

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

Information Collection Request
Supporting Statement

OMB 1140-00xx
ATF Form 5320.23
National Firearms Act (NFA) Responsible Person Questionnaire

A. JUSTIFICATION

1. The ATF Form 5320.23 is required for any responsible person (as defined in 27 CFR 479.11) who is part of a trust or legal entity that is applying on ATF Form 1, Application to Make and Register a Firearm, as the maker or is identified as the transferee on ATF Form 4, Application for Tax Paid Transfer and Registration of Firearm, or ATF Form 5, Application for Tax Exempt Transfer of Firearm. Forms 1, 4 and 5 are required under the National Firearms Act (NFA)(Title 26, United States Code, Chapter 53) for any person seeking to make an NFA firearm or to transfer an NFA firearm. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 479. The specific regulation cites for the questionnaire are §§ 479.62, 479.63, 479.84 and 479.85.

The NFA, in 26 U.S.C. §§ 5812 and 5822, requires that an application to make or transfer, when the maker or transferee is an individual, include the fingerprints and photographs of the maker or transferee. In a recent rulemaking, these requirements have been extended to include members of any trust or legal entity when the member meets the definition of “responsible person.” This form has been created to identify the responsible person, the name of the applicant maker or transferee, and the identification of the firearm involved in the transaction. The form requires the inclusion of the responsible person’s photographs and fingerprints.

In addition, each responsible person must provide a notification to the local chief law enforcement officer of this pending transaction. The responsible person identifies the officer on the form and sends a copy of the form to the officer.

The form also includes questions for the responsible person to answer to help ATF determine whether the responsible person is prohibited by Federal law from possessing a firearm.

This form is submitted as part of the application package on Form 1, Form 4 or Form 5 when the applicant maker or transferee is a trust or legal entity.

ATF Form 5320.23
1140-00xx

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 Form 5320.23:

- Item 2 – change ‘maker’ to ‘applicant’ for clarity.
 - Item 3c – field noted to show the supplying of the email address is optional.
 - Item 5- combined the lines for the agency name and official’s name and title into one line and deleted the line ‘date sent to agency.’
 - Certification (following item 8) – 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. The instruction now reads that a completed copy will be submitted with the Form 1, 4 or 5.
 - Instruction 1 – added reference to instruction 9 regarding disposition of the form.
 - Instruction 3 – revised instruction to show that the responsible person’s photograph will not be required on the CLEO copy of the form (field will be obscured).
 - Instruction 4 – revised instruction to show that the firearm serial number is not required on the CLEO copy of the form (field will be obscured).
2. The information on this form is used by NFA Branch personnel as part of the process to determine the legality of the application under Federal, State and local law. Sections 5812 and 5822 provide that an application shall not be approved if the receipt or possession would place the person receiving the firearm in violation of law. The questionnaire provides information for ATF to determine whether any responsible person associated with the applicant maker or transferee is eligible to make, receive or possess firearms.

The law enforcement notification required of a responsible person allows local law enforcement authorities to provide any information that would indicate whether the responsible person is prohibited from possessing a firearm.

The questionnaire is prepared in duplicate. One copy, with the photographs and fingerprints, is submitted with the Form 1, 4 or 5 application. The other copy is sent to the chief law enforcement officer identified on the form.

ATF Form 5320.23
1140-00xx

3. The form is available on the ATF website (www.atf.gov) in a fillable version which can be downloaded, printed and filed. The form cannot currently be filed electronically; however, ATF intends to make the form an eForm which may then be filed via ATF's eForms system (www.atfonline.gov). However, there is no time frame for implementation due to Agency-wide funding issues.

When implemented, ATF anticipates that electronic submission will decrease the filing time and increase the accuracy and completion 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 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 the possibility of firearms being transferred to persons whose possession would be in violation of law. The information will be used to ensure the legal transfer and possession of a firearm.
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 form. 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 creation of this form were addressed and resolved by ATF.
9. No payment or gift was provided in association with this collection.
10. The information from this form 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

ATF Form 5320.23
1140-00xx

authorities for purposes of prosecution for violation of the NFA. 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 responsible person, such as whether the responsible person 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 responsible person is prohibited by Federal law from possessing firearms.

12. *Estimated total annual reporting and/or recordkeeping burden:* 57,914.5/57,915 hours based on 2 responsible persons.

Estimated average burden hours per respondent and/or recordkeeper: .25 hours.

Estimated number of respondents and/or recordkeepers: 115,829.

Estimated annual frequency of responses: 1.

13. *Estimated total costs:* \$113,512.

- Mailing: \$113,512
\$.49 x 231,658 responsible persons: \$113,512

NOTE: All other costs are associated with the justification package for Forms 1, 4, and 5.

14. The estimate of \$71,813.98 annual cost to the Federal Government is as follows:

- Printing Form 5320.23: \$71,813.98 (231,658 responsible persons x \$.31 per form)

15. Since this is a new form, there are no adjustments.

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.

ATF Form 5320.23
1140-00xx

B. Collections of Information Employing Statistical Methods

None