

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

Information Collection Request
Supporting Statement

OMB 1140-0015
ATF Form 5 (5320.5)
Application for Tax Exempt Transfer and Registration of Firearm

A. JUSTIFICATION

1. The ATF Form 5 (5320.5) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. Under the provisions of 26 U.S.C. § 5812, an NFA firearm shall not be transferred until the transferor has applied for and received approval from the Attorney General of the United States (delegated to ATF) and paid the applicable transfer tax. The transfer of an NFA firearm is subject to a tax of \$200 or \$5 (for a firearm classified as an “any other weapon”) as established by § 5811. Exemptions from payment of the transfer tax are provided by §§ 5852 and 5853.

The statutory requirements are implemented in §§ 479.81 through 479.86 and §§ 479.89 through 479.91, Title 27, Code of Federal Regulations.

Exemptions from the payment of the transfer tax are provided for the transfer of an NFA firearm to the United States (§§ 5852(a) and 479.89); to a State or local agency (§§ 5853(a) and 479.90); and of an unserviceable firearm (§§ 5852(e) and 479.91). ATF also uses the Form 5 to effect a transfer resulting from operation of law, for example, a firearm in an estate being transferred to a beneficiary or a firearm being transferred as a result of a bankruptcy. ATF also uses the form 5 for the temporary transfer of a firearm for repair and its subsequent return. The claim to entitlement for each specific exemption is contained on the Form 5 application.

The Transferee’s Certification on the application form satisfies the requirements of 18 U.S.C. 922(b)(4) and 27 CFR 478.98. The Law Enforcement Certification on the application satisfies the requirements of § 5812 and § 479.85.

Form Changes. ATF is proposing the following changes to ATF Form 5 (5320.5) through the proposed rule published on September 9, 2013, under RIN 1140-AA43:

- Incorporate provisions of RIN: 1140-AA43 that requires the transferee to list the names and home addresses of all responsible persons of a legal

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entity where the transferee is a partnership, company, association, trust, corporation, or other legal entity.

- Add a certification by law enforcement that the fingerprints and photographs accompanying the form are those of the individual transferee
 - Remove a certification by law enforcement that they have no information that the transferee will use the firearm or device described in the form for other than lawful purposes.
 - Incorporate information currently captured by ATF Form 5330.20, Certification of Compliance with 18 U.S.C. 922(g)(5)(B), eliminating the completion of an additional form for any application submitted. As the same information is requested, there is no increase to the submission time.
 - Incorporate the requirement that legal entities must submit fingerprints, photographs and Law Enforcement Certification.
2. The information on this form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law. Section 5812 provides that an application shall not be approved if the receipt or possession would place the person receiving the firearm in violation of law. Section 5811 imposes a tax upon the transfer of an NFA firearm. The form is used by applicants to qualify their claim for exemption from the payment of transfer tax as provided by §§ 5852 and 5853.

The application is submitted in duplicate. The approval of the application effectuates the registration of the firearm to the transferee. Both copies of the application are noted to reflect the approval – one copy is returned to the applicant for transmission to the transferee as proof of registration and the other is retained by ATF as part of the National Firearms Registration and Transfer Record. The information is used to verify any subsequent transfer and registration of the firearm. In addition, registration information used to determine the non-registration of a firearm, a violation as specified in § 5861.

3. The form is available on the ATF website and it is fillable. However, due to the fact that an original signature is required and, in some cases, requires the submission of fingerprints and photographs, and the original signature on a certificate from the chief local law enforcement officer, respondents cannot respond electronically. Form 5 is part of an ongoing ATF project to implement eForms when the fingerprints, photographs, and law enforcement certificate are not required. When implemented, ATF anticipates that electronic submission will decrease the filing time and increase the accuracy and completeness of the filing. Electronic submission will assist in increasing the efficiency of ATF's processing.

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4. ATF uses a uniform subject classification system to identify duplication and to ensure that any similar information already available cannot be used or modified for use for the purpose of this information collection.
5. The information on this form is unique to the person supplying it and would have minimal or no impact on small businesses or other small entities.
6. If this information collection was not conducted the consequences would be that of the possibility of firearms being transferred to persons that are prohibited from receiving firearms.
7. This collection is conducted in a manner consistent with the requirement in 5 CFR 1320.6.
8. The ATF industry liaison consulted with the firearms industry during the creation of the form. The revision of this collection is associated with RIN: 1140-AA43 and a Notice of Proposed Rule Making is being published in Federal Register in order to solicit comments from the public.
9. No payment or gift was provided in association with this collection.
10. Confidentiality is not assured. The information from this application may only be disclosed to Federal authorities for purposes of prosecution for violation of the National Firearms Act. The information is kept in a secured location.
11. Questions of a sensitive nature are included on the form. These relate to the qualifications of the transferee, such as whether the transferee has been convicted of any crime, is a fugitive from justice, is a drug user, is an illegal alien, etc. This information is needed to determine whether the transferee is prohibited by Federal law from possessing firearms.
12. In CY 2012, 9,688 Form 5 applications were processed. The filing of the Form 5 is an independent event for when a person is requesting permission to transfer an NFA firearm on a taxpaid basis.

After review, we found that the number of respondents identified in the last justification (7,888) was low, and that the burden hour figure was incorrectly computed. We also questioned whether the 4 hours per respondent was accurate.

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Based on our analysis of Form 5 applications processed during CY 2012, ATF found that the completion times for each form actually vary between individuals, legal entities, and FFL/government agencies. For example, if the transfer is to an individual, due to the requirements for fingerprints, photographs and Law Enforcement Certification, the submission will take 230 minutes. For a transfer to a legal entity, the amount of time is doubled based on an estimate of two responsible persons per legal entity and an additional five minutes for copying documents to establish the existence of the legal entity, for a total of 465 minutes. For a transfer to an FFL or government agency, there is no requirement for fingerprints, photographs or Law Enforcement Certification. Therefore, the submission for transfer to an FFL or government agency takes less than four hours, in fact, 20 minutes. The estimated time now represents an average of the different times for the three subsets (i.e., individuals, legal entities, and FFL/government agencies) and is:

- 20 minutes (to complete and mail the form) for a submission to an FFL or government agency
- 230 minutes for submission to an individual (50 minutes to procure photographs; 60 minutes to procure fingerprints, 100 minutes to procure the Law Enforcement Certification; and 20 minutes to complete and mail the form)
- 465 minutes for submission to legal entity (100 minutes to procure photographs; 120 minutes to procure fingerprints, 200 minutes to procure the Law Enforcement Certification; 5 minutes to copy documents to establish the existence of the legal entity; and 40 minutes to complete and mail the form)

Estimated total annual reporting and/or recordkeeping burden: 6,297 hours

- 8,965 FFL/government agencies will take 20 minutes (2,988 hours)
- 135 legal entity respondents will take 465 minutes (1,046 hours)
- 588 individual respondents will take 230 minutes (2,254 hours).

Estimated average burden hours per respondent and/or recordkeeper: 39 minutes

Estimated number of respondents and/or recordkeepers: 9,688

Estimated annual frequency of responses: 1.

13. As noted in section 12, we reviewed our prior submission and found that there were operational costs that had not been considered. There is no start-

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up costs associated with this form, but there are costs associated with providing the information.

Estimated operational costs: \$34,483.50

- \$27,456 cost for fingerprints (\$24) and photographs (\$8) (Individuals - $\$32 \times 588 = \$18,816$; 2 responsible persons - $\$32 \times 270 = \$8,640$)
- \$202.50 cost for copies of legal entity documents ($\$1.50 \times 135$)
- \$6,825 cost for mailing (\$2 each for 723 respondents and \$.60 for 8,965 respondents)

14. The estimate of \$19,144.48 annual cost to the Federal Government is as follows:
 - \$96.88 for printing 9,688 Forms 5 ($9,688 \times .01$)
 - \$12,441 for processing fingerprint ($\$14.50 \times 858$)
 - \$6,606.60 for conducting and reviewing background checks ($\$7.70$ (15 minutes at \$30.80 per hour) $\times 858$)
15. The adjustments made to this collection are decrease in the number of respondents to 9,688; decrease in the total annual burden hours to 6,297; and an increase in the total cost burden.
16. The results of this collection will not be published.
17. ATF does not request approval to not display the expiration date of the OMB approval for this collection.
18. There are no exceptions to the certification statement.

Collections of Information Employing Statistical Methods

None