

PUBLIC COMMENTS SPREADSHEET FOR OMB 1140-0072

1140-0072 Explosives Employee Possessor Questionnaire (ATF Form 5400.28)

Date of Submission	Name of Requestor and Agency (If Applicable)	Type of Submission (email , letter, phone)	Contact Info	Comment / Request	ATF Response
5/19/2021	Dynetics	email with attached letter	Nicholas.Muzzarelli@dynetics.com	See Public Comment Document	See Public Comment Document
7/7/2021	Internation Society of Explosives Engineers	email with attached letter	shivak@isee.org	See Public Comment Document	See Public Comment Document
7/19/2021	Institute of Makers of Explosives	email with attached letter	jhoffman@ime.org	See Public Comment Document	See Public Comment Document

Public Comment for OMB 1140-0072

Dynetics Comments

Dynetics

A Leldos Company

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May 19, 2021

Bureau of Alcohol, Tobacco, Firearms & Explosives
Explosives Licensing Division
Attn: Shawn Stevens
244 Needy Road,
Martinsburg, WV 25405

RE: Docket 1140-0072: Proposed Revision to Explosives Employee Possessor Questionnaire-ATF Form 5400.28

Dear Mr. Stevens,

This letter is drafted in response to the proposed revision of the Explosives Employee Possessor Questionnaire-ATF Form 5400.28 cited in docket 1140-0072. With this opportunity to provide comments, the following is suggested to potentially reduce burden on licensees, the Explosives Licensing Division and the Federal Bureau of Investigation (FBI).

Currently the regulations of 27 CFR 555.33(a) state that the Director will conduct a background check on all responsible persons and employees who will be authorized by the employer to possess explosive materials in the course of their employment. The regulations cited in 27 CFR 555.57(b) go on to state that any changes in responsible persons or employees authorized to possess explosive materials must be reported within 30 days and reports relating to newly hired employees must be submitted on ATF Form 5400.28.

In the course of business operations, some corporations may choose to possess multiple licenses at its various locations depending on what type of activity is to take place (i.e. importation, manufacturing, testing, or program/contract requirements) at each specific site. Traditionally, some employees must possess explosives at multiple locations in the course of their employment. In the current process, each employee must submit a new Employee Possessor Questionnaire each time the need arises for the employee to be added to another license held by the corporation. With this requirement, some employees find that they must complete the aforementioned form multiple times, significantly increasing the burden to collect the information as well as triggering the government to conduct a background investigation regardless of the fact that an employee possess a cleared status on another license held by the corporation.

In order to reduce the burden of collection of information, as well as to prevent the government from having to conduct repetitive background checks, it is suggested that employees who have been previously cleared on a corresponding corporate license be omitted from having to

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complete and submit an additional Employee Possessor Questionnaire. As a potential alternative process, if the situation arises where an employee needs to be added as a cleared person on a corresponding license held by the corporation, of which, shares the same Employee Identification Number, and the employee has sufficiently completed the necessary background investigation within the previous three years, then the responsible person on the licenses may draft a letter. This letter should contain the employee's identifying information, include the license number for which the employee is currently cleared, and the license number for which the employee should be additionally associated with as cleared, as well as any other pertinent information to the ATF's Explosive Licensing Division for review. Upon review, if the Explosive Licensing Division confirms that all information provided is accurate, then the employee would then be subsequently placed onto the corresponding license as a cleared person.

With this suggestion, it is believed that the burden to collect the required information will be reduced for licensees looking to add employees to multiple licenses held by a single corporation. Coinciding with the reduced burden for licensees, it is also believed that the Explosives Licensing Division and FBI would experience a reduced burden as well due to a reduction in the amount of repeat Employee Possessor Questionnaires being submitted for processing.

After review, should any representative of the ATF find a need of additional information or has an inquiry, please do not hesitate to reach out using any of the contact information provided below. Thank you for your time and consideration,

Nicholas M. Muzzarelli
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Nicholas.Muzzarelli@dynamics.com

Agency Response:

Thank you for your suggestion, however, background checks are automatically run when we enter a person. Also, we do have persons that commit crimes during that 3-year time. Our current standard of practice if the background is older than 6-months we reprocess it. In addition, you can already list more than one license or permit on a single EPQ if it's under the same company or if they switched, they could just re-sign their current EPQ and submit it with the updated information. There would not be a way for us to avoid running someone that was being added to a license.

ISEE Comments

ISEE

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International Society of Explosives Engineers

July 7, 2021

Shawn Stevens

Federal Explosives Licensing Center 44 Needy Road

Martinsburg, WV 25405

Re: Proposed Changes to the Explosives Employee Possessor Questionnaire (OMB 1140-0072)

Dear Mr. Stevens,

The International Society of Explosives Engineers (ISEE) and its Government Affairs Committee has had the opportunity to review the above referenced Proposed Changes to the Explosives Employee Possessor Questionnaire and respectfully offer the following comments.

About ISEE

ISEE was formed in 1974 as a society dedicated to promoting the safety, security, and the controlled and legal use of explosives in mining, quarrying, construction, manufacturing, oil and gas exploration, demolition, and other types of use vital for the good of the general public. It is a professional association consisting of over 2500 members with the majority located in the USA.

ISEE has a history of supporting governmental agencies in the adoption of laws and regulations that prevent the illegal use and unlawful possession of explosive materials by prohibited individuals. This included supporting The Safe Explosives Act (the Act) signed into law on November 25, 2002 and the necessary changes made to 27 CFR Part 555 to implement the Act.

Please consider the following comments on the proposed changes to form 5400.28 Employee Possessor Questionnaire.

Comments on the Proposed Changes

ISEE supports the ATF's continued efforts to require appropriate identifying information for all employees who will be authorized by the FEL and FEP to possess explosive materials in order to determine that these individual employees are not prohibited from possessing explosives under any paragraph of section 842(i) of the Act.

It is required by Title 27 CFR Sect. 555.45 that an application for an FEL or FEP must include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials by submitting an Explosives Employee Possessor

§ 843 of the Act requires that an application for a user permit or limited permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Attorney General shall by regulation prescribe, including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials.

The appropriate identifying information prescribed by regulation is defined under Title 27 CFR Sect. 555.11 as:

Appropriate identifying information. The term means, in relation to an individual:

- The full name, date of birth, place of birth, sex, race, street address, State of residence, telephone numbers (home and work), country or countries of citizenship, and position at the employer's business or operations of responsible persons and employees authorized to possess explosive materials;
- The business name, address, and license or permit number with which the responsible person or employee is affiliated;
- If an alien, INS-issued alien number or admission number; and
- Social security number, as optional information (this information is not required but is helpful in avoiding misidentification when a background check is conducted).

It is ISEE's position that the proposed changes to the Explosives Employee Possessor Questionnaire ATF F 5400.28 fall far outside the scope of prescribed regulation and definition for appropriate identifying information.

If, after 18 years of using the current Explosives Employee Possessor Questionnaire ATF F 5400.28, ATF finds it cannot properly perform the function of the agency, then a regulatory change to the definition of appropriate identifying information would be required.

Additionally, there are several other proposed changes to the Explosives Employee Possessor Questionnaire ATF F 5400.28 that if implemented would put an unnecessary and significant burden on the industry, without any safety, security, or economic benefit, as well as violate an individual employee's medical health privacy rights.

Specific Concerns About the Proposed Changes

- **A Responsible Person (RP) must submit a signed written request granting permission for each additional employee possessor to be added to the existing FEL or FEP.**
 - ISEE is concerned the addition of a requirement that a Responsible Person (RP) submit written communication with each Employee Possessor Questionnaire is overly burdensome and unnecessarily time consuming.

- Several FELs and FEPs employ dozens of individuals whose job duties constantly change from non-employee possessors to employee possessors and vice versa. These FEL's and FEP's have a limited number of responsible persons who would be tasked with writing written requests to add or remove employee possessors.
- Title 27 CFR Sect. 555.57 requirements for a change of employees requires a person holding a FEL or FEP to report additions to employee possessors. The reports relating to newly hired employees authorized to possess explosive materials must be submitted on ATF F 5400.28 for each employee.
- Title 27 CFR Sect. 555.11 defines Person as any individual, corporation, company, association, firm, partnership, society, or joint stock company.

There is not currently a regulatory requirement under Title 27 CFR Sect. 555.57 that a responsible person must submit a signed written request granting permission for each additional employee possessor to be added to the existing FEL or FEP.

- **Previous addresses for the last five years.**

- ISEE is concerned that a requirement that an employee identify all addresses for the prior five years is overly burdensome and time consuming. For some employees with multiple changes of address, the requirement may be impossible. The requirement that an applicant identify each address for the past five years also exceeds the requirement of Title 27 CFR Sect. 555.11 which requires that an applicant provide only a current address.

- **Have you ever worked for a Federal Explosives License or Permit?**

- ISEE is concerned that the questionnaire requires the applicant identify the FEL or FEP number for those employers. With some employees regularly switching employers it may be difficult if not impossible to obtain the FEL or FEP numbers of past employers. Given that FELs and FEPs may have internal security policies that prohibit the disclosure of FEL and FEP numbers to persons not currently employed this may be an impossible question to answer fully.
- It would seem an overly time consuming burden (far beyond the 20 minutes estimated to complete the entire form) to provide this information as ATF must already possess this information in order to verify the information submitted on the Explosives Employee Possessor Questionnaire ATF F 5400.28.
- Additionally, this requirement that an employee identify each previous FEL or FEP number for past employers exceeds the requirement of Title 27 CFR Sect. 555.11 which requires that an applicant provide only the business name, address, and FEL or FEP number with which the employee is current affiliated.
- Moreover, the AFT should have this information in its system which would lessen the burden on employees or employees to obtain this information.

- **The requirement that asks applicant whether he/she is under 21 years of age.**

- ISEE is concerned that the insertion of this question would discourage an explosives company from hiring individuals less than 21 years of age and discourage employees under 21 years of age from becoming employee possessors. There is not a federal requirement that an employee possessor be 21 years or older.

5. The release of medical information to the ATF.

- ISEE is concerned this requirement requires an employee to balance their individual medical privacy rights with an opportunity to secure employment within the explosive's industry. There are also potential HIPPA violations involved with this blanket authorization requirement.
- Additionally, this requirement that an employee provide a release of medical information to the ATF far exceeds the requirement of Title 27 CFR Sect. 555.11.

Conclusions

We believe that the Explosives Employee Possessor Questionnaire, as written, exceeds the scope of Title 18, U.S.C. Section 1102, Chapter 40 and Title 27 CFR Sect. 555. ISEE recommends ATF proceed with a regulatory change to the definition of appropriate identifying information. However, ISEE would not support the inclusion of the following overly burdensome requirements in an expanded regulatory definition.

- The blanket authorization for medical information.
- The question regarding whether the employee is under 21.
- The submission of former employers FEL or FEP numbers.
- The submission of previous addresses for the last five years.
- The submission by a Responsible Person (RP) of a signed written request granting permission for each additional employee possessor to be added to the existing FEL or FEP.

We appreciate the opportunity to submit our comments on the proposed changes to the Explosives Employee Possessor Questionnaire ATF F 5400.28 and welcome the opportunity to engage in further discussions regarding the questionnaire or other matters. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Steven B. Shivak, MS, CAE

Executive Director

International Society of Explosives Engineers 440.349.4403

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Agency Response

Thanks for your interest in and comments provided for the above-referenced collection. We will review your request and provide a more detailed response momentarily.

IME Comments

IME

Institute of Makers of Explosives

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The safety and security institute of the commercial explosives industry since 1913

July 19, 2021

Mr. Shawn Stevens
Federal Explosives Licensing Center
244 Needy Road
Martinsburg, WV 25405

CC: Marianna Mitchem, Marna Howard

Re: Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Explosives Employee Possessor Questionnaire [OMB Number 1140-0072]

Dear Mr. Stevens:

IME respectfully submits the following comments on the above-captioned action.

Interest of IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

Nearly all IME members use ATF Form 5400.28. Accordingly, IME members have a direct interest in the proposed revision of the form

General Comments

- The amount of identifying information and background/status questions included in the proposed form is considerably expanded from the current 5400.28. Consequently, the length of the form would increase from two (or one, if printing two-sided) to three pages, increasing the burden on both employees and employers.
- ATF proposes to change the name of the form to the “Explosives Employee Possessor Questionnaire” or “EEPQ.” The form has always been referred to within industry as the “Employee Possessor Questionnaire” or “EPQ.” This name and acronym change would require companies to change company documents that refer to the EPQ.

- It would be useful to clearly and obviously indicate which responses are mandatory and which are optional or provisional, e.g., the current EPQ clearly indicates on the face of the form that providing a social security number is “voluntary.” Although this is explained in the Privacy Act Information section in the Instructions, it would be better to retain this information on the face of the form. In addition, some employee possessor (EP) applicants may not have an email address and should not be required to establish one merely to complete the form.
- Elimination of the requirement to use “block letters” is an improvement.

Comments Common to the Existing and Proposed Form 5400.28

- The general information section at the very top of the form uses numbers (i.e., 1 and 2). It would be clearer to replace these numbers with letters (e.g., A and B) to distinguish this general information section from the subsequent sections that require responses to specific questions.
- Section 6 includes blocks for a full social security number (SSN). While some applicants will opt-out of this request entirely, some may be comfortable submitting it. Therefore, it is important that the information on the face of the form clearly indicates that submission is voluntary.
- The signature line for a “second submission” has always confused employees and does not provide a benefit to employers. Since the employee typically submits the information on the form once every three years, it would not be burdensome to require the submission of another questionnaire to ensure the accuracy of the information. We recommend that the “second submission” signature line be deleted.

Comments on Proposed Changes to Form 5400.28

- The requirement that the employee provide details on a separate sheet for all “yes” answers for questions 22 through 38 would significantly increase the burden (we estimate that the burden would be doubled or trebled) in completing the form. If information on former employers is considered mandatory (i.e., FEL/P numbers), the time required to research the information and to complete the form could stretch to days. In some cases, it may prove impossible to obtain this information. IME recommends that the name of the most recent FEL/P employer be requested in lieu of the FEL/P number.
- The instructions for Number 1 in the general information section (at the top of the form) adds a new requirement that a “Responsible Person (RP)” must submit a signed written request to add a new EP to an existing FEL/P. We note that 27 CFR 555.57(b) requires that changes to RPs and EPs be reported by a “person” holding a license or permit. The regulations, in turn, define “person” to include an “individual, corporation, company, association, firm, partnership, society, or joint stock company.” 27 CFR 555.11. In contrast, the definition of a “responsible person” refers to *individuals*, i.e., “partners, sole proprietors, site managers, corporate officers and directors and majority shareholders.” The proposed new requirement for submission by an RP may be outside of the current regulatory requirement in 27 CFR 555.57(b).

For many companies, this will add a layer of complexity (burden) to the completion and submission of the form. Digital submission should be permitted, and a physical letter not required. We believe that allowing an RP to transmit the forms via email would be more efficient. We recommend that ATF accept the text of the email as meeting the regulatory requirements.

- Question 12 requires the applicant to provide an email address. While the use of email seems ubiquitous, it is possible that not all applicants will have an email account. As noted above, this question should be optional.
- Questions 13, 16, 17, 18, and 19 are new to this proposed revision of 5400.28 and seek additional identifying information about the EP applicant that could be useful in verifying identity and performing a background check(s). While information such as height, weight, eye color, and hair color are commonly found on drivers' licenses and other forms of identification, some individuals will find this intrusive.
- Question 14 seeks residential history and dates for the past five years. 27 CFR 555.11 defines the term "appropriate identifying information" to include a "street address." While the regulation does not expressly limit this to a "current" street address, we are concerned that requiring such information dating back five years goes beyond what was originally contemplated in the regulation. We appreciate that this additional information may help to speed the review period for some applicants. However, there are employees who may have changed residences multiple times within a five-year period and who may not have a record of or recall this information - in particular, the exact dates of residency at each location. Because of the burden this requirement could place on some EP applicants, we recommend that the collection of this information be removed or at least optional and noted as voluntary on the face of the form.
- Questions 22, 23, and 24 ask that the employee provide the FEL/P number of a former employer(s). It is highly unlikely that that an employee would know the FEL/P number of a former employer(s), and many FEL/Ps may refuse to provide this information to a former employee and/or current employer. This requirement would be particularly burdensome for individuals who have spent many years in the explosives industry or who are returning to the industry after a hiatus. This should not be required information. As previously noted, IME has no objection to requiring the applicant to provide the name and location of the most recent FEL/P employer. ATF will have access to the corresponding FEL/P number and any disqualifying issue(s) would likely be associated with that employment.
- Question 25 requires the employee to indicate whether s/he has ever been denied permission to handle explosive materials by ATF. We recommend that ATF consider replacing the word "handle" with the word "possess" to cover constructive possession. If the intent of the question is to learn whether the applicant has ever received a letter of denial from ATF, this question should be asked directly.
- Question 27 includes a new secondary question, i.e., "are you a current member of the military who has been charged with violation(s) of the Uniform Code of Military Justice, and whose charge(s) have been referred to a general court martial?" The information is relevant re prohibiting any individual involved in a criminal investigation/prosecution from handling explosives. We assume this question is aimed at individuals serving as

military reservists. ATF should also consider including individuals serving in certain National Guard capacities who may be charged under state codes of military justice .

- Question 28 – In asking about convictions, this question adds the language “including a military court.” This is relevant information. IME has no objection.
- Question 30 asks the employee to indicate whether s/he is under 21 years of age. This question is unnecessary and should be deleted. The applicant’s date of birth is covered in Number 7 in the general information section. We also are concerned that this question could discourage recruitment and hiring of individuals between the ages of 18 and 21.
- Question 31 - The question adds the warning, “The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes by state law.” This is useful information clarifying an issue that may be confusing to some applicants. IME supports this proposed language.
- The new boxes in Question 34 are useful. We suggest, however, that they be moved to the general information section at the top of the form.
- Question 36 asks the employee to indicate whether s/he is an alien illegally or unlawfully in the US. It is highly unlikely that a person in the country illegally would answer this question truthfully. This is a prohibited category under the law, so should be included here in some form, but the existing Form 5400.28 adequately covers the issue in Question 25.
- Question 37 asks whether the applicant is an alien who has been admitted to the US under a nonimmigrant visa. This is a new, relevant question.
- Question 38 – This question requests alien applicants to provide their US-issued Alien or Admission Number. This is a new, more specific question and asks for specific documentation. We assume that ATF is seeking this information to assist in speeding the review of the application. The existing form 5400.28 simply asks for an “explanatory statement” if the applicant is a lawful permanent resident. The existing form also, however, advises that “Generally, if you are an alien [except for a lawful permanent resident alien], you cannot possess explosive materials.” It is unclear why this explanation was removed. It is useful to include it on the face of the form even though the alien exception is explained under the Exceptions in the instructions.

Overall, we have found that applicants are often confused by the request(s) pertaining to immigration/alien status. It would be easier to simply ask whether the applicant is a permanent resident alien (yes or no) and, if yes, to provide their associated USCIS number or a copy of their Permanent Resident Card. In addition, the form instructions should clearly lay out the criteria for when non-citizens can be approved to be EPs, including information about exceptions and applying for relief from disability.

- By signing the form the employee is advised that s/he is authorizing the release of certain data including medical information/records. We assume that this authorization relates to the prohibition applicable to persons who have been committed to a mental institution and, possibly, to similar prohibitions applicable to persons who unlawfully use or are addicted to controlled substances. We are concerned, however, that this authorization may be overly broad and may compromise an applicant’s medical privacy rights. It may also dissuade applicants from pursuing employment or continuing employment in the explosives industry. IME recommends the medical information/records authorization be removed.

- In general, the estimated time requirements to complete the form as drafted are greatly underestimated, especially pertaining to address history and previous FEL/P numbers. The additional requirements would require the employee to research records or contact previous employers, which could increase the time to complete the form and may take days to conclude.

IME is willing to survey its members to aid in determining a more accurate time estimate if these new requirements are not removed.

Conclusion

IME appreciates the opportunity to submit these comments. Please let me know if you have any questions or we can provide any additional information.

Respectfully Submitted,

Joshua Hoffman Ph.D., P.E.
Director of Technical Services, IME

Agency Response

Thanks for your interest in and comments provided for the above-referenced collection. We will review your request and provide a more detailed response momentarily.