

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 for a person with a registered National Firearms Act (NFA)(Title 26, United States Code, Chapter 53) firearm to apply for and receive permission for the transfer and registration of an NFA firearm. The statutory requirements are implemented in Title 27, Code of Federal Regulations, Part 479.

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 unless exempted. Exemptions from payment of the transfer tax are provided by §§ 5852 and 5853. See §§ 479.81 through 479.86 and §§ 479.89 through 479.91.

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). In addition, ATF 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 (as now provided by § 479.90a) or a firearm being transferred as a result of a bankruptcy. ATF also uses the Form 5 for the temporary conveyance of a firearm for repair and its subsequent return. The claim to entitlement for each specific exemption is contained on the Form 5 application.

Section 5812 also requires that the application form identify the transferee in such manner as the Attorney General may by regulations prescribe, except that if the transferee is an individual, his fingerprints and photographs must be included in the application. Similarly, the transferor and firearm must also be identified in such manner as the Attorney General may by regulations prescribe.

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In a recent rulemaking, ATF extended the requirements for fingerprints and photographs to other transferees. Prior to the rulemaking, if the transferee 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.

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 This rulemaking rescinded the requirement for the certification and replaced it with a notification to the local chief law enforcement officer of the proposed transfer of the firearm.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

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 5 (5320.5):

- 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.
- Items 1, 2 and 3 relocated on form for mailing purposes
- Item 3d – noted the supplying of the email address is optional
- Item 4g - serial number will be obscured on the CLEO copy (see instruction 2.d(6)).
- Item 12 – 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 17) – 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 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 19 – revised to allow entry of additional responsible person names.

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- Instruction 2.a – revised to clarify what is a completed form and provide instructions as to the dissemination of the form.
 - Instruction 2.k - revised to clarify what is a completed form and provide instructions as to the dissemination of the form.
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. The form identifies the transferor, transferee and firearm. 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.

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

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 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 for a transfer to a trust or other legal entity or to a government agency. A transferee who is an individual cannot file electronically as the system does not have the

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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.
6. The consequences of not conducting this information collection could result in firearms being transferred to persons whose possession would be in violation of law. The information is used to ensure the legal transfer and possession of a firearm and to effectuate the registration of the firearm to the transferee in the National Firearms Registration and Transfer Record. The information collection also ensures the exemption from the transfer tax liability.
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 information collection 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. 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 was provided in association with this collection.
10. The information from this application is classified as "tax information" or "tax return information" and any release is severely restricted under the Tax Reform Act (26 U.S.C. § 6103) and may only be disclosed to Federal

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authorities for purposes of prosecution for violation of the National Firearms Act. The 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 information is needed to determine whether the transferee is prohibited by Federal law from possessing firearms.
12. *Estimated total annual reporting and/or recordkeeping burden:* 5,350 hours (current estimated total annual reporting and/or recordkeeping burden from OMB Information Collection Number 1140-0015: 5,287 hours).

As discussed in the final rule, there is a total of 10,591 respondents. Of these, 9,892 Government/Federal firearm licensee respondents will take 20 minutes per response (3,297 hours); 211 trust and legal entity responders will take 260 minutes per response (914 hours); and 488 individual respondents will take 140 minutes per response (1,139 hours).

Estimated average burden hours per respondent and/or recordkeeper: .51 hours (current estimated average burden hours per respondent or recordkeeper from OMB Information Collection Number 1140-0015: 33 minutes).

Estimated number of respondents and/or recordkeepers: 10,591 (current estimated number of respondents and/or recordkeepers from OMB Information Collection Number 1140-0015: 9,688).

Estimated annual frequency of responses: 1 (current estimated annual frequency of responses from OMB Information Collection Number 1140-0015: 1).

13. *Estimated total costs:* \$33,150.00 (current estimated totals costs from OMB Information Collection Number 1140-0015: \$25,844)
 - Fingerprints and photographs: \$27,282
 - o \$29.98 x 488 individual applicants: \$14,630
 - o \$29.98 x 422 responsible persons: \$12,652
 - Copies of legal entity documents: \$338
 - o \$1.60 x 211 trusts or legal entity applicants: \$338
 - Mailing: \$5,532.10

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- o \$.98 x 699 individual (488) and trust or legal entity (211) respondents: \$685.02
- o \$.49 x 9,892 government or FFL respondents: \$4,847.08

14. The estimated annual cost of \$24,950.31 to the Federal Government is as follows:

- Printing Forms 5: \$3,283.21
 - o (10,591 forms x \$.31 per form)
- Processing fingerprints: \$11,602.50
 - o (\$12.75 x 910 individuals and responsible persons)
- Conducting and reviewing background checks of individual and responsible person respondents: \$10,064.60
 - o (\$11.06 (15 minutes at \$44.22 per hour) x 910 (individuals and responsible persons))

15. The adjustments made to this collection are an increase in the number of respondents to 10,591; an increase in the total annual burden hours to 5,350; and an increase in the total 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

None