

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) 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.

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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.

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, confirming 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.

ATF has identified that the collection of Responsible Persons Social Security Number, Date of Birth, Race, and UPIN (if applicable) would assist in limiting delays in the processing of NICS background checks. While this information is not required, it would prove beneficial.

Form Changes. ATF requests approval to make the following changes to ATF Form 5 (5320.5):

- Item 2: Remove "Legal Entity" and add "Corporation" and "Legal Entity" as separate choices.
- Item 2b: Add "/Parrish" to County
- Item 3d: Remove "optional"

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- Item 5: Copy language directly from the Item 5 of the ATF Form 1. Add a separate entry box for both FFL and FEL license/permit numbers.
- Item 12: Reduce spacing to save room for additional items below
- Item 16: Add SSN, DOB, and Race
- New Item 17a: Add State of Birth and Country of Birth
- Add UPIN to be Item 19
- Definitions/Instructions: 1e: Responsible Person: Break definition into section A. and B.
- Definitions/Instructions: 2d(2): Change numbering to "20 & 21".
- Definitions/Instructions 2d(3): Change numbering to include "18 or 19" add "See 2. d.5. for RP Requirements".
- Add new Definitions/Instructions: 2.h: Social Security Number
- Change all references from "NFA Branch" to "NFA Division"
- Item 2a: Update "Legal Entity" to "Other Legal Entity"
- Items 5, 22 and Definitions/Instructions 2i and 2l: Change all references from "Applicant" to "Transferee"
- Item 4g: Obscure "Serial Number" on CLEO Copy
- Item 16: Obscure "Social Security Number" on CLEO Copy and ATF Copy 2
- Items 16 and 20: Add "(See Instruction 2h)"
- Increase Font Size of "Important Information for Currently Registered Firearms" Section
- Definitions/Instructions: 2i: Signatures: Add the statement: "Exceptions: In the case of eforms or where a variance has been granted a digital signature may be used."
- Item 4i: Update statement to read as follows: "Has the Firearm been rendered unserviceable as defined in Definition 1m? If "Yes", describe the method by which the firearm has been rendered unserviceable. Use additional sheets."
- Item 15: Photo block: Remove "Business"
- Item 3c: Obscure "Transferor's Telephone" on CLEO Copy
- Item 3d: Obscure "E-mail address" on CLEO Copy

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2. The information on this form is used by NFA Division 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 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 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 also 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.

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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. All comments received during both the 60-day and the 30-day Federal Register Notice period received a response, and/or were incorporated within ATF Form 5 (5320.5).
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 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

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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 respondents. 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 \$24,950.31 is as follows:
 - Printing Forms 5: \$3,283.21
(10,591 forms x \$.31 per form)
 - Processing fingerprints: \$11,602.50
(\$12.75 x 910 individuals and responsible persons)
 - Conducting and reviewing background checks of individual and responsible person respondents: \$10,064.60
(\$11.06 (15 minutes at \$44.22 per hour) x 910 (individuals and responsible persons).
15. There are no program changes or adjustments associated with this collection.
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

No statistical methods are associated with this collection.