

GENERAL 41F QUESTION & ANSWERS

Q: Why did ATF amend NFA regulations?

A: The regulations were amended in response to a petition for rulemaking, filed on behalf of National Firearms Act Trade & Collectors Association (NFATCA). The petitioner requested that ATF amend 27 CFR 479.63 and 479.85, as well as corresponding ATF Forms 1 and 4. The amended regulations make identification and background checks requirements the same for trusts and legal entities as they were for individuals, thus providing important and public security benefits.

Q: An individual representing a trust or legal entity must complete an ATF Form 4473 and pass a background check prior to receiving NFA firearms from a Federal firearms licensee (FFL). Why was a change to regulation necessary if these procedures apply?

A: Although individuals are subject to these requirements, only the individual who was actually present was subject to these requirements. This means that the other individuals who might act on behalf of the trust or legal entity were not subject to these requirements. Further, the requirement to complete ATF Form 4473 and undergo a background check apply only when a firearm is received from an FFL—no individual is subject to these requirements when the trust or legal entity “makes” an NFA firearm. The final rule addresses this by requiring background checks of all individuals acting on behalf of a trust or entity applying to make a firearm.

Q: How will CLEO notification be accomplished?

A: The Department has revised the regulations in 27 CFR 479.62 and 479.84 to require the applicant or responsible persons to submit (mail or deliver) a completed copy of the application (Form 1, 4, or 5) or a completed copy of Form 5320.23 (*National Firearms Act (NFA) Responsible Person Questionnaire*), respectively, to the chief law enforcement officer of the locality in which the applicant or responsible person is located. In the case of a trust, this is considered located at the primary location where the firearm will be maintained. In addition, the “responsible persons” associated with a trust should each submit documentation to their CLEO having jurisdiction where the responsible person is located.

Q: Will new responsible persons, added after the making or transfer, be subject to the same requirements?

A: Once an application has been approved, no documentation is required to be submitted to ATF when a new responsible person is added to a trust or legal entity. However, should a responsible person change after the application has been submitted, but before it is approved, the applicant or transferee must contact the NFA Branch for guidance.

Q: Will trusts and corporate entities still be able to use the ATF eForms system to submit applications after this rule goes into effect?

A: No. The eForms system was not designed to allow the filing of forms where fingerprints and photographs are required. ATF will continue to work toward improving the eForms system and expanding it for future use.

Q. Were any new sections to 27 CFR part 479 added by the final rule?

A. Yes. The final rule added a new section to address the possession and transfer of firearms registered to a decedent. The new section clarifies that the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate may possess a firearm registered to a decedent during the term of probate without such possession being treated as a “transfer” under the NFA. It also specifies that the transfer of the firearm to any beneficiary of the estate may be made on a tax-exempt basis.

Q. Are any forms being revised?

A. Yes. A change from CLEO certification to CLEO notification required a revision to Form 1 (*Application to Make and Register a Firearm*), Form 4 (*Application for Tax Paid Transfer and Registration of a Firearm*) and Form 5 (*Application for Tax Exempt Transfer and Registration of a Firearm*). There is also a new form, Form 5320.23 (*National Firearms Act (NFA) Responsible Person Questionnaire*), that is required to be completed by responsible persons of a trust or legal entity.

Q. If I use a previous version of Form 1, 4, or 5, will it be accepted?

A. No. On or after July 13, 2016, all previous versions of ATF Forms 1, 4, and 5 will be obsolete and will be returned without action.

Q. Are there specific requirements for the “responsible person?”

A. Yes. Each responsible person is required to complete ATF Form 5320.23 (*National Firearms Act (NFA) Responsible Person Questionnaire*), and submit photographs and fingerprints each time the trust or legal entity files an application to make an NFA firearm or is listed as the transferee on an application to transfer an NFA firearm. In addition, each responsible person for the trust or legal entity is required to notify the CLEO of the locality in which the responsible person is located that an application is being submitted to ATF.

Q. How will ATF process applications that were received prior to the publication date?

A. Applications postmarked prior to the effective date of the final rule will be processed under the current regulations. Only those applications postmarked on or after the effective date of the final rule will be subject to the new regulations.

Q. Where can I find the “Machineguns, Destructive Devices and Certain Other Firearms; Background Checks for Responsible Persons of a Trust or Corporation or Other Legal Entity With Respect to the Making or Transferring of a Firearm” final rule?

A. The final rule was published in the Federal Register on January 15, 2016. It can be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

Q. Will fingerprint cards and photographs be needed for each person(s) identified as a “Responsible Person?”

A. Yes. All individuals identified as “Responsible Persons” are required to submit fingerprint cards and photographs. In addition, each “Responsible Person” is required to complete the Form 5320.23, National Firearms Act (NFA) Responsible Person Questionnaire. (See instruction 2 d. (5) on the Forms 1, 4, and 5.)

Fingerprint cards and the Form 5320.23 with photograph attached must be provided upon every application submission.

Q. If an application was approved within the preceding 24 months, are fingerprint cards and photographs required to be submitted with a new application?

A. Yes. The 24-month exemption for providing supporting “documentation” refers only to the documentation proving the existence of an entity, such as trusts or corporate paperwork. The Form 5320.23 with attached photograph and fingerprint cards are required for each person identified as a responsible person for each submission in order to initiate the required background check. See instruction 2 d. (4) and (5) on the Forms 1, 4, and 5.

Q. How will the NFA Branch process ATF Forms 1, 4, and 5 once this proposal is implemented?

A. The NFA Branch will now be required to perform full criminal background checks on all individuals who are identified as Responsible Persons of a trust or legal entity (e.g. corporation, LLC, etc.). See the definition of Responsible Person for clarification on who is considered a Responsible Person. The new ATF Form 5320.23 is required to be submitted, along with photograph and fingerprint cards, in order to initiate the background check. CLEO certification is no longer required. However, each Responsible Person will be required to submit a copy of the 5320.23 to their respective CLEO. This submission is for notification purposes only. There is no action required on the part of the CLEO, unless he or she has information that may disqualify any individual from acquiring or possessing a firearm. In that case, the CLEO should notify the NFA Branch.

Q. What are the new requirements for a trust or legal entity transferee or applicant on a Form 1, 4, or 5?

A. If a Form 1, 4, or 5 is submitted by a trust or legal entity (e.g. corporation, LLC, etc.), all Responsible Persons must be identified as specified on the form. Each Responsible Person will be required to complete and submit with the application Form 5320.23 National Firearms Act (NFA) Responsible Person Questionnaire, including photograph, and submit two properly completed FD-258 fingerprint cards. Each Responsible Person must provide a copy of their completed 5320.23 to their respective CLEO for notification purposes. There is no action required on the part of the CLEO, unless he or she has information that may disqualify any individual from acquiring or possessing a firearm. In that case, the CLEO should notify the NFA Branch.

If a Form 1, 4, or 5 is submitted by an individual transferee or applicant, the requirements remain the same as they were prior to the effective date of 41F, except that CLEO certification is no longer required. Individual transferees and applicants must submit a copy of their Form 1, 4, or 5 to the CLEO in the jurisdiction in which the transferee or applicant resides to comply with the notification requirement.

FREQUENTLY ASKED QUESTIONS RECEIVED BY NFA CUSTOMER SERVICE REPS

Q. When will this final rule go into effect?

A. The effective date is July 13, 2016.

Q. If an application was submitted prior to the effective date of the new regulations, will it be grandfathered in?

A. Applications post marked prior to the effective date of July 13, 2016 will be processed according to the current regulations. All applications post marked on or after the effective date of July 13, 2016 will be processed according to the new regulations set forth by 41F.

Q. Who in a trust or legal entity will have to submit fingerprint cards?

A. All responsible persons of the trust or legal entity are required to submit fingerprint cards. See definition of “responsible person” to determine who qualifies.

Q. Are fingerprint cards and photographs for each responsible person required for every NFA application submission?

A. Yes. Fingerprint cards and Form 5320.23 with photograph attached are required for all responsible persons associated with the trust or other legal entity for each application submitted.

Q. May a Federal firearms licensee fingerprint a customer? As an FFL dealer, can we fingerprint our customers?

A. Fingerprints may be taken by anyone who is properly equipped to take them (see instructions on ATF Form 1, Form 4, Form 5, and Form 5320.23). Therefore, applicants may utilize the service of any business or government agency that is properly equipped to take fingerprints.”

- Q. Is an FFL required to conduct a NICS background check prior to the transfer of the firearm for applications submitted by trusts and legal entities before the effective date of July 13, 2016?**
- A. Yes. A NICS background must be conducted if an NFA firearm has been approved for transfer to a trust or legal entity, such as a corporation, and no background check was conducted as part of the application process on the individual who will receive the firearm.
- Q. Is an FFL required to conduct a background check prior to the transfer of the firearm for application submitted by trusts and legal entities after the effective date of July 13, 2016?**
- A. No. NICS background check will not be required prior to the transfer of the NFA firearm if the individual picking up the firearm on behalf of the trust or legal entity has undergone a background check as part of the application process. Responsible persons will be listed on the ATF Form 1, 4, or 5 so the licensee will know who has undergone a background check as part of the NFA application process.
- Q. If I use a previous version of Form 1, 4, or 5, will it be accepted?**
- A. No. On or after July 13, 2016, all previous versions of ATF Forms 1, 4, and 5 will be obsolete and will be returned without action.

QUESTIONS & ANSWERS FOR CHIEF LAW ENFORCEMENT OFFICERS (CLEO)

- Q. Why are ATF Forms 1, 4, 5, and/or 5320.23 being received in the mail or delivered to our law enforcement agency?**
- A. All applicants, transferees, and responsible persons are required to forward a completed copy of their NFA application and/or completed copy of the Form 5320.23, respectively, to the chief law enforcement officer of the locality in which the applicant or responsible person is located. In the case of an applicant that is a trust, this is considered the primary location where the firearm will be maintained.
- Q. What action does the CLEO need to take upon receipt of these forms?**
- A. No action is required from the CLEO. If the CLEO has information that the applicant, transferee, or responsible person is or may be prohibited from possessing a firearm, that CLEO may notify the NFA Branch at (304)616-4500 or NFA@atf.gov.
- Q. Is the Chief Law Enforcement Officer required to sign off on NFA forms?**

A. No. The CLEO Certification requirement has been replaced with CLEO notification and no signing or approval by the CLEO is required. Only the CLEO notification process will be required for applications post-marked on or after the effective date of July 13, 2016.

Q. Is the Chief Law Enforcement Officer required to file these NFA forms after receipt?

A. No. The CLEO is not required to file any of the NFA forms that may be received pursuant to this final rule.

Q. If an agency has information regarding an applicant who may be a prohibited person, who should be contacted?

A. Please contact the NFA Branch at (304) 616-4500 or NFA@atf.gov.