

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

Information Collection Request
Supporting Statement

OMB 1140-0011 ATF Form 1 (5320.1)
Application to Make and Register a Firearm

A. JUSTIFICATION

1. The ATF Form 1 (5320.1) is required to affect the registration of a National Firearms Act (NFA) (Title 26, United States Code, Chapter 53) firearm by any person, other than a qualified manufacturer, who wishes to make and register an NFA firearm. The implementing regulations are in Title 27, Code of Federal Regulations, Part 479 (§§ 479.61 – 479.71).

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). Subject to certain exceptions, the making of an NFA firearm is subject to a tax of \$200 (26 U.S.C. § 5821). Unless the making is exempt from tax, applicants are required to submit their tax payment with the Form 1.

Section 5822 also requires that the application form identify the firearm and the maker, and that if the maker is an individual, his or her fingerprints and photographs must accompany the application.

In a recent final rulemaking, ATF extended the requirements for fingerprints and photographs to other applicants. Prior to the rulemaking, if the applicant was a trust or legal entity, such as an LLC or corporation, fingerprints and photographs were not required. The rulemaking defined responsible persons in regard to trusts and legal entities and requires that any responsible person must submit fingerprints and photographs.

In addition, the regulations had required an individual applicant to obtain a certification from their local chief law enforcement officer that the making and possession of the firearm was not prohibited by State or local law and that the official had no knowledge that the individual would use the firearm for any unlawful reason. The rulemaking has rescinded the requirement for the certification and replaced it with a notification to the local chief law enforcement officer of the proposed making of the firearm. The notification is required for all applicants and responsible persons.

ATF also found that additional information was needed to clarify what type of firearm is being made when explosives materials were involved.

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Two comment periods were held regarding this form with the second comment period closing on May 31, 2016. Changes, as discussed below, were made to this form.

Form Changes. ATF has made the following changes to ATF Form 1 (5320.1):

- Provide a new print format for the form. Rather than a long sheet of paper, the form will be printed in a set of 3 (ATF, ATF Copy 2 (Registrant), and CLEO) with each titled accordingly.
 - Item 3f – field noted to show the supplying of the email address is optional.
 - Item 4g – serial number is obscured on the CLEO copy (see instruction 2.d(6)).
 - Item 4j – revised to clarify instructions regarding explosives permit/license requirements. Instruction 2l is also revised.
 - Item 10 – combined the lines for the agency name and official’s name and title into one line and deleted the line for ‘date sent to agency.’
 - Certification (following item 14) – changed language to reflect concerns about sending a completed copy of the form to meet the notification requirement when the form had not yet been signed/completed. Also revised to clarify that not all fields require information for a completed form. The certification now reads that a completed copy will be sent upon the submission of the form. See instructions 2.d(2) and 2.d(3) for information as to what items shall be completed when the application is filed by either an individual or a trust or other legal entity.
 - Item 16 – revised to allow entry of additional responsible person names.
 - Item 17 – financial information will only be completed on the ATF copy of the form. The field is obscured on the ATF Copy 2 (Registrant) and CLEO copy. See instruction 2.d(6).
 - Instruction 2.a – revised to clarify what is a completed form and provide instructions as to the dissemination of the form.
 - Instruction 2.l – re-number existing 2.l to 2.m. Also revised to clarify what is a completed form and provide instructions as to the dissemination of the form.
 - New instruction 2.l added regarding compliance with the explosives laws and regulations.
2. The information on this form is used by the NFA Branch personnel to determine the legality of the application under Federal, State and local law. Section 5822 provides that an application shall not be approved if the making or possession would place the person making the firearm in violation

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of law. An individual applicant is asked to respond, under penalties of perjury, to questions to determine whether he or she is prohibited by Federal law from possessing firearms. For a trust or legal entity, each responsible person will provide this information via the filing of Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire.

The requirement for fingerprints for both individuals and responsible persons allows ATF to determine, based on criminal history checks, whether the applicant or responsible person would be prohibited by Federal law from possessing a firearm. The law enforcement notification required of the applicant and any responsible person (via Form 5320.23) allows local law enforcement authorities to provide any information that would indicate whether the application or any responsible person is prohibited under Federal law from making or possessing a firearm.

The application is submitted in duplicate. The approval of the application effectuates the registration of the firearm to the maker. Both copies of the application are noted to reflect the approval – one copy is returned to the applicant 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 is used to determine the non-registration of a firearm, a violation as specified in § 5861.

3. The form is currently available for electronic filing on the ATF website at www.atfonline.gov. The form may be filed electronically by a trust or other legal entity or by a government agency. An applicant who is an individual cannot file electronically as the system does not have the capability to accept fingerprints and allow for a 3rd party (the CLEO as currently required) signature. The electronic form must be modified as a result of the regulatory changes as must the supporting databases. ATF's goal is to have the electronic form available by the end of Calendar Year 2016. In the interim, the form will be available on the ATF website (www.atf.gov) in a fillable version which can be downloaded, printed and filed and in hard copy.
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.

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6. The consequences of not conducting this collection could result in a person being in unlawful possession of a firearm. The information is used to ensure the legal making and possession of a firearm and effectuate the registration of the firearm from the National Firearms Registration and Transfer Record.
7. There are no special circumstances associated with this collection and the collection is conducted in a manner consistent with the requirement in 5 CFR 1320.6.
8. In September 2013, ATF published a Notice of Proposed Rulemaking (Docket No. ATF 41P) in conjunction with RIN: 1140-AA43, including the proposed forms. The comment period ended in December 2013. This form was revised based on comments made to the proposed rulemaking and as a result of the changes made to the regulations in the Final Rule published in the Federal Register (81 FR 2657) on 15 January 2016. Comments on the revisions made to the form in accordance with OMB requirements, were addressed and resolved by the ATF. Specifically suggestions for formatting changes were included in Section 1 under the sub-heading form changes. Additional comments and ATF responses were combined and submitted to ROCIS in one combined comments document in PDF format.
9. No payment or gift is associated with this collection.
10. In addition to the requirements for confidentiality contained in the Privacy Act, this information is classified as "tax information" or "tax return information" and any release is severely restricted by the Tax Reform Act (26 U.S.C. § 6103).
11. This collection of information does include questions of a sensitive nature. These relate to the qualifications of the applicant, such as whether the applicant 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 applicant is prohibited by Federal law from possessing firearms.
12. *Estimated total annual reporting and/or recordkeeping burden:* 102,808 hours (current estimated total annual reporting and/or recordkeeping burden from OMB Information Collection Number 1140-0011: 16,374 hours).

As discussed in the final rule, there is a total of 25,716 respondents. Of these, 477 Government/Federal firearm licensee respondents will take 20 minutes per response (159 hours); 21,879 trust and legal entity responders will take 260 minutes per response (94,809 hours); and 3,360 individual respondents will take 140 minutes per response (7,840 hours).

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Estimated average burden hours per respondent and/or recordkeeper: 3.92 hours (current estimated average burden hours per respondent or recordkeeper from OMB Information Collection Number 1140-0011: 1.69 hours).

Estimated number of respondents and/or recordkeepers: 25,716 (current estimated number of respondents and/or recordkeepers from OMB Information Collection Number 1140-0011: 9,662).

Estimated annual frequency of responses: 1 (current estimated annual frequency of responses from OMB Information Collection Number 1140-0011: 1).

13. *Estimated total costs:* \$1,472,498.00 (current estimated totals costs from OMB Information Collection Number 1140-0011: \$146,766)
- Fingerprints and photographs: \$1,412,597
 - o \$29.98 x 3,360 individual applicants: \$100,732
 - o \$29.98 x 43,758 responsible persons: \$1,311,865
 - Copies of legal entity documents: \$35,006
 - o \$1.60 x 21,879 trusts or legal entity applicants: \$35,006
 - Mailing: \$24,967.95
 - o \$.98 x 25,239 individual and trust or legal entity respondents: \$24,734.22
 - o \$.49 x 477 government or FFL respondents: \$233.73
14. The estimated annual cost of \$1,129,820.85 to the Federal Government is as follows:
- Printing Forms 1: \$7,941.27
 - o (25,617 forms x \$.31 per form)
 - Processing fingerprints: \$600,754.50
 - o (\$12.75 x 47,118 individuals and responsible persons)
 - Conducting and reviewing background checks of individual and responsible person respondents: \$521,125.08
 - o (\$11.06 (15 minutes at \$44.22 per hour) x 47,118)
15. The adjustments made to this collection are an increase in the number of respondents to 25,716, a change in total annual burden hours to 102,808, and an increase in cost burden.

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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

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No statistical methods are associated with this collection.