

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

Information Collection Request
Supporting Statement

OMB # 1140-XXXX ATF Form 5320.23
National Firearms Act (NFA) Responsible Person Questionnaire

A. JUSTIFICATION

1. The ATF Form 5320.23 is required to affect the registration of a National Firearms Act (NFA) firearm by a legal entity. Under the provisions of 26 U.S.C. § 5822, no person can make an NFA firearm until he or she has applied for and received approval from the Attorney General (delegated to ATF). 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.

ATF published a proposed rule (RIN 1140-AA43) on September 9, 2013, (78 FR 55014) that proposed to establish ATF Form 5320.23 to affect the registration of a NFA firearm. Responsible persons of a legal entity must be identified and a criminal background check completed prior to the making or transferring of an NFA firearm. This form (ATF F 5320.23) will be used, in addition to the ATF Forms 1, 4, and 5, for purposes of certification of responsible persons of the legal entities and to verify that such persons are not prohibited from shipping, transporting, receiving, or possessing NFA firearms.

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

ATF Form 5320.23 incorporates information currently captured by ATF F 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.

2. Any legal entity, which is not a Federal firearms licensee (FFL), seeking to transfer an NFA firearm must complete a Form 5320.23 for each of the responsible persons of the legal entity as part of an application of an ATF Form 1, 4, or 5. The responsible person must furnish all information called for on the form. The information on this form is used by NFA Branch personnel to identify the responsible person of the legal entity and to determine the legality of the application under Federal, State and local law. Sections 5812 and 5822 provide that an application

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shall not be approved if the receipt or possession would place the person receiving the firearm in violation of law.

The Form 5320.23 must be completed in full and returned to ATF NFA Branch as part of the Form 1, 4, or 5 application. The approval of the Form 1, 4, or 5 application effectuates the registration of the firearm to the transferee.

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 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 5320.23 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.
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 collection has no impact on small business or other small entities.
6. The consequence of not conducting this information collection would result in firearms being transferred to persons who would be in violation of the law.
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 this form. The creation of this form is associated with RIN: 1140-AA43 and a Notice of Proposed Rule Making is being published in the Federal Register in order to solicit comments from the public.
9. No payment or gift is associated with this collection.
10. The information from this application may be only disclosed to Federal authorities for purposes of prosecution for violation of the National Firearms Act. The respondent's information is kept in a secured location. Confidentiality is not assured.
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

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information is needed to determine whether the transferee is prohibited by Federal law from possessing firearms.

12. In CY 2012, 5,328 Form 1 applications for legal entities were processed, 35,237 Form 4 applications for legal entities were processed, and 135 Form 5 applications for legal entities were processed. The filing of the Forms 1, 4, and 5 is an independent event for when a person is requesting permission to transfer an NFA firearm on a tax paid basis. With each Form 1, 4, and 5 submitted, the legal entity must submit a Form 5320.23 for each responsible person of the legal entity.

Based on our analysis, it is estimated that the completion time for the Form 5320.23 is ten minutes and it is estimated that there are two responsible persons per legal entity. Therefore, it is estimated that the submission will take 106,560 minutes (2 x 5,328 x 10 minutes) relative to Form 1, 704,740 minutes (2 x 35,237 x 10 minutes) relative to Form 4, and 2,700 minutes (2 x 135 x 10 minutes) relative to Form 5. For a total of 814,000 minutes.

The estimated total number of respondents is 81,400

- 10,656 (5,328 legal entities x 2 responsible persons) submitting Form 1
- 70,474 (35,237 legal entities x 2 responsible persons) submitting Form 4
- 270 (135 legal entities x 2 responsible persons) submitting Form 5)

Each respondent will respond one time.

The estimated burden hours are 13,567

- 1,776 hours for legal entities submitting Form 1
- 11,746 hours for legal entities submitting Form 4
- 45 hours for legal entities submitting Form 5

13. There is no start-up costs associated with this form, but there are costs associated with providing the information.

Estimated operational costs: \$417,854 (10 minutes at \$30.80 per hour x 81,400)

- Submissions with Form 1 - \$54,701 (10 minutes at \$30.80 per hour x 10,656)
- Submissions with Form 4 - \$361,767 (10 minutes at \$30.80 per hour x 70,474)
- Submissions with Form 5 - \$1,386 (10 minutes at \$30.80 per hour x 270)

14. The estimated annual cost to the Federal Government is as follows:

\$814 for printing 81,400 Forms 5320.23 (81,400 x .01)

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15. There are no adjustments as this is a new form.
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.

B. Collections of Information Employing Statistical Methods

None