

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
Information Collection Request
Supporting Statement
OMB 1140-0015
Application for Tax Exempt Transfer and Registration of Firearm – ATF
Form 5 (5320.5)

A. Justification

1. The Application for Tax Exempt Transfer and Registration of Firearm – ATF Form 5 (5320.5) (ATF Form 5) must be completed to apply for permission to transfer and register a National Firearms Act (NFA) firearm (Title 26, United States Code (U.S.C.), Chapter 53). The statutory requirements are implemented in Title 27, Code of Federal Regulations (CFR), 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 Bureau of Alcohol, Tobacco, Firearms and Explosives (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, 27 CFR §§ 479.81–479.86, and §§ 479.89–479.91.

Exemptions from the payment of the transfer tax are provided for the transfer of an NFA firearm to the United States (26 U.S.C. § 5852(a) and 27 CFR § 479.89); to a State or local agency (26 U.S.C § 5853(a) and 27 CFR § 479.90); and of an unserviceable firearm (26 U.S.C. § 5852(e) and 27 CFR § 479.91). In addition, ATF uses the Form 5 to affect a transfer resulting from operation of law, for example, a firearm in an estate being transferred to a beneficiary (as now provided by 27 CFR § 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 of Title 26 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.

Prior to the rulemaking published on January 15, 2016 that requires background checks on responsible persons of a trust or legal entity with respect to transferring a firearm (81 FR 2658), if the transferee was a trust or legal entity, such as an LLC or corporation, fingerprints and photographs were not required to be submitted with the application. However, the rulemaking expanded the definition for responsible persons to other transferees, including trusts and legal entities, and now requires the submission of two fingerprint identification cards (FD 258) and a photograph with the Form 5.

Regulations had previously 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. The official would also have to certify that they had no knowledge that the transferee would use the firearm for any unlawful reason. The 2016 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.

ATF has identified that the collection of responsible person's Social Security Number, date of birth, race, and unique personal identification number, (if applicable) would assist in limiting delays in the processing of National Instant Criminal Background Check System (NICS). This information is not required but would prove beneficial.

Form Changes. ATF has made the following changes to ATF Form 5 (5320.5):

- Two new Maker's questions were added to the Form 5320.5 to match the new questions added to the 4473;
 - *"Do you intend to make any firearm listed on this form for sale or other disposition to any person described in questions 11.c through 11.l or a person described in question 11.m who does not fall under an exemption?"*
 - *Do you intend to sell or otherwise dispose of any firearm listed on this form in furtherance of any felony or other offense punishable by imprisonment for a term of more than one year, a Federal crime of terrorism, or a drug trafficking offense?"*
 - Clarification added to Directions section 2.d.(5);
 - **Note:** *Each Responsible Person of an entity licensed under the Gun Control Act (GCA) that does not pay the Special (Occupational) Tax (SOT) must submit ATF Form 5320.23 with the application as instructed in the above paragraph 27 CFR 479.63 (b)(2)(ii).*
 - Other minor grammar changes where needed.
2. NFA Division personnel will use the information collected on ATF Form 5 to determine the legality of the application under Federal, State, and local law. The form identifies the transferor, transferee, and firearm. 26 U.S.C § 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 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 by filing the National Firearms Act (NFA) Responsible Person Questionnaire – ATF Form 5320.23.

The requirement for the submission of fingerprints for both individual transferees and responsible persons allows ATF personnel 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 for the transferee and any responsible person (via Form 5320.23) allows these 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 complete ATF Form 5 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 updated to reflect the approval. One copy is returned to the applicant for transmission to the transferee as proof of registration, while the other copy 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 26 U.S.C. § 5861.

3. ATF form 5 is currently available for electronic filing on the ATF website at www.atfonline.gov.
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 has minimal or no impact on small businesses or other small entities.
6. Without this information collection firearms could be transferred to persons whose possession would be in violation of law. The collected information is used to ensure the legal transfer and possession of a firearm and effectuate the registration of the firearm to the transferee in the National Firearms Registration and Transfer Record. This 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. No comments were received during the 60-day Federal Register (FR) notice period. However, a 30-day FR notice will be published to solicit public comments.
9. No payment or gift is associated with this collection.
10. The information from this application is classified as “tax information” or “tax return information.” Any release is severely restricted under the Tax Reform Act (26 U.S.C. § 6103) and may only be disclosed to Federal 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 regarding 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. There are 10,591 respondents who will respond one (1) time to this information collection (IC). 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 responders will take 140 minutes per response (1,138 hours). It takes on average .5052 hours to complete the form. Therefore, the total annual IC burden is 5,350 hours.
13. The total estimated cost burden for this IC is \$33,149.83 or \$33,150, which is calculated as follows: \$3.13 (average cost per respondent to prepare and mail packet with responses) * 10,591 (# total respondents).
14. The estimated annual Federal Government cost of \$23,585.31 is calculated as follows:
 - Printing Forms 5: \$3,283.21 (10,591 forms x \$.31 per form)
 - Processing fingerprints: \$10,237.50 (\$11.25 x 910 individuals and responsible persons)
 - Conducting and reviewing background checks of individual and responsible person respondents: \$10,064.60 which is equal to (\$11.06 (15 minutes at \$44.22 per hour)) x 910 (individuals and responsible persons).
15. There are no adjustments associated with this collection.
16. The results of this collection will not be published.
17. ATF does not request approval to omit the Office of Management and Budget expiration date for this collection.
18. There are no exceptions to the certification statement.

B. This Collections of Information Employs No Statistical Methods.