport explosive materials. Accordingly, ATF does not have to determine the eligibility to possess explosives of Employee Possessors who fall within this exception.

Definitions

- 1. Under Indictment or Information or Convicted in Any Court.** An indictment, information, or conviction in any Federal, State, or local court.
- 2. Employee Possessor.** An employee possessor is an individual who has **actual or constructive possession** of explosive materials during the course of his employment. **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; or an employee, such as a blaster, who actually uses explosive materials*). **Constructive possession** exists when an employee lacks direct physical control over explosive materials, but exercises 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*).
- 3. Alien.** An alien in the United States means any person who is not a citizen or national of the United States.

Exceptions

1. A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, is not prohibited from shipping, transporting, possessing, or receiving explosives if: (1) the conviction was properly invalidated by a court on the basis that the conviction was unconstitutional; (2) in the case of a Federal conviction, the person received a Presidential pardon; or (3) ATF granted relief from Federal explosives disabilities under 18 U.S.C. § 845(b), 27 CFR 555.142.
2. Purposes of this form, aliens can be employee possessors if they are lawful permanent residents. 18 U.S.C. § 842(d)(7); (i)(5).

Privacy Act Information

The following information is provided pursuant to Section 3 of the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3):

- 1. Authority.** Solicitation of this information is made pursuant to 18 U.S.C. §§ 842, 843. Disclosure of this information by the employee possessor is mandatory if the employee possessor wishes to possess explosives.
- 2. Purpose.** To determine the eligibility of the employee possessor to possess explosive materials.
- 3. Routine Uses.** The information will be used by ATF to make determinations set forth in paragraph 2. In addition, information may be disclosed to other Federal, State, foreign, and local law enforcement and regulatory agency personnel to verify information on the employee possessor questionnaire and to aid in the performance of their duties with respect to the regulation of explosives unless such disclosure is prohibited by law. Finally, the information may be disclosed to members of the public in order to verify the information on the questionnaire when such disclosure is not prohibited by law.
- 4. Effects of not supplying the requested information.** Failure to supply complete information will delay processing and may cause denial of the application.
- 5. Disclosure of social security number.** Disclosure of the individual's social security number is voluntary. Under 18 U.S.C. §§ 842(f), 843, and Executive Order 9397, November 22, 1943, ATF has the authority to solicit an individual's social security number. The number may be used to verify the individual's identity.

Paperwork Reduction Act Notice

This request is in accordance with the Paperwork Reduction Act of 1995. The purpose of this information collection is to determine the eligibility of the employee possessor to engage in certain operations. The information requested is required to obtain or retain a benefit and is mandatory by statute 18 U.S.C. 843.

The estimated average burden associated with this collection is 20 minutes per respondent, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.