

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Jose Cerda

Subseries:

OA/ID Number: 18931

FolderID:

Folder Title:

Brady - BJS [Bureau of Justice Statistics] Report

Stack:

S

Row:

98

Section:

2

Shelf:

4

Position:

2

Leanne A. Shimabukuro	09/04/97 12:47:29 PM
-----------------------	----------------------

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP
Subject: Brady

Bruce-

We just found out late this morning that BJS is releasing a new study with Brady numbers today at noon (it should be out already). The study says that of the more than 250,000 **firearms** sales blocked between 2/94 and 12/96, 173,000 were **handgun** purchases.

The Brady numbers in this report conflict with the numbers the President and the AG have used in other statements and documents. We have said in the past that 250,000 **handgun** sales have been blocked since passage of Brady (6/26 POTUS statement on S. Ct. decision). In February this year at the Brady three-year anniversary, we announced 186,000 handgun sales blocked. These statements were all cleared through Justice.

Arguably, the number of handgun sales blocked at today's date are approaching 250,000 since the BJS data is only to 12/96. However, I'm concerned that we get nailed by the numbers looking lower than what we've already announced. I'm also concerned about the President citing different numbers than he's used in the past.

Rahm asked for a draft statement anyway that he wants to release today. I just sent it out to him-- here it is.



BRADY#.ST

STATEMENT OF THE PRESIDENT

Today, the Justice Department announced that (of the more than 250,000 gun sales blocked since passage of the Brady Act) Brady background checks prevented 173,000 illegal handgun sales through the end of last year. The data further reveal that the vast majority of these thwarted handgun sales were to felons and fugitives from justice. This confirms what we've known all along: that Brady background checks are vital in keeping guns out of the hands of criminals.

While states are no longer required to conduct Brady background checks in light of the Supreme Court's recent decision, I am pleased that law enforcement around the country are continuing to do these checks on a voluntary basis. Our goal has remain unchanged: no background check, no handgun.

I have pledged to do everything in my power to make sure that we continue to keep handguns out of the hands of criminals. Today's study further makes the case that for the safety of our communities and all Americans, Brady background checks must continue.

Alexander T. Hunt

02/02/98 03:24:47 PM

Record Type: Record

To: Michael F. Crowley/OMB/EOP@EOP, Leanne A. Shimabukuro/OPD/EOP@EOP
cc: Victoria Wassmer/OMB/EOP@EOP
Subject: DOJ Brady reg

Because it is related to the ATF reg that I sent you earlier, I am sending you copies of this reg as well. If you have any comments, please send them ASAP to Victoria, the DOJ desk officer in OIRA.

Thanks.

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG ORDER No. XXX]

RIN 1105-AA51

National Instant Criminal Background Check System Regulations

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice is publishing a proposed rule for the National Instant Criminal Background Check System (NICS) to establish policies and procedures for ensuring the privacy and security of this system and to implement a NICS appeals policy for persons who have been denied the purchase of a firearm because of information in the NICS they believe to be erroneous or incorrect. Specifically, this rule will detail policies for validating NICS data, storing, accessing, and querying records in the system, retaining and destroying NICS information, and correcting erroneous data in the system.

DATES: Written comments must be received on or before [Insert date 90 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: All comments concerning this proposed rule should be mailed to:

Mr. Emmet A. Rathbun, Unit Chief, Review, Analysis, and Development Unit, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306.

FOR FURTHER INFORMATION CONTACT: Mr. Emmet A. Rathbun, Unit Chief, Review, Analysis, and Development Unit, telephone number (304) 625-2000.

SUPPLEMENTARY INFORMATION: On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Public Law 103-159, the “Brady Handgun Violence Prevention Act” (“Brady Act”) requires the Attorney General to establish by November 30, 1998, “a national instant criminal background check system that any [firearms] licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.” To implement the NICS, the Brady Act authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any Federal Department or agency on persons for whom receipt of a firearm would be in violation of the law.

Prohibited Persons

Section 922 of title 18 prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who-

- (1) Is under indictment for or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is a fugitive from justice;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or committed to a mental institution;

- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced U.S. citizenship;
- (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or
- (9) Has been convicted in any court of a misdemeanor crime of domestic violence.

The Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, published a final rule concerning "Definitions for the Categories of Persons Prohibited From Receiving Firearms" in the Federal Register on June 27, 1997 (T.D. ATF-391, 62 FR 34634). These definitions became effective August 26, 1997, and shall apply to the operation and use of the NICS.

Department of Justice Action

The Federal Bureau of Investigation (FBI), as directed by the Attorney General, has coordinated the development efforts of the NICS since 1993. The FBI is negotiating formal Memoranda of Understanding (MOUs) between the FBI and Federal agencies that will supply data to the NICS. The MOUs outline procedures for supplying data to the NICS and define limits on the appropriate use of the data.

This proposed rule may directly impact the following groups: prospective firearms purchasers, Federal firearms licensees (FFLs), state and local law enforcement agencies, and certain Federal agencies.

Brady Act Task Group

Immediately after the Brady Act went into effect on February 28, 1994, the FBI

established a Brady Act Task Group (BATG) composed of experienced state and local law enforcement officials. The FBI has worked closely with the BATG, whose purpose has been to assist in the development and finalization of requirements for implementing the NICS.

The System

In order to establish the NICS in a way that incorporates relevant information for the various categories of prohibited persons previously mentioned, the system will include files in a newly created "NICS Index" and will utilize existing systems of records operated by the FBI, such as the National Crime Information Center (NCIC), the Interstate Identification Index (III), the future Integrated Automated Fingerprint Identification System (IAFIS), and NCIC 2000.

The NICS Index will contain records provided by Federal agencies, as required by the Attorney General, on persons prohibited from receiving firearms under Federal law. The NICS Index will also include information provided voluntarily by the states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under Federal law.

In states where they agree to do so, state or local law enforcement agencies will serve as Points of Contact (POCs) for the NICS. As POCs, these agencies will receive inquiries by FFLs, initiate a NICS background check, check state and local record systems (including criminal justice databases) for disqualifying records, and provide a response back to the FFL. States may also exchange messages regarding long-gun purchases made outside of a purchaser's state of residence.

Background Checks

A NICS background check will search for matching records in the NICS Index, NCIC,

and III, that indicate that a transfer of a firearm would violate state or Federal law. In states where state or local law enforcement agencies act as POCs, the cooperating agencies may also check state or local record systems. For each background check, the FBI will consolidate matching records from all Federal databases searched and will provide the response to either the state or local POC or the FFL. In cases where the checks are performed by state or local POCs, an authorized state or local official located where the firearm transfer is to occur will receive and evaluate information about matching records from the FBI and any available state databases and will determine whether the prospective purchaser is the subject of the matching records and whether the records contain information indicating that the transfer would violate state or Federal law. In states where FFLs contact the FBI directly, a representative of the FBI will make these determinations. In either case, only the decision whether or not the transfer may proceed, and none of the underlying information, will be communicated to the FFL.

Retention and Destruction of Records in the NICS

The NICS will retain indefinitely records that prohibit persons from receiving or possessing a firearm unless such records are canceled by the agency that supplied the records to the NICS. In cases where the firearms disability may be temporary in nature (e.g., a restraining order that expires on a certain date) the NICS will automatically purge the record on the date of expiration.

For system security purposes, the FBI will maintain an automated Audit Log of all transactions that pass through NICS. Transactions relating to firearm transfer approvals in the Audit Log will be maintained for eighteen months. After this time, information contained in the Audit Log related to the person or the transfer will be destroyed; only the NICS Transaction

Number (NTN), a unique number assigned to each inquiry received by the NICS, and the date on which the NTN was assigned, will be retained. This temporary retention of information will allow the FBI and state and local officials to audit and/or investigate, for up to eighteen months, alleged unauthorized access to the NICS. The FBI will retain a log of all transactions relating to firearm transfer denials for 10 years, after which time the records will be archived to the National Archives and Record Administration (NARA). The FBI will not keep any other logs or details of NICS transactions.

System Security

This regulation requires all FBI personnel and the state and local law enforcement agencies using the system to identify themselves before obtaining access to the NICS through the use of an Originating Agency Identifier (ORI) assigned by the FBI. The Control Terminal Agency (CTA) in each state, typically the state police or department of public safety, will be responsible for providing to the FBI a list of agencies authorized in the state to serve as a POC for the NICS. In addition, the NICS will require an authenticated password from FBI personnel accessing the system. The NICS will require the same identification and authentication procedures of authorized Federal agency employees who are provided access to the NICS for purposes of adding, modifying, and canceling records. The NICS will detect whenever an invalid ORI and password combination is provided and deny access to any individual who is unable to authenticate his/her identity. After the third consecutive unsuccessful attempt to access the NICS, the system will generate an alarm notification to the NICS administrators at the FBI and terminate access.

To ensure the proper level of access for each transaction, an agency must include its ORI

in each message it sends to the NICS. Agencies providing records for the NICS must include their ORI and a unique agency record identifier (ARI) in each record provided. The system will allow Federal and state agencies to modify or cancel only the data that they have provided.

Personnel Security

Federal agencies will be responsible for ensuring that their personnel who process and handle data for the NICS comply with the NCIC Security Policy of 1992, with applicable Federal laws, such as the Privacy Act of 1974 and the Computer Security Act of 1987, and with their agency's policies and procedures for protecting information. In addition, if the NICS allows a Federal Agency direct terminal access to the NICS for the purpose of adding, modifying, or canceling records, the agency, at a minimum, must ensure that terminal operators follow the security policy guidelines of their agency.

Physical Security

Federal agencies will label any magnetic media used to transport NICS data. These labels will identify the agency supplying the data and the sensitivity of the data. The FBI will store NICS data only in areas that are physically safe from access by unauthorized persons or exposure to environmental hazards.

If an agency communicates electronically with the NICS via an NCIC Communications Circuit, the computer site and/or terminal area used by the agency must have adequate physical security to protect against unauthorized personnel gaining access to the computer equipment or to any of the stored data.

Visitors in the area of the computer site and/or terminal must be accompanied by staff personnel at all times, and access to the terminal area is restricted to the minimum number of

authorized employees needed to complete the work.

Authority to Obtain Records from Federal Agencies

Section 103(e)(1) of the Brady Act states that “[n]otwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.”

Routine Uses and Record Access Procedure

Pursuant to the Privacy Act of 1974, a Privacy Act System Notice setting forth the routine uses of records maintained in the system and record access procedures of the NICS will be published separately in the Federal Register.

User Fee Charge

FFLs who contact the NICS Operations Center by telephone or by electronic means to initiate a background check will be assessed a fee. The user fee will be published separately in the Federal Register.

Appeal from a Denial and the Correction of Erroneous System Information

If, as a result of a background check, an individual is unable to purchase or receive a firearm, the individual may request the reason(s) for the denial from the agency that made the determination. The denying agency shall respond with the reasons for the denial within five business days of receipt of the request. The individual may challenge the accuracy of the record by appealing to the state or local POC which denied the transfer, the agency which originated the

record, or the FBI. If a record is found to be inaccurate, the data in the NICS shall be corrected and the individual will be provided a written confirmation of the correction of erroneous data to present to the FFL. If more than 30 days have transpired since the initial check, the FFL will recheck the NICS without a fee before allowing the sale to continue. The Brady Act also provides that an individual may contest the accuracy or validity of a disqualifying record by bringing "an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be."

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. A Brady Act Task Group, composed of experienced state and local law enforcement officials, provided input on the design of the NICS system. When developing the guidelines for the NICS system development, both the Task Group and the FBI took into account the fact that many FFLs are small businesses. The FBI is not aware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The obligation of FFLs to contact the NICS before transferring a firearm is imposed by the Brady Act. The ATF will be issuing regulations which will determine how FFLs shall interact with the NICS. In designing the NICS, the FBI has sought to avoid burdens on small

entities beyond those requirements needed to conduct the statutorily prescribed background checks effectively and to ensure the privacy and security of the information in the NICS.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866, § 3(f), Regulatory Planning and Review, and thus has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12612

This rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual

effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this proposed rule because no requirement to collect information is imposed.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Automatic data processing, Business and industry, Courts, Firearms, Information, Law enforcement officers, Reporting and recordkeeping requirements, Telecommunications.

Accordingly, Title 28 of the Code of Federal Regulations is amended by adding the following new Part 25:

Part 25 -- DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart A - The National Instant Criminal Background Check System

- 25.1 Purpose and authority.
- 25.2 Definitions.
- 25.3 System information.
- 25.4 Validation and data integrity of records in the system.
- 25.5 System safeguards.
- 25.6 Accessing records in the system.
- 25.7 Querying records in the system.
- 25.8 Retention and destruction of records in the system.
- 25.9 Correction of erroneous system information.
- 25.10 Record source categories.
- 25.11 Prohibited activities by authorized users.

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence Prevention Act (Brady Act), Pub. L. 103-159, 107 Stat. 1536, codified at 18 U.S.C. 922(t). The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer for determination of whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. These regulations are issued pursuant to Section 103(h) of the Brady Act, 107 Stat. 1542, and include requirements to ensure the privacy and security of the system and appeals procedures for persons who have been denied the right to purchase a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

§ 25.2 Definitions.

Appeal means a formal procedure to challenge the denial of a firearm transfer.

ARI means a unique Agency Record Identifier assigned by the submitting agency to each record provided to the NICS.

Audit log means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

Data source means an agency that provided specific information to the NICS.

Delayed means a temporary denial of a firearm transfer requiring more research prior to a NICS “Proceed” or “Denied” response.

Denied means denial of a firearm transfer based on a NICS response indicating a matching record was found where there is reason to believe that receipt of a firearm by a prospective purchaser would violate 18 U.S.C. 922 or state law.

Denying agency means the state or local law enforcement agency acting as a POC for the NICS, or the NICS Operations Center, whichever determines that information in the NICS indicates that the transfer of a firearm to a person would violate Federal or state law, based on a background check.

Dial-up access means any routine access through commercial switched circuits on a continuous or temporary basis provided that appropriate security measures are in place.

Federal agency means any authority of the United States that is an “Agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

FFL means a person licensed by the Bureau of Alcohol, Tobacco and Firearms as a

manufacturer, dealer, or importer of firearms.

Firearm means, as in 18 U.S.C. 921(a)(3), any weapon (including a starter gun) that will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device as defined in 18 U.S.C. 921(a)(4). Such term does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

Licensed dealer means any person, as in 27 CFR 178.11, engaged in the business of selling firearms at wholesale or retail; engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or who is a pawnbroker; licensed under the provisions of the Gun Control Act, 18 U.S.C. 923.

Licensed importer means any person, as in 27 CFR 178.11, engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution, and who is licensed under the provisions of the Gun Control Act, 18 U.S.C. 923.

Licensed manufacturer means any person, as in 27 CFR 178, engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution, and who is licensed under the provisions of the Gun Control Act, 18 U.S.C. 923.

NICS Index means the database, to be managed by the FBI, containing information provided by state and Federal agencies about persons prohibited under Federal law from receiving or possessing a firearm. The NICS Index is separate and apart from NCIC and III.

NICS Operator is a NICS Operations Center staff member that receives telephone inquiries from FFLs to perform background checks, and who makes a determination based upon available information as to whether the receipt or transfer of a firearm would be in violation of

state or Federal law.

NICS Operations Center means the unit of the FBI that receives telephone inquiries from FFLs to perform background checks, makes a determination based upon available information as to whether the receipt or transfer of a firearm would be in violation of state or Federal law, researches criminal history records, tracks and finalizes appeals, and conducts audits of system use.

NRI means the system generated unique NICS Record Identifier associated with each record in the system.

NTN means the unique NICS Transaction Number that will be assigned to each inquiry received by the NICS. Its primary purpose will be to provide a means of associating inquiries to the NICS with the response provided by the NICS to the FFL.

ORI means a nine character Originating Agency Identifier assigned by the NCIC to an agency which has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System.

Originating Agency means an agency that provides a record to the NICS.

POC means a state or local entity serving as a point of contact for the NICS that will receive background check requests from FFLs, check state or local record systems, perform NICS inquiries, and respond to FFLs with the results of a background check.

Proceed means a NICS response indicating no matching record was found to prohibit the transfer of a firearm.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, information that disqualifies the

individual from receiving a firearm and that contains his/her name and other personal identifiers.

STN means a unique State-Assigned Transaction Number assigned to each valid inquiry for a background check.

System means the National Instant Criminal Background Check System.

System Administrator means the Federal Bureau of Investigation.

§ 25.3 System information.

(a) The system name is the National Instant Criminal Background Check System.

(b) The system will be located at the Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The system manager and address is: Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I Building, 935 Pennsylvania Avenue, NW, Washington, D.C. 20535.

§ 25.4 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This includes:

(1) Accurately adding, canceling, or modifying NICS records supplied by Federal agencies;

(2) An automatic rejection of any attempted entry of records in the NICS that contain detectable invalid data elements;

(3) Automatic purging of records in the NICS after they are on file for a prescribed period of time; and

(4) Quality control checks by FBI personnel.

(b) Each contributing agency will be responsible for ensuring the accuracy and validity

of the data it provides to the NICS and will immediately correct any such record determined to be invalid or incorrect.

§ 25.5 System safeguards.

(a) Information maintained in the NICS is stored electronically for use in a computer environment. The NICS computer will reside inside a locked room within a secured facility. Only authorized persons may actually access the computer by using an assigned code.

(b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures, listed in paragraphs (c) through (f) of this section, are the minimum to be adopted by all criminal justice agencies having access to the NICS. Each state's Control Terminal Agency will provide to the NICS Operations Center a list of valid ORIs for those agencies that will serve as POCs for the NICS.

(c) The responsibilities of state computer centers include the following:

(1) The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data,

(2) Since personnel at these computer centers can have access to data stored in the system, they must be screened thoroughly under the authority and supervision of a state Control Terminal Agency. This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state Control Terminal Agency. This screening will also apply to non-criminal justice maintenance or technical personnel,

(3) All visitors to these computer centers must be accompanied by staff personnel at all

times;

(4) State or local law enforcement agencies utilizing a state/NCIC terminal to access the NICS must have the proper computer instructions written and other built-in controls to prevent data from being accessible to any terminals other than authorized terminals; and

(5) Each state Control Terminal Agency shall build its data system around a central computer, through which each inquiry must pass for screening and verification.

(d) Authorized state agency remote terminal devices having access to the NICS must meet the following requirements:

(1) All agencies having terminals with access to the system must physically place these terminals in secure locations within the authorized agency;

(2) The agencies having terminals with access to NICS data must screen terminal operators and must restrict access to the terminals to a minimum number of authorized employees, and

(3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.

(e) FFL remote terminal devices may be used to transmit queries to the NICS. The following procedures will apply to such queries:

(1) The NICS will identify and authenticate an FFL dial-up user prior to the user's submitting a background check query to the NICS, by verifying a unique user identity, which will be based on an FFL Number assigned by ATF and a NICS assigned password;

(2) The proper use of dial-up circuits will be included as part of the periodic audits by the FBI;

(3) All failed authentications will be logged by the NICS and provided to the site security administrator;

(4) Three failed authentications will result in the user account being disabled; and

(5) All transactions and messages sent and received through dial-up access will be automatically logged. Automatic logging will include initiation and termination messages, failed authentications, and any access violations.

(f) FFLs may use the telephone to transmit queries to the NICS, in accordance with the following procedures:

(1) FFLs may contact the NICS Operations Center via a telephone number provided by the FBI,

(2) FFLs will provide the NICS Operator with their FFL Number and password, the purpose code or type of sale, and the name, sex, race, and date of birth of the prospective buyer. If the type of sale is a long gun, then the purchaser's state of residence must be provided; and

(3) The NICS will verify the FFL Number and password before processing the request.

(g) The following precautions will be taken to help ensure the security and privacy of NICS information when FFLs contact the NICS Operations Center:

(1) Access will be restricted to initiation of a background check;

(2) The NICS Operator will only provide a response of "Proceed," "Delayed," or "Denied" (with regard to the prospective firearms transfer), and will not provide the details of any record information about the purchaser; and

(3) The FBI will periodically monitor telephone inquiries to ensure proper use of the system

§ 25.6 Accessing records in the system.

(a) The NICS Operations Center will provide electronic dial-up access to FFLs and authorized state agencies 24 hours each day. In those cases where potentially disqualifying information is found in response to an FFL query, the FFL will receive a "Delayed" response and the follow-up "Proceed" or "Denied" response will be returned during the NICS Operations Center's regular business hours. The NICS Operations Center will provide FFLs with telephone access to the NICS only during its regular business hours.

(b) The process of accessing the NICS for the purpose of conducting a background check is generally initiated by an FFL contacting a state or local law enforcement agency, telephoning the NICS Operations Center, or through electronic dial-up access. The NICS Operations Center will perform the functions described below.

(c) The FBI NICS Operations Center, upon receiving an FFL's telephone request for a background check, will use the NICS to

(1) Verify the FFL Number and password;

(2) Assign a NICS Transaction Number (NTN) to the inquiry;

(3) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records;

and

(4) Provide a "Proceed," "Delayed," or "Denied" response to the FFL that requested the background check. "Proceed," "Delayed," and "Denied" responses will be based on the consolidated NICS search results, and will include an NTN.

(d) In states where a state or local law enforcement agency serves as a Point of Contact (POC) for the NICS, such agency will:

- (1) Verify the FFL number and password; and
 - (2) Transmit the request for a background check via the NCIC interface to the NICS.
- (e) Authorized state or local law enforcement agencies serving as POCs may conduct a search of available files in state and local law enforcement systems, and may provide a unique State-Assigned Transaction Number (STN) to each valid inquiry for a background check.
- (f) FFLs in each state will be advised whether they are required to initiate a background check with the NICS Operations Center or a state or local law enforcement agency.
- (g) Upon receiving a request for a background check, the NICS will provide an NTN to the FFL making the inquiry. This number will be unique for each inquiry received by the NICS and will provide a means of associating inquiries of the NICS with the NICS consolidated responses.
- (h) When the NICS receives an inquiry from a POC, a search will be made of the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s), and the NICS will provide an electronic response to the law enforcement unit serving as the POC that requested the background check. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:
- (1) No record response, if the NICS determines, through a complete search, that no matching record exists;
 - (2) Partial response, if the NICS has not completed the search of all of its records. (This response will indicate the databases that have been searched (i.e., III, NCIC, and/or NICS Index) and the databases that have not been searched. It will also provide any potentially disqualifying

information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.);

(3) Single matching record response, if all records in the relevant databases have been searched and one matching record was found; or

(4) Multiple matching record response, if all records in the relevant databases have been searched and more than one matching record was found.

(i) Generally, the NICS will complete the process of searching the relevant databases, preparing a response, and transmitting this response to the requester electronically, without human intervention. The NICS will provide its response to the state and local law enforcement systems in a clear and concise format that can be processed and routed electronically by state computers, or communicated verbally through telephone communication.

(j) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, an authorized state or local law enforcement representative will:

(1) Confirm any matching records;

(2) Notify the FFL that the transfer is allowed or denied and include in this notification the NTN and, if applicable, an STN; and

(3) Notify the NICS if the transfer was denied.

(k) In cases where a transfer is denied by a state or local law enforcement agency, the POC shall provide a denial notification to NICS. This denial notification will include the name of the person who was denied a firearm and the NTN. This notification may be provided

(1) immediately by electronic message to the NICS (i.e., at the time the transfer is denied); or

(2) as soon thereafter as possible.

(l) If this denial notification is not provided, the NICS will assume that the transfer was allowed and will destroy its records regarding the transfer in accordance with the procedures detailed in § 25.8.

(m) The following responses may be provided by a NICS Operator to an FFL who has requested a background check from the NICS:

(1) Proceed response, if no disqualifying information was found in the NICS Index, NCIC or III;

(2) Delayed response, if the NICS has not completed the search of the records in the NICS Index, NCIC, and III. The NICS Operator will provide a "Delayed" message to the FFL, indicating that the firearm transfer should not proceed pending receipt of a NICS response or the expiration of three business days, whichever occurs first; or

(3) Denied response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides reason to believe that receipt of a firearm by the prospective purchaser would violate 18 U.S.C. 922 or state law.

(n) All responses to FFLs will include an NTN, which the FFL is required to record either on the appropriate ATF form or otherwise keep as part of his or her permanent sales records for audit and inspection purposes, under 27 CFR Part 178.124 recordkeeping requirements.

§ 25.7 Querying records in the system.

(a) Authorized agencies may query NICS for specific records by querying on:

- (1) A NICS Record Identifier (NRI);
- (2) The Data Source in combination with Agency Record Identifier (ARI); or
- (3) NTN.

(b) The following search descriptors will be used in a query of the system for purposes of a background check:

- (1) Name;
- (2) Sex; and

(3) Complete date of birth or a unique numeric identifier. Examples of unique numeric identifiers for purposes of this system are: Social Security number (to comply with Privacy Act requirements, Social Security number will not be required by the NICS to perform any background check) and miscellaneous identifying numbers (military number or number assigned by Federal, state, or local authorities to an individual's record). Additional identifiers that may be included in a query are race, height and weight, eye and hair color, alias, place of birth, and state of residence.

§ 25.8 Retention and destruction of records in the system.

(a) The NICS will retain indefinitely NICS Index records which indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law unless such records are canceled by the originating agency. In cases where a firearms disability is only temporary, as defined by 27 CFR 178, the NICS will automatically purge the pertinent record on a specified date as determined by the referenced regulation. Unless otherwise removed, records

contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system. The Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, originating agency identifier (ORI), and inquiry/response data (including the NTN). The NICS will maintain an audit log with records pertaining to background checks. After eighteen months, if the transfer is allowed, all information in the audit log related to the person or the transfer will be destroyed, other than the NTN assigned to the transfer and the date the number was assigned. Audit log records relating to denials will be retained for 10 years, after which time they will be archived to NARA. The NICS will not be used to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922 (g) or (n) of title 18, United States Code or by state law from receiving a firearm.

(1) The Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the audit log by time frame, i.e., by day or month, or by a particular state or agency. The NICS, including the NICS Index Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. This Audit log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(i) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer; and

(ii) All information (regardless of media) contained in the NICS Index Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units servicing FFLs (POCs) will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS which allows a transfer; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained in accordance with state law

§ 25.9 Correction of erroneous system information.

(a) The individual may request the reason for the denial from the agency that conducted the check of the NICS (the "denying agency," which will be either the FBI or the state or local law enforcement agencies servicing the FFLs). The request must be made in writing to the denying agency and must include the unique transaction number (NTN or STN) supplied by the FFL.

(b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. The response should indicate whether additional information, including fingerprints and other supporting documents, is required to support an appeal involving questions of identity, i.e. a claim that the record in question does not pertain to the individual who was denied.

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights have been restored, he or she may make application first to the denying agency, i.e. either the FBI or the state or local law enforcement agencies servicing the FFLs. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual shall so notify the denying agency, which will, in turn, verify the record correction with the originating agency and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the above procedure, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C-3, Clarksburg, West Virginia 26306. Upon receipt of the information, the FBI will investigate the matter by contacting the state or local law enforcement agency that denied the transaction or the agency that contributed the data, and requesting, as appropriate, that the agency so contacted verify that the record in question pertains to the individual who was denied or verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the agency. If the record is corrected as a result of the inquiry, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating

agency, the agency that contributed the record shall correct the data in the NICS and the denying agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. If the appeal is successful and more than thirty (30) days have transpired since the initial check, the FFL must recheck the NICS without a fee before allowing the sale to continue. In cases where multiple disqualifying records are the basis for the denial, the individual must pursue a correction for each record.

(f) An individual may also contest the accuracy or validity of a disqualifying record by bringing an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the firearm transfer be approved.

§ 25.10 Record source categories.

It is anticipated that most records in the NICS Index will be obtained from Federal agencies as required by the Attorney General. It is also anticipated that a limited number of authorized State and local law enforcement agencies will voluntarily contribute records. Information in the NCIC and III systems that will be searched during a background check will be obtained from Federal, State, local and international law enforcement agencies.

§ 25.11 Prohibited activities.

(a) State or local agencies, FFLs, or individuals violating subpart A of these regulations shall be subject to a fine not to exceed \$10,000 and subject to cancellation of NICS inquiry privileges.

(b) Misuse or unauthorized access includes, but is not limited to, the following:

(1) State or local agencies, FFLs, or individuals purposefully furnishing an individual's name with incorrect spelling and/or altering an individual's date of birth to obtain a "Proceed" response, thereby allowing the firearm transfer;

(2) State or local agencies, FFLs, or individuals purposefully using the system to perform a check for unauthorized purposes, e.g. personal or monetary gain; and

(3) Any unauthorized person accessing NICS.

Dated:

Janet Reno

Attorney General



DEPARTMENT OF THE TREASURY
WASHINGTON

OMR

99-154-D

MEMORANDUM FOR NEAL COMSTOCK
EXECUTIVE SECRETARY

FROM: JOHN P. SIMPSON 
DEPUTY ASSISTANT SECRETARY
(REGULATORY, TARIFF AND TRADE ENFORCEMENT)

SUBJECT: Implementation of Public Law 103-159,
Relating to the Permanent Provisions of
the Brady Handgun Violence Prevention Act
(93-057P)

Attached for transmission to the Federal Register is a notice of proposed rulemaking (NPRM) relating to 27 CFR Parts 178 and 179.

On November 30, 1993, Public Law 103-159 was enacted, amending the Gun Control Act of 1968 (GCA). Title I of Pub. L. 103-159, the "Brady Handgun Violence Prevention Act" ("Brady"), amended the GCA to provide in those States that did not already require a background check, a 5-day waiting period before a licensed firearms importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to a nonlicensed individual (interim provision). The waiting period provisions of the law became effective on February 28, 1994, and will cease to apply on November 30, 1998.

Brady also provides for the establishment of a national instant criminal background check system (NICS) that a firearms licensee must contact before transferring any firearm to nonlicensed individuals (permanent provision). Brady requires that NICS be established not later than November 30, 1998. NICS will advise the licensee whether the system maintains any information on whether receipt or possession of a firearm by a prospective purchaser would violate Federal or State law.

In general, the permanent provision of Brady, 18 U.S.C. 922(t), makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a firearm to a nonlicensed individual (transferee), unless-- (1) before the completion of the transfer, the licensee contacts the national instant background check system; (2) the system provides the licensee with a unique identification number signifying that transfer of the firearm would not be in violation of law OR 3 business days

(meaning a day on which State offices are open) have elapsed from the date the licensee contacted the system and the system has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and (3) the licensee verifies the identity of the transferee by examining a valid identification document containing a photograph of the transferee. Brady also provides certain exceptions to NICS, including if the transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which meets the conditions specified in the statute.

The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing these proposed regulations to implement the permanent provisions of Brady. These proposed regulations require that a licensed firearms importer, manufacturer, or dealer contact NICS before transferring any firearm to a nonlicensed individual. If receipt of the firearm would not violate the law, NICS will assign a unique identification number to the transfer and provide the licensee with the number. The licensee will record the number on the firearms transaction form, ATF Form 4473.

ATF is also proposing to amend the regulations to solicit additional optional information about the purchaser on Form 4473, including the transferee's social security number and alien registration number (if applicable), to facilitate the transfer of a firearm. The Bureau believes this information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law.

Upon publication in the Federal Register, a press release will be issued. Copies of the NPRM will be available to any interested person.

We believe this document warrants the attention of the Secretary or Deputy Secretary, and we recommend that you bring it to their attention.

Recommendation:

Approve for transmittal to the Federal Register.

_____ Approve _____ Disapprove _____ Let's Discuss

Reviewer

Comments: _____

Attachment

(Billing Code: 4810-31-P)

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[Notice No.]

RIN: 1512-AB²³~~22~~

Implementation of Public Law 103-159, Relating to the
Permanent Provisions of the Brady Handgun Violence
Prevention Act (93R-057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF),
Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to implement the provisions of Public Law 103-159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. These proposed regulations implement the law by requiring, with some exceptions, a licensed firearms importer, manufacturer, or dealer to contact the national instant criminal background check system (NICS) before transferring any firearm to an unlicensed individual. NICS will advise the licensee whether the system contains any information that the prospective purchaser is prohibited by law from possessing or receiving a firearm.

DATES: Written comments must be received on or before
[90 days from the date of publication in FEDERAL REGISTER].

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. .

FOR FURTHER INFORMATION CONTACT: James P. Ficareta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230) .

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44).. Title I of Public Law 103-159, the Brady Handgun Violence Prevention Act (the "Brady law"), imposed as an interim measure a waiting period of 5 days before a licensed importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to an unlicensed individual. The waiting period applies only in States without an acceptable alternate system of conducting background checks on handgun purchasers. The interim provisions of the Brady law, 18 U.S.C. 922(s), became effective on February 28, 1994, and cease to apply on November 30, 1998.

Permanent Provisions of the Brady Law

The permanent provisions of the Brady law provide for the establishment of a national instant criminal background

check system ("NICS") that a firearms licensee must contact before transferring any firearm to unlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law will apply to all firearms. Furthermore, while there is no five-day waiting period under the permanent provisions, the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation of law.

National Instant Criminal Background Check System

The Brady law requires that the Attorney General establish a permanent national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information on whether receipt of a firearm by a prospective transferee would violate Federal or State law. The law requires that the permanent system be established not later than November 30, 1998.

Upon establishment of the system, the Attorney General is required to notify each firearms licensee and the chief law enforcement officer of each State of the existence and purpose of NICS and the means to be used to contact NICS.

Beginning on the date that is 30 days after the Attorney General notifies firearms licensees that NICS is established, the permanent provisions of Brady, 18 U.S.C. 922(t), become effective.

Statutory Requirements

Section 922(t) generally makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a firearm to an unlicensed individual (transferee), unless--

1. Before the completion of the transfer, the licensee contacts the national instant background check system;
2. The system provides the licensee with a unique identification number signifying that transfer of the firearm would not be in violation of law OR 3 business days (meaning a day on which State offices are open) have elapsed from the date the licensee contacted the system and the system has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and
3. The licensee verifies the identity of the transferee by examining a valid identification document containing a photograph of the transferee.

Penalties for Noncompliance

Section 922(t) provides that a firearms licensee who transfers a firearm and knowingly fails to comply with the

requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, may be subject to license suspension or revocation and fined not more than \$5,000.

Proposed Regulations

ATF is proposing regulations to implement the requirements placed on firearms licensees by section 922(t). The Department of Justice will be promulgating regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system, and appeal procedures for individuals who are determined by NICS to be ineligible to purchase a firearm. Accordingly, these issues are not addressed in the ATF regulations.

Time of NICS Check

The Brady law generally provides that a licensed importer, manufacturer or dealer may not transfer a firearm to an unlicensed individual unless, before the completion of the transfer, the licensee contacts NICS. It is clear that the law contemplates that the licensee should contact NICS immediately prior to the transfer of a firearm. ATF recognizes that there may be circumstances in which there is an unavoidable delay between the NICS check and the transfer of the firearm. For example, many States have waiting periods for the sale of certain types of firearms. Nonetheless, ATF believes that the regulations should impose

a time frame beyond which a licensee can no longer rely upon a "stale" NICS check in transferring a firearm.

In accordance with the above, ATF is proposing to amend § 178.124(c) to require licensees to contact NICS after the transferee has executed the firearms transaction record, Form 4473. ATF is also proposing to amend § 178.102(c) to provide that a licensee may not rely upon a NICS check that was conducted more than 30 calendar days prior to the transfer of the firearm. This will ensure that licensees are not relying upon "stale" NICS checks. Finally, the proposed regulations clarify that a separate NICS check must be conducted for each separate transaction. While an individual may purchase several firearms in one transaction, a licensee must initiate a separate NICS check for each separate transaction. Examples are provided in section 178.102(c) of the proposed regulations.

Section 922(t)(2) provides that if NICS notifies the licensee that the information available to the system does not indicate that the prospective purchaser's receipt or possession of the firearm would violate the law, the system will assign a unique identification number to the transfer and provide the licensee with the number. The Department of Justice has advised ATF that NICS will also provide licensees with a unique identification number in the event that the transfer is denied or delayed by NICS. Accordingly, the proposed regulations require that licensees

record any responses received from the system, in addition to the unique identification number (if any) provided by the system, on the firearms transaction record (ATF Form 4473). The proposed regulations also require that licensees maintain a copy of each Form 4473 for which a NICS transaction number has been received, regardless of whether the transfer of the firearm was completed. This will enable ATF to determine compliance with the law by licensees and purchasers.

Exceptions to NICS

The statute provides the following exceptions to the national instant background check system:

1. The transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which allows the transferee to possess or acquire a firearm, and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that available information does not indicate that possession of a firearm by the transferee would be in violation of the law;
2. Purchases of firearms which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms); or
3. Purchases of firearms for which the Secretary has certified that compliance with NICS is impracticable

because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Proposed regulations which implement these provisions of the law are set forth in §§ 178.102(d), 178.131, and 178.150.

It should be noted that State "instant check" and "point of sale check" systems will not qualify as alternatives to the NICS check required by the permanent provisions of the Brady law. Therefore, NICS checks must be conducted on firearms purchasers in those States.

With respect to purchases of firearms which are subject to the National Firearms Act, ATF is proposing to amend § 179.86 to provide that in addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director must contact NICS.

Permits

The Brady law provides that a licensee is not required

to initiate a NICS check where the purchaser presents a permit that allows the purchaser to "possess or acquire a firearm." The proposed regulations clarify that this exception includes permits to carry concealed weapons as well as permits specifically authorizing the purchase of a firearm.

For purposes of the permanent provisions of the Brady law, it is irrelevant whether the permit covers the type of firearm that is being purchased. For example, a licensee need not initiate a NICS check where an individual who wishes to purchase a rifle presents a handgun permit, as long as that permit meets all the requirements of the Brady law. The critical issue is not the type of firearm for which the permit was issued, but whether the State has conducted a background check on that individual to ensure that the individual is not prohibited from possessing a firearm. Of course, all such transactions must still comply with State law.

NICS Checks in Conjunction With the Issuance of Permits

The law provides that the permit must have been issued not more than 5 years earlier by the State in which the transfer is to take place. Furthermore, the permit is only a valid alternative under the Brady law if the law of the State provides that such a permit is to be issued only after

an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.

In construing the language of the statute, it is ATF's position that as of November 30, 1998, "the information available to" State officials will include the NICS database. Accordingly, the proposed regulations provide that permits issued on or after November 30, 1998, will be valid alternatives under the permanent provisions of the Brady law only if the State officials conduct a NICS check on all permit applicants. It should be noted that the NICS database will provide a more extensive background check of the purchaser than other record systems containing only criminal records. NICS will include records from the Defense Department concerning dishonorable discharges, records from the State Department regarding individuals who have renounced United States citizenship, and other information not available in criminal records.

Permits Issued to Persons Prohibited Under Federal Law

The proposed regulations provide that a permit would only be a valid alternative if the issuing State verifies that possession of a firearm by the permittee would not be in violation of Federal, State or local law. There may be

States that would issue a permit to individuals (such as persons who have renounced United States citizenship or persons convicted of a misdemeanor crime of domestic violence) even though these individuals are subject to Federal firearms disabilities. If a State does not disqualify all individuals prohibited under Federal law, the permits issued by that State would not be accepted as alternatives under the permanent provisions of the Brady law. Prior to the effective date of the permanent provisions of the Brady law, ATF will notify licensees in each State whether or not permits issued by that State will suffice as alternatives under the Brady law.

Pawn Transactions

The permanent provisions of the Brady law apply to any transfer of a firearm by a licensed importer, manufacturer or dealer to a nonlicensee. This includes the redemption of a pawned firearm. It should be noted that the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, amended § 922(s) of the GCA to exempt transactions involving the return of a handgun to the person from whom it was received. Thus, the redemption of a pawned handgun by the person from whom it was received is not subject to the waiting period and background check requirements imposed by the interim provisions of the Brady law. However, no such exemption appears in § 922(t). Thus, the proposed regulations would apply the permanent provisions of the

Brady law to pawn transactions.

Firearms Transaction Record (Form 4473)

In general, the regulations provide that prior to the transfer of a firearm to a prospective purchaser, the buyer must complete, sign, and date a firearms transaction record, Form 4473. The form requests certain information, including the transferee's name, sex, height, weight, race, residence address, date of birth, and place of birth. ATF is proposing to amend the regulations to solicit additional optional information about the purchaser, such as the transferee's social security number and alien registration number (if applicable), to facilitate the transfer of a firearm.

ATF believes this additional information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law. For example, by providing a social security number, the transferee might avoid confusion with a prohibited buyer who has the same name and date of birth as the transferee. This would clearly help expedite the transfer. ATF would note that ATF Form 5300.35, Statement of Intent to Obtain a Handgun (Brady form), currently requests the purchaser's social security number and alien registration number as optional information. Because the NICS check will be based upon information from the Form 4473, the proposed regulations

would not require firearms purchasers to fill out a separate Brady form.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking are in § 178.102, under control number 1512-0520, and have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Other collections of information contained in this notice of proposed rulemaking are in § 178.124(c), with respect to

proposed changes to ATF Form 4473, under control number 1512-0129, and will be submitted to OMB, and approved by OMB, prior to publication of final regulations in the Federal Register.

Comments on the collections of information in § 178.102 should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed

regulation are in 27 CFR 178.102. This information is required to implement the provisions of Public Law 103-159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The collections of information are required to ensure compliance with the law. The likely respondents and/or recordkeepers are individuals and businesses.

Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated number of respondents: 6,000,000;

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be

included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, 27 CFR Parts 178 and 179 are amended as follows:

Part 178--COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-930; 44 U.S.C. 3504(h).

Par. 2. Section 178.11 is amended by adding a definition for "NICS" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

NICS. The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

* * * * *

Par. 3. Section 178.96 is amended by revising the first sentence in paragraph (b), and by revising paragraph (c) to read as follows:

§ 178.96 Out-of-State and mail order sales.

(a) * * *

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124.

* * *

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun which is a curio or relic, to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if--

(i) The purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale and delivery of the rifle or shotgun;

(ii) The licensed importer, licensed manufacturer, or licensed dealer complies with the provisions of § 178.102;

(iii) The purchaser furnishes to the licensed importer, licensed manufacturer, or licensed dealer the firearms transaction record, Form 4473, required by § 178.124; and

(iv) The sale, delivery and receipt of the rifle or shotgun fully comply with the legal conditions of sale in both such States.

(2) For purposes of paragraph (c) of this section, any

licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

Par. 4. Section 178.97 is revised to read as follows:

§ 178.97 Loan or rental of firearms.

(a) A licensee may loan or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: Provided, That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), the licensee complies with the requirements of § 178.102, and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part.

(b) A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, the licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this temporary furnishing of firearms for use on premises on which such an activity is conducted.

Par. 5. Section 178.102 is revised to read as follows:
§ 178.102 Sales or deliveries of firearms on and after
November 30, 1998.

(a) Background check. Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless--

(1) Before the completion of the transfer, the licensee has contacted NICS;

(2)(i) NICS informs the licensee that it has no information that receipt of the firearm by the transferee would be in violation of Federal or State law and provides the licensee with a unique identification number; or

(ii) Three business days (meaning days on which State offices are open) have elapsed from the date the licensee contacted NICS and NICS has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

(3) The licensee verifies the identity of the transferee by examining the identification document presented in accordance with the provisions of § 178.124(c).

(b) Unique identification number. In any transaction for which a licensee receives a unique identification number from NICS, such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained

in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

(c) Time limitation on NICS checks. A NICS check conducted in accordance with paragraph (a) of this section may only be relied upon by the licensee for use in a single transaction, and for a period not to exceed 30 calendar days. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.

Example 1. A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However, the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

Example 2. A purchaser completes the Form 4473 on January 25, 1999, and arranges for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information

available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee completes Section B of the Form 4473, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

Example 3. A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date, Section B of the Form 4473 is completed by the licensee, and the firearm is transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

(d) Exceptions to NICS check. The provisions of paragraph (a) of this section shall not apply if--

(1) The transferee has presented to the licensee a permit or license that--

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law: Provided, That on and after November 30, 1998, the information available to such official includes the NICS;

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(3) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) The document referred to in paragraph (d)(1) of this section (or a copy thereof) shall be retained or the required information from the document shall be recorded on the firearms transaction record in accordance with the provisions of § 178.131.

Par. 6. Section 178.124 is amended by revising paragraph (c), by removing "paragraph (c)(1)(ii)" in paragraphs (d) and (e) and adding in its place "paragraph (c)(3)(iii)", and by revising the first sentence in

paragraph (f) to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c)(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; whether the transferee is a citizen of the United States; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number and alien registration number (if applicable). Such information may help avoid the possibility of the transferee being misidentified as a felon

or other prohibited person.

(3) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. After the transferee has executed the Form 4473, but before transferring the firearm described on the Form 4473, the licensee:

(i) Shall comply with the requirements of § 178.102 and record on the form the date on which the licensee contacted the NICS, as well as any response provided by the system, including any identification number provided by the system;

(ii) Shall verify the identity of the transferee by examining the identification document (as defined in § 178.11) presented, and shall note on the Form 4473 the type of identification used;

(iii) Shall, in the case of a transferee who is an alien legally in the United States, cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located, and shall note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm; and

(iv) Shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm.

* * * * *

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located. * * *

* * * * *

Par. 7. Section 178.124a is amended by removing the period at the end of the introductory text of paragraph (e) and adding in its place a colon.

Par. 8. Section 178.125(e) is amended by revising the text following the eighth sentence to read as follows:

§ 178.125 Record of receipt and disposition.

* * * * *

(e) Firearms receipt and disposition by dealers.

* * * The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record,

Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically, and the identification number (if any) provided by the NICS. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD										
Description of firearm					Receipt		Disposition			
Manu- factur- er and/ or Im- porter	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if Forms 4473 filed numerically	Identifi- cation No. provided by NICS (if any)

* * * * *

Par. 9. Section 178.129 is amended by revising paragraph (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), by adding new paragraph (c), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.129 Record retention.

* * * * *

(b) Firearms transaction record. Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has received a transaction number from NICS for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record the transaction number on the Form 4473, and retain the Form

4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): Provided, That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms. Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512-0520, 1512-0006, and

1512-0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512-0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129)

Par. 10. Section 178.130 is removed.

Par. 11. Section 178.131 is revised to read as follows:

§ 178.131 Firearms transactions not subject to a NICS check.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a firearm is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the NICS check prescribed by § 178.102(a) shall maintain the records required by paragraph (a) of this section.

(2) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(1), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of

the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

Par. 12. Section 178.150 is revised to read as follows:

§ 178.150 Alternative to NICS in certain geographical locations.

(a) The provisions of § 178.102(d)(3) shall be applicable when the Director has certified that compliance with the provisions of § 178.102(a)(1) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written

request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

(c) For purposes of this section and § 178.129(c), the "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

Part 179--MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN
OTHER FIREARMS

Par. 13. The authority citation for 27 CFR Part 179 continues to read as follows:

AUTHORITY: 26 U.S.C. 7805.

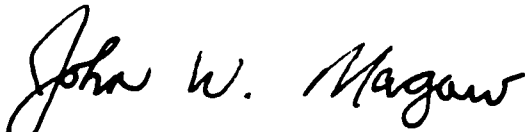
Par. 14. Section 179.86 is amended by adding a sentence at the end of the section to read as follows:

§ 179.86 Action on application.

* * * In addition to any other records checks that may be conducted to determine whether the transfer,

receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National Instant Criminal Background Check System.

Signed: DEC 31 1997.

A handwritten signature in cursive script that reads "John W. Magaw".

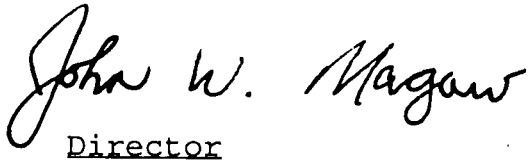
Director

Approved:

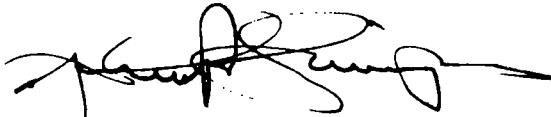
Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement)

receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National Instant Criminal Background Check System.

Signed: DEC 31 1997


Director

Approved: January 16, 1998



Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement)

DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE
January 14, 1998

Contact: Beth Weaver, Treasury (202) 622-2960
Gregory King, Justice (202) 514-2008
Royce Griffin, Arkansas AG (501) 682-2007

BRADY BACKGROUND CHECKS TO RESUME NATIONWIDE

Treasury Secretary Robert E. Rubin and Attorney General Janet Reno announced today that once again Brady background checks on prospective handgun purchasers will be conducted in every state in the nation.

Arkansas Attorney General Winston Bryant also announced that the State of Arkansas rejoins today the vast majority of jurisdictions across the country in voluntarily conducting background checks, which the State had discontinued following the U.S. Supreme Court's ruling on Brady Law. The Court ruled that state and local law enforcement officials could not be required to conduct such checks.

"I am very pleased that Arkansas has reinstated background checks on handgun purchasers," said Secretary Rubin. "This public safety measure is absolutely critical to saving lives and preventing crime."

"Background checks save lives, and that's why, once again, they are being done in every state" said Attorney General Reno. "The overwhelming majority of affected law enforcement agencies have responded to the President's request to continue doing background checks voluntarily."

Arkansas is one of 23 states affected by the Supreme Court's decision last June that struck down the Brady Act's requirement that state or local officials conduct background checks on prospective handgun purchasers. It is also 1 of 7 states for which the responsibility for background checks lies at the state rather than local level.

In July, 1997 in wake of the Court's decision, Rubin and Reno met with national law enforcement leaders, to urge state and local police to continue to conduct background checks on prospective handgun purchasers.

Because of the Court's ruling, the Arkansas State Police immediately discontinued background checks on handgun buyers. However, virtually all of the law enforcement agencies in the other 22 states that had been conducting checks prior to the Court's decision continued to do them voluntarily.

RR-2157

For press releases, speeches, public schedules and official biographies, call our 24-hour fax line at (202) 622-2040



The only other exception was Ohio, which initially responded to the Court's decision by continuing background checks only on purchasers who consented to one. Last month, Rubin and Reno entered into a voluntary arrangement with the Ohio Attorney General that resulted in full reinstatement of background checks on every prospective Ohio handgun purchaser.

To facilitate the resumption of background checks in Arkansas, the Bureau of Alcohol, Tobacco and Firearms (ATF) has designated the Arkansas Attorney General as a "Chief Law Enforcement Officer" under the Brady Act. Although the Brady Act provides for a pre-purchase waiting period of up to 5 days to allow a background to be conducted, Attorney General Bryant's office expects that, in most cases, the check will be completed within 1 business day of the time the office receives notice of the proposed gun sale. No fee will be charged for the background check.

"I am responsible for protecting the people of Arkansas, and that's why I've requested authority to conduct background checks" said Attorney General Bryant. "Under our procedure, law abiding citizens should be less inconvenienced than before, so that convicted felons and other prohibited persons are prevented from purchasing handguns."

In the event the background check yields information indicating that a prospective handgun purchaser may be disqualified by law from receiving or possessing a firearms, the Arkansas Attorney General will notify local law enforcement officials and prosecutors about the possibility that criminal conduct may be involved.

"An ATF review indicates that with Arkansas on board, nearly 100 percent of the United States population now lives in a jurisdiction where law enforcement performs background checks on handgun purchasers," Rubin said.

According to Department of Justice surveys, background checks of the kind provided for in the Brady Act have prevented firearm sales to over 300,000 felons, fugitives and others prohibited from receiving or possessing them. While in effect, background checks in Arkansas blocked over 1,500 criminals and other prohibited persons from illegally obtaining handguns from firearms dealers.

Date: 12/18/97 Time: 15:16

FPolice capture 2,200 fugitives after checking food stamp rolls

WASHINGTON (AP) Police in 24 cities captured almost 2,200 fugitives after checking food stamp rolls, a sweep that will save taxpayers \$3.1 million, administration officials said Thursday.

Vice President Al Gore announced that the computer cross-matching program, made legal by last year's welfare reform law, will be expanded nationwide in the coming months. ``We want to provide a safety net for the needy, not a hammock for fugitives and felons,''' Gore said at a White House event attended by state and local police officials.

Before the new welfare law, privacy protections made it illegal for police to check food stamp rolls, and fugitives were not specifically prohibited from obtaining the benefits.

That was changed effective in August 1996. The Agriculture Department's inspector general then launched ``Operation Talon'' 11 months ago in cooperation with specific local police departments. The first 85 fugitives were arrested in June in Louisville and Lexington, Ky.

Some of the roundups were elaborate sting operations. In Chicago, Cook County Sheriff Michael Sheahan said his officers set up a fake ``government consulting firm'' to contact fugitives and tell them their food stamp benefits would run out unless they came down for an interview.

``Once the offenders believed their benefits were in jeopardy, the calls started pouring in,''' Sheahan said.

The fictitious firm's name was ``Tsera & Marant,''' a play on the words ``arrest warrant.''' Some fugitives even accepted free rides in what turned out to be a police van that took them straight to jail.

The Chicago sweep was responsible for 470 of the 2,199 arrests made under the program. Among those arrested were 19 people accused of murder or attempted murder, 10 fleeing child molestation charges and seven accused of rape. More than 600 of the cases involved drugs.

``We knew it would work,''' Gore said. ``They want that address to be honest when it is put on an envelope with money in it.'''

Agriculture Secretary Dan Glickman said the arrests saved taxpayers \$3.1 million, assuming each fugitive obtained food stamps for a full year. More importantly, he said, the program helps keep public ``confidence and trust'' in the \$1.9 billion program that is helping feed 20.1 million Americans this year.

APNP-12-18-97 1523EST



Daily Sections

- Nation-World
- Arkansas Local
- Editorial Voices
- Sports
- Business
- Features-Style
- Classified Ads
- Acrobat PDFs

Weekly Sections

- Business Matters
- Business & Tech
- Weekend Section

Other Sections

- Previous Features
- Photo Gallery
- Useful Links

Help

- Info & E-mail
- Site Map

Front Page

- Nation-World
- Arkansas-Local
- Editorial-Voices
- Sports
- Business
- Features-Style
- Classified Ads
- Acrobat PDFs
- Business Matters
- Business & Tech
- Weekend Section
- Previous Features
- Photo Gallery
- Useful Links
- Info & E-mail
- Site Map

RETURN to Arkansas Section

Pasts figure again in bid to buy a gun

RACHEL O'NEAL
ARKANSAS DEMOCRAT-GAZETTE

After a seven-month hiatus, the state will resume criminal background checks for handgun buyers. Attorney General Winston Bryant's office is taking over the checks that Gov. Mike Huckabee's administration declined to make.

The development ends Arkansas' distinction as the only state not looking into the backgrounds of potential handgun buyers.

Before Wednesday, Bryant had not announced that he was taking steps to get gun-buyer background checks reinstituted in Arkansas. On Dec. 29, he asked the federal Bureau of Alcohol, Tobacco and Firearms for permission to conduct the checks. It gave its approval Jan. 5. Starting Jan. 22, Bryant's office will do the checks.

"Arkansas needs to join the rest of the nation and ensure that felons don't purchase handguns," Bryant said Wednesday. "We need to have procedures in place to prevent felons from illegally purchasing handguns in Arkansas."

In June 1997, Col. John Bailey, commander of the Arkansas State Police, decided to stop the state police background checks, and Huckabee supported his decision.

The checks were being done under a mandate imposed on the states by a federal statute known as the Brady Law. Bailey stopped them after the U.S. Supreme Court ruled the mandate unconstitutional.

The high court did not prohibit states from voluntarily doing the checks.

Bryant said his office will be responsible for the checks until a national instant background check system is in place. That system, called for by the Brady Law, is to be complete in November.

Saying the background checks would subject his agency to "unwarranted and expensive litigation," Bailey had defended his decision.

State police spokesman Bill Sadler said Wednesday that Bailey "has never been opposed to the concept" of background checks but had concern about the legality of doing them.

Sadler also said there were questions about whether the state police could continue to charge \$15 for processing the background checks before the federal mandate was struck down.

"It's not an issue of us being last in anything," Sadler said. "It's an issue of whether Arkansas was placing itself in legal jeopardy ... in the arena of conducting [background] checks and charging a fee for that check."

Bryant said his office will do the checks without charging a processing fee. He will not hire any more employees to run the program. Instead, he is reshuffling duties among his existing staff.

T.J. Farley, an investigator with the attorney general's Medicaid Fraud Control Unit, will direct the work, with two assistants, who have been reassigned from within the office.

In his request to the federal bureau Bryant asked to be designated the state's chief law enforcement officer for the purposes of supervising the

checks. He based his request on a 1945 case where the state Supreme Court found that the "common law duties of the attorney general, as chief law officer of the state, when not restricted or limited by statute, are very numerous and varied."

Bryant also wrote that his office has statewide jurisdiction and has "the ability, desire, and responsibility to protect the public's safety."

John Magaw, director of the federal bureau, said in a Jan. 5 letter that the bureau had recognized the Arkansas State Police in 1994 as the appropriate chief law enforcement officer.

"However, we understand that there is some question about the authority of the State Police to conduct background checks under the Brady Law," Magaw wrote.

He also wrote that it has been his agency's policy to "allow the law enforcement community in each state to determine who should serve" as chief law enforcement officer. Therefore, Magaw agreed to recognize Bryant as Arkansas' chief law enforcement officer.

Federal law prohibits gun purchases by people convicted of or indicted on felony charges; people with mental illnesses; people dishonorably discharged from the military; fugitives; and illegal aliens. The U.S. Supreme Court left intact the Brady Law's five-day waiting period for gun purchases.

Huckabee has called the Brady Law's background checks and waiting period "basically an imposition upon law-abiding citizens."

When asked Wednesday if he supports Bryant's decision to take over the checks, Huckabee said "if he wants to do it, that's his prerogative."

Huckabee spokesman Rex Nelson said Huckabee supports the national instant background check system. He said Huckabee has concerns about whether the national system will be ready by November.

"It's not a secret that he's not a fan of the waiting period," Nelson said. "We are pushing for the speedy implementation of a instant check system."

Bryant said he believes his office will be able to accept or reject an application within one business day. Under the new process, gun dealers will fax the applications to the attorney general's office, which will review the information and run a check with the National Crime Information Center, a database containing criminal records.

Before the state police discontinued the checks, more than 400 handgun applications were rejected, Bryant said.

Using those figures, Bryant said that up to 200 people who should have been rejected may have been allowed to purchase handguns during the period that the state did not have a background check system.

"I am very pleased that Arkansas has reinstated background checks on handgun purchasers," said Treasury Secretary Robert E. Rubin. "This public safety measure is absolutely critical to saving lives and preventing crimes."

Sarah Brady, chairman of Handgun Control Inc., also applauded Bryant's decision. The group is a gun control lobbying organization.

The law is named after her husband, who was wounded in an attempt to assassinate President Reagan.

"We hope Arkansas will never again allow criminals to slip through a common-sense safety net because of political or ideological considerations," Brady said.

Last year, Bryant's office initially advised the state police that continuing the checks could lead to lawsuits over illegal exaction if the state charged the \$15 after the U.S. Supreme Court ruling.

In an attorney general's opinion issued later, Bryant found that state law allowed the background checks.

Bryant said Wednesday that Rick Hogan, a staff attorney assigned to the state police, had initially advised Bailey that the background checks could lead to legal problems. But Bryant said after exploring the issue, he found that Hogan's initial assessment was wrong.

Hogan now works for the state Department of Health.

Information for this article was contributed by The Associated Press.

This article was published on Thursday, January 15, 1998

RETURN to Arkansas Section

Copyright 1998, Little Rock Newspapers, Inc. All rights reserved.

This document cannot be reprinted without the express written permission of Little Rock Newspapers, Inc.