

OMB Comments ATF Form 1, 4, 5, and 5320.23 30 Day Posting									
Comment #	Date of Submission	Commenter	Contact Information	Form #	Item #	Current	Proposed	ATF Response	Date of Response
1	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	2A	Corporation, Other Legal Entity, Individual, Trust	Individual, Legal Entity, Trust	"Other" Legal Entity (All else remains the same). This will be handled similarly on the Form 1 & 5	8/16/2019
2	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	Instructions 2i, 2j, 2m and Blanks 5 & 22	"Applicant"		Identify in Instructions who the Applicant is referring to i.e. Transferee, Transferor, or both. This will be handled similarly on the Form 1, 5, & .23	8/16/2019
3	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	16, 17a, 17b, 18a, 18b, 18c, & 20		Remove questions	Required as part of the background process. It is not duplicative to the Finger Print card as that is a separate and unrelated process. SSN can be greyed out on the ATF Copy 2 as well as the CLEO copy. Serial Number will also be greyed out on the CLEO copy. This will be handled similarly on the Form 1, 5, & .23	8/16/2019
4	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	Instructions 2h and Blanks 16 & 20		Add "Optional" to blanks 16 & 20	Add "See Instruction 2h" to Items 16 & 20	8/16/2019
5	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	Transferee Certification	Located at the top of Page 3	Move to Bottom of Page 2	Concurred with comment however, spacing with the other changes would not allow this to happen.	8/16/2019
6	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	Definition 1D		Narrow Definition of "Person"	No Change Will Be Made	8/16/2019
7	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	"Important Information for Currently Registered Firearms"		Increase font size	Concur. This will be handled similarly on the Form 1, 5, & .23	8/16/2019
8	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	4	2i	All signatures required on ATF Form 4 must be original in ink on both copies. (1) if the applicant is an individual, the applicant shall sign the form; (2) if the applicant is the estate of a decedent where the firearm is being transferred to other than a beneficiary, the executor or administrator of the estate shall sign the form; (3) if the applicant is a trust or legal entity, a responsible person of the trust or legal entity shall sign the form; or (4) if the applicant is a Federal firearms licensee, a responsible person of the Federal firearms licensee shall sign the form.	Signatures. All signatures required on ATF Form 4 must be original on both copies. Original signatures may be in ink, electronically or digitally signed. (1) if the applicant is an individual, the applicant shall sign the form; (2) if the applicant is the estate of a decedent where the firearm is being transferred to other than a beneficiary, the executor or administrator of the estate shall sign the form; (3) if the applicant is a trust or legal entity, a responsible person of the trust or legal entity shall sign the form; or (4) if the applicant is a Federal firearms licensee, a responsible person of the Federal firearms licensee shall sign the form.	Add: Exceptions: In the case of eforms or where a variance has been granted a digital/electronic signature may be used. This will be handled similarly on the Form 1, 5, & .23	8/16/2019
9	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	5320.23	3b & 3C		Remove Email and Telephone Number	No Change Will Be Made - Required for error resolution	8/16/2019
10	7/24/2019	Chris Bass Silencer Shop	christopherbass01@gmail.com	5320.23	Definitions/Instructions 2j.		2j. Should reference Item 23 rather than 22	Concur	8/16/2019
11	6/28/2019	Internal ATF Comments	Abbaynesh.Bryant@atf.gov	Form1	Information for the Chief Law Enforcement Officer	A "Yes" Answer to Items 13a through 13h	Should read: A "Yes" Answer to Items 11a through 11h	Concure	6/28/2019
12	6/28/2019	Internal ATF Comments	Abbaynesh.Bryant@atf.gov	Form 5320.23	Item 8	Answer questions 6a. Through 6h. Answer questions 7 and 8 if applicable	Should read: Answer questions 8a. Through 8h. Answer questions 9 and 10 if applicable	Concure	6/28/2019

From: [NFA OMB Comments](#)
To: [Christopher Bass](#)
Subject: RE: Comment related to OMB Number 1140-0014
Date: Friday, August 16, 2019 9:22:00 AM
Attachments: [image001.jpg](#)
Importance: High

Thank you for your comments. ATF will be reviewing each and providing an official response at a later time.

Please let me know if you have any further questions or comments.

Regards,

From: Christopher Bass <christopherbass01@gmail.com>
Sent: Wednesday, July 24, 2019 5:44 PM
To: Chancey, James E. <James.Chancey@atf.gov>; NFA OMB Comments <NFAOMBCOMMENTS@atf.gov>
Subject: Re: Comment related to OMB Number 1140-0014

Attached please find Hill Country Class III, LLC's supplemental comment related to OMB Number 1140-0014 , Revision of a Currently Approved Collection; Application for Tax Paid Transfer and Registration of Firearm-ATF Form 4 (5320.4).

Please let me know if you have any questions or concerns.

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Thanks,
Chris Bass

The Bass Firm, PLLC

----- Forwarded message -----

From: NFA OMB Comments <NFA.OMB.Comments@usdoj.gov>
Date: Tue, Jun 25, 2019 at 9:52 AM
Subject: RE: Comment related to OMB Number 1140-0014
To: Christopher Bass <christopherbass01@gmail.com>

Thank you for your comments. ATF will be reviewing each and providing an official response at a later time.

Please let me know if you have any further questions or comments.

Regards,

ATFseal



James Chancey

Program Analyst/COR
National Firearms Act Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice

james.chancey@atf.gov

From: Christopher Bass <christopherbass01@gmail.com>

Sent: Friday, May 31, 2019 12:08 PM

To: NFA OMB Comments <NFAOMBCOMMENTS@atf.gov>

Subject: Comment related to OMB Number 1140-0014

Attached please find Hill Country Class III, LLC's comment related to OMB Number 1140-0014 , Revision of a Currently Approved Collection; Application for Tax Paid Transfer and Registration of Firearm-ATF Form 4 (5320.4).

Please let me know if you have any questions or concerns.

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Thanks,
Chris Bass

The Bass Firm, PLLC

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Thanks,
Chris Bass

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Thanks,
Chris Bass



**COMMENT OF HILL COUNTRY CLASS III, LLC D/B/A SILENCER SHOP
TO NOTICE OF PROPOSED AGENCY INFORMATION COLLECTION ACTIVITIES;
PROPOSED ECOLLECTION ECOMMENTS REQUESTED; REVISION OF A
CURRENTLY APPROVED COLLECTION; APPLICATION FOR TAX PAID
TRANSFER AND REGISTRATION OF FIREARM-ATF FORM 4 (5320.4)**

Respectfully submitted on behalf of Hill Country Class III, LLC d/b/a Silencer Shop by:

THE BASS FIRM, PLLC

A handwritten signature in black ink, appearing to read 'Chris Bass', followed by a horizontal line.

Christopher M. Bass
The Bass Firm, PLLC
P.O. Box 2128
Coppell, Texas 75019
Telephone: (214) 596-8314

Hill Country Class 3, LLC d/b/a/ Silencer Shop (“Silencer Shop”) files this supplemental comment related to OMB Number 1140- 0014, entitled Application for Tax Paid Transfer and Registration of Firearm—ATF Form 4 (5320.4).¹

I. SILENCER SHOP’S INTEREST IN THE PROPOSED FORMS

Silencer Shop is a small business owned by Dave Matheny in Austin, Texas. Silencer Shop holds a federal firearm license (“FFL”) and is a special occupational taxpayer (“SOT”). Silencer Shop is technology-focused business and was founded on the principals of customer service excellence, selection, competitive-pricing, and simplifying the silencer ownership process for both partner dealers and end-users. Silencer Shop is the largest distributor of firearm silencers in the country with a public showroom in Austin and a large online store available at www.silencershop.com.

II. SILENCER SHOP’S PROPOSED EDIT TO CHECKABLE SELECTIONS UNDER 2A.

The current checkable selections listed under 2a are:

Corporation
Other Legal Entity
Individual
Trust

Silencer Shop proposes that the checkable sections should be:

Individual
Legal Entity
Trust

¹ This comment addresses a revised proposed version of the Form 4 that was published on June 26, 2019, after Silencer Shop’s previous comment was submitted. Although this comment focuses primarily on Form 4 applications, Silencer Shop suggests some changes to other forms herein, and offers the same comments related to the proposed Form 5 (OMB Number 1140- 0015), Form 1 (OMB Number 1140- 0011), and Form 23 (OMB Number 1140-0107) which are currently open for comment and contain the same or similar language.

III. SILENCER SHOP'S PROPOSED EDIT TO REMOVE THE WORD "APPLICANT."

The word "Applicant" is not defined on the Form and is used inconsistently. It is unclear if the ATF considers the transferee, the transferor, or both the "Applicant." In 22 and instruction 2i(1) it appears the "applicant" is the transferee. In instruction 1, 2j, and 2m it appears to be the transferor. 26 USC 5812 makes clear that the transferor is the Applicant.² To avoid this confusion the ATF should use the terms "Transferor" (or "Registrant") and "Transferee" and avoid the use of the word "applicant" altogether.

IV. SILENCER SHOP'S PROPOSED EDITS TO REMOVE PRIVATE AND UNNECESSARY IDENTIFYING INFORMATION.

Questions Requiring Transferees Social Security Number, Birth, Ethnicity, UPIN and Race Information should be removed.

Silencer Shop proposes that the ATF remove questions 16, 17a, 17b, 18a, 18b, 18c and 20 in accordance with the Paperwork Reduction Act, as that information not necessary to accomplish the purpose of the Form 4, is duplicative, has no practical utility, and requesting transferee's social security number is a violation of the Social Security Number Fraud Prevention Act of 2017.³

Requesting the transferee's social security number in question 16 violates the Social Security Number Fraud Prevention Act of 2017. This act prevents government agencies from including social security numbers on documents sent by mail. This form is mailed multiple times. The transferor mails the Form to the ATF lockbox⁴. The ATF then mails the form with unobscured

² "A firearm shall not be transferred unless (1) **the transferor** of the firearm has filed with the Secretary a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary;" (emphasis added)

³ The purpose of this form is "To insure payment of the tax imposed by 26 U.S.C. § 5811; to ensure that the transfer would not be in violation of law; and to effect registration of the firearm."

⁴ Having the document with confidential personal information sent to a third-party government "lockbox" contractor raises its own host of concerns.

social security numbers from the ATF lockbox in Portland, OR to the NFA Branch in West Virginia. Then the ATF mails an approved form back to the transferor. Thus, this document qualifies for protection under the Act. The social security number is being sought from the transferee, who is not the Applicant. By mailing the form from the lockbox to the NFA Branch and by mailing the approved or denied document to the transferor the ATF would be providing the transferee's social security number through the mail to a third party in violation of the law.

Additionally, requiring this information poses serious privacy concerns and could lead to identity theft. This is especially true given that a copy of this Form will be sent to the transferor and to the transferee's chief law enforcement officer, who would almost certainly have an obligation to make these forms available to public through open record and public information requests. The current version of the Form 4 does not require the disclosure of this highly confidential information. Seeking this information from the transferee does nothing to assist in payment of the tax, because the tax is imposed on the transferor, not the transferee. See 26 USC 5812(a)(2). Further this information does nothing to assist in the registration of the firearm because none of this information is included in the registry – as the ATF states in Paragraph 3 of the Privacy Act Information section, the only information placed into the National Firearms Registration and Transfer Record is “information as to the identification of the firearm, date of registration, and the identification and address of person entitled to possess the firearm.” Thus, requesting the information in questions 16, 17a, 17b, 18a, 18b, 18c, and 20 is unnecessary, duplicative, and poses serious privacy concerns.

This request is also duplicative in violation of the Paperwork Reduction Act of 1995. To the extent the ATF believes this information is needed to complete the FBI or NICS background check on the transferee, the information necessary for that check is already included on the

fingerprint card, and thus the request on the Form is duplicative. See FBI Form FD-258. Having this information on only the fingerprint cards offers slightly more protection because the fingerprint cards are not sent to CLEO's or returned to the transferor.

To the extent the ATF decides to require this information, blanks 16, 17a, 17b, 18a, 18b, 18c, and 20 should be obscured (greyed out) on the ATF Copy 2 (Registrant Copy) and the CLEO copy of the Form to prevent disclosure of confidential private information.

The serial number should be obscured on the CLEO copy.

The serial number of the firearm (blank 4g) should be obscured (greyed out) on the CLEO copy of the Form. The instructions on the form clearly state that "item 4g (serial number) is obscured on the CLEO copy. These fields do not require completion on these copies." However, the blank is not greyed out. To avoid unintentional disclosure of this information the ATF should obscure this blank similar to the way Method of Payment (blank 23) is greyed out on the CLEO copy.

V. SILENCER SHOP'S PROPOSED EDIT TO CURE THE INCONSISTANCY BETWEEN INSTRUCTION PRIVACY ACT INFORMATION NOTICE 1, PAPERWORK REDUCTION ACT NOTICE, 2H AND BLANKS 16 AND 20.

If the ATF decides to include blanks 16 and 20 it should note on the Form itself, and not just the instructions, that those blanks are optional. This would bring the Form in line with the 4473, which reads: "Social Security Number (**Optional**, but will help prevent misidentification)." Both the Paperwork Reduction Act Notice and the Privacy Act Information Notice 1 say that providing this information is "mandatory."

VI. SILENCER SHOP'S PROPOSED EDIT TO MOVE THE TRANSFEREE CERTIFICATION.

Silencer Shop proposes that the ATF reformat the document to keep the Transferee Certification signature and date block (unnumbered) on page 2 of the Form. In the proposed Form, that Certification is on page 3 of the Form. The ATF should attempt to keep that certification on page 2 along with the information that is being certified. That will assist transferors in gathering this information and certification from the transferee. This will also assist the transferee in carrying a copy of the approved form after the transfer has been completed. This formatting can easily be accomplished if the ATF removes some of the unnecessary blanks mentioned above.

VII. SHOP'S PROPOSED EDIT TO NARROW DEFINATION 1D "PERSON"

Silencer Shop proposes that the ATF should remove the language "including each responsible person associated with such an entity" as there is no legal basis for this. Indeed, every legal resource defines entities in the exact opposite way, as separate from the responsible persons who compose it. For instance, Black's Law Dictionary defines a corporation as "an association of shareholders (or even a single shareholder) created under law and regarded as an artificial person by courts, *having a legal entity entirely separate and distinct from the individuals who compose it ...*" The US Supreme Court has consistently held that entity persons are entirely separate from the individuals who make them up - any definition of "Person" that attempts to equate an entity with the reasonable persons who own or are employed by that entity would fly in the face of long established precedent.

VIII. SILENCER SHOP'S PROPOSED EDIT TO INSTRUCTION 2(I) TO ACCEPT ELECTRONIC SIGNATURES.

The current proposed instruction 2(i) reads:

***Signatures.** All signatures required on ATF Form 4 must be original in ink on both copies. **Exceptions:** In the case of eforms or where a variance has been granted a Digital/Electronic signature may be used.*

- (1) if the applicant is an individual, the applicant shall sign the form;*
- (2) if the applicant is the estate of a decedent where the firearm is being transferred to other than a beneficiary, the executor or administrator of the estate shall sign the form;*
- (3) if the applicant is a trust or legal entity, a responsible person of the trust or legal entity shall sign the form; or*
- (4) if the applicant is a Federal firearms licensee, a responsible person of the Federal firearms licensee shall sign the form.*

Silencer Shop would propose the instruction be changed to read:

Signatures. *All signatures required on ATF Form 4 must be original on both copies. Original signatures may be in ink, electronically or digitally signed.*

- (1) if the applicant is an individual, the applicant shall sign the form;*
- (2) if the applicant is the estate of a decedent where the firearm is being transferred to other than a beneficiary, the executor or administrator of the estate shall sign the form;*
- (3) if the applicant is a trust or legal entity, a responsible person of the trust or legal entity shall sign the form; or*
- (4) if the applicant is a Federal firearms licensee, a responsible person of the Federal firearms licensee shall sign the form.*

In other words, Silencer Shop would suggest removing the signing “in ink” requirement in order to allow for electronic signatures, **both in and out of the e-Form system**, and other legally acceptable “original” signatures other than those “in ink.” Such a change would “[m]inimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.” OMB Number 1140–0014. The ATF estimates that the current version of the Form 4 takes “227.0598 minutes” to complete, allowing for electronic signatures would significantly reduce that time and accomplish the stated task of using technology to minimize the burden on the submitter. This is especially true now that the signature of both the transferor and the transferee is required on the Form. These parties could live hundreds or even thousands of miles apart making “in ink”

signatures from both parties difficult.⁵ Electronic signatures hold the same weight and legal significance as “in ink” signatures, so requiring “in ink” signatures has no added benefit. The ATF offers no reasoning as to why an “in ink” signature is necessary.

A) The ATF and other government agencies already accepts electronic signatures.

Although the current Form 4 instructions state that signatures must be “in ink,” for many years the ATF accepted and approved Form 4’s bearing electronic signatures. Through its e-Form system the ATF allowed Form 4’s that were not signed “in ink,” but were instead electronically signed.⁶ The e-Form system is currently accepting Forms 1, 2, 5, 6, 9, 10, and 11 - all with electronic signatures. Indeed, the ATF acknowledged that allowing for “Electronic Signature (for submitter and ATF personnel) – provides enhanced authentication, validation and improves processing and approval.”⁷ Changing the instruction to indicate that electronic signatures are acceptable as originals simply conforms to the ATF’s current practice of accepting electronic signatures.

The Internal Revenue Service accepts electronic signatures on documents in its similar tax collection functions. The IRS has explained that accepting electronic signatures “helps reduce office expenses like paper, postage and physical storage space and time-consuming efforts spent obtaining a physically signed authorization form.”⁸ These are advantages that both the ATF and the applicants would benefit from. The Environmental Protection Agency allows for electronic

⁵ For instance, an owner of a firearm in Navy Town, Alaska who was transferring the firearm to someone in Gordon, Alaska would have to travel some 1800 miles by plane or ship to obtain the transferee’s “in ink” signature. More realistic, a transferor in El Paso, Texas who was transferring a firearm to someone in Texarkana, Texas would have to travel almost 12 hours by car to obtain an “in ink” signature.

⁶ The ATF indicates on the Form 4’s that they were “DIGITALLY SIGNED” in the signature block.

⁷ ATF Eforms Update, January 15, 2016, Lenora (Lee) Alston-Williams.

⁸ New esignature Guidance for IRS efile, <https://www.irs.gov/e-file-providers/new-electronic-signature-guidance-for-the-irs-efile-signature-authorization>

signatures in similar registration functions concluding that allowing for electronic signature technology will “result in reductions in costs and other business efficiencies.”⁹

B) Federal Law Requires Acceptance of Electronic Signatures as Originals.

Governmental agencies must accept private parties’ use of electronic signatures.¹⁰ Congress has mandated that electronic signatures are valid and must be accepted, and all federal courts who have examined the issue agree. An electronic signature is valid and enforceable under the U.S. Electronic Signature in Global and National Commerce Act of 2000 (E-SIGN). See 15 U.S.C. § 7001(a)(1) (“Notwithstanding any statute, regulation, or other rule of law ... with respect to any transaction in or affecting interstate or foreign commerce, (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity or enforceability solely because it is in electronic form”); *see also Newton v. Am. Debt Servs., Inc.*, 854 F. Supp. 2d 712, 731 (N.D. Cal. 2012) *aff’d*, 549 Fed.Appx. 692 (9th Cir. 2013) (“Under E-SIGN, electronic records and signatures that are in compliance with E-SIGN are legally binding.”); *Small Justice LLC v. Xcentric Ventures LLC*, 2014 WL 1214828, at *4 n.2 (D. Mass., Mar. 24, 2014) (“The E-Sign Act, 15 U.S.C. § 7001, recognizes that the click of a button online can replace an actual signature.”). E-SIGN “effectively sweeps away a myriad of anachronistic and inconsistent state and federal requirements for paper and ink documents and signatures.”¹¹ Whether electronic or otherwise, “[t]he law demands only demonstration of a person's intent to authenticate a document as [his or her] own in order for the document to be signed.” *Hamdi Halal Mkt. LLC v. United States*, 947

⁹ EPA INFORMATION DIRECTIVE POLICY, Electronic Signature Policy, Directive No.: CIO 2136.0.

¹⁰ *See* General Services Administration (GSA) and Federal Chief Information Officers (CIO) Council, Use of Electronic Signatures in Federal Organization Transactions v. 1.0 (January 25, 2013) (Table C-1, noting that acceptance of an electronic signature is required in all cases where a signature is required by law or regulation); Office of Management and Budget, Guidance on Implementing the Electronic Signatures in Global and National Commerce Act (E-SIGN) (E-SIGN supersedes “Federal and State statutes and agency regulations requiring the use of paper records and ink signatures.”).

¹¹ Whittie, Robert, Electronic Records and Signatures under the Federal E-SIGN Legislation and the UETA, <http://www.law.washington.edu/Directory/docs/Winn/Electronic%20Records%20and%20Signatures.htm>

F.Supp.2d 159, 164 (D. Mass. 2013) (considering a definition of electronic signature in federal statute). “[R]egulations may not deny the legal effect of filings with governmental agencies solely because they are made with an electronic record.”¹²

The E-Sign Act defines an "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. 15 U.S.C.A. § 7006(5). E-Sign preempts state law, other than the Uniform Electronic Transactions Act (UETA). 15 U.S.C.A. § 7002(a)(1). The overwhelming majority of states have adopted the Uniform Electronic Transactions Act (UETA) that authorizes the use of electronic signatures. The UETA states that a signature may not be denied legal effect or enforceability solely because it is in electronic form. Unif. Electronic Transactions Act § 7. It also states that if a law requires a signature, an electronic signature satisfies the law. *Id.*

IX. EMAIL AND PHONE NUMBER INFORMATION SHOULD BE REMOVED FROM THE FORM 23.

Seeking non-public personal information on the Form 23 such as a responsible person’s phone number (blank 3b) and electronic mail address (blank 3c) does nothing to further the purposes of the form. The ATF does not request this information on the Form 4 or Form 5 from the transferee. It is unclear why the responsible person of an entity transferee might need to provide his email and phone number when an individual transferee would not be required to provide this. Providing a phone number and email address does nothing to assist the ATF or local law enforcement in assessing a responsible person is prohibited from possessing the firearm. The FBI NICS system does not require such information to conduct a background check. Nowhere in

¹² Whittie, *supra.*; see also footnote 4.

the ATF regulations does it require transferee or responsible person to provide a phone number or email address. Thus, those blanks should be eliminated.

For all Forms, phone and email should be should be optional. The ATF should use “(optional)” in the blank similar to the email blank in the current version Form. Many users may not have telephone numbers or electronic mail addresses¹³.

X. MISCELLANEOUS ERRORS

Silencer Shop suggests the ATF correct the following typographical errors contained in the current drafts of the Forms:

2j: should reference item 23 rather than 22.

¹³ A 2015 Pew Research Center study shows that 15% of American adults do not use the internet, and thus would not have access to electronic mail. The study also noted that seniors, Americans living in rural communities, and racial minorities are among those most likely to be without electronic mail. <http://www.pewresearch.org/fact-tank/2015/07/28/15-of-americans-dont-use-the-internet-who-are-they/>