FOIA Number: 2009-1305-F

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OA/ID Number:	18931
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Folder Title:
Brady Fee/NICS [National Instant Criminal Background Check System] [1]

Stack:	Row:	Section:	Shelf:	Position:
S	98	2	4	2

www.gunowners.org
Aug 1998

While Congress Takes Break, it's Time for Gun Owners to Work -- Encourage Gingrich to keep Smith Anti-Brady amendment

by Gun Owners of America
8001 Forbes Place, Suite 102, Springfield, VA 22151
(Wednesday, July 22, 1998)

ACTION: Send the pre-written letter (found below) to Rep. Newt Gingrich asking him to exert his power as House Speaker to make sure the Smith Anti-Tax and Registration amendment remains word-for-word as passed by the Senate. A conference committee will soon begin ironing out the differences between the House and Senate versions of the Commerce-State-Justice appropriations bill. We need to make sure the Smith amendment remains in the final bill that is sent to the President's desk. (By the way, since Rep. Gingrich has not ruled out a run for the Presidency, your input-- no matter where you live-- should carry great weight with him.) You can fax Mr. Gingrich at 202-225-4656, or call him at ph: 202-225-4501. E-mail: georgia6@mail.house.gov

(Monday, August 10, 1998) -- You will recall that in the past few weeks, Gun Owners of America has kept you up-to-date on Senator Smith's plans to shackle the FBI and its attempts to register and tax gun owners. GOA activated its members and generated thousands of postcards into the Senate. Another flood of faxes and phone calls poured into the Senate after GOA issued a grassroots alert before the Smith vote.

Sen. Smith praises GOA members for their hard work

Subsequently, the Smith "Anti-Brady" amendment overwhelmingly passed (69-31) as a rider to the Commerce-State- Justice appropriations bill.

Senator Smith lauded the members of Gun Owners of America after the vote, and told GOA Executive Director, Larry Pratt: "Your leadership was essential in marshalling the grassroots support in favor of this amendment. When it really counted and I needed help, Gun Owners of America was there fighting for my amendment."

Smith concluded by telling Pratt that, "You and your members are great patriots. I could never have done this without your help!"

Indeed, gun owners won a tremendous victory in the Senate. And Sen. Smith was not the only one taking notice. One of the newspapers of record in Washington, D.C.-- *The Hill* newspaper (July 29, 1998)-- credited all of you with flooding the Senate in favor of the pro-gun agenda:

> Lobbying on the [legislation] was intense, and it continues. The Gun Owners of America's 200,000 grassroots members covered Hill offices with phone calls, faxes and e-mails [right before the vote].

House and Senate conferees to determine fate of the Smith "Anti-Brady" amendment

As mentioned above, the Smith amendment will soon be going to a conference committee. So we need you to send faxes and e-mails to the legislators on the conference committee. Ask them to vote "NO" on the Commerce-State-Justice bill if any part of the Smith language has been watered down or removed. Here is a partial list of the conferees:

Legislator	Phone/Fax
Sen. Campbell (CO)	202-224-5852 / 224-1933
Sen. Domenici (NM) senator_domenici@domenici.senate.gov	202-224-6621 / 224-7371
Sen. Gregg (NH) mailbox@gregg.senate.gov	202-224-3324 / 224-4952
Sen. Hollings (SC) http://www.senate.gov/~hollings/webform.html (web-based constituent response form)	202-224-6121 / 224-4293
Sen. Hutchison (TX) senator@hutchison.senate.gov	202-224-5922 / 224-0776
Sen. McConnell (KY) senator@mcconnell.senate.gov	202-224-2541 / 224-2499
Sen. Stevens (AK) senator_stevens@stevens.senate.gov	202-224-3004 / 224-2354
Rep. Livingston (LA)	202-225-3015 / 225-0739
Rep. Mollohan (WV)	202-225-4172 / 225-7564
Rep. Rogers (KY)	202-225-4601 / 225-0940

Send the first letter below to Newt Gingrich asking him to fight for the Smith Anti-Brady amendment in the conference committee. The e-mail address for Rep. Gingrich is georgia6@mail.house.gov while the fax number is 202-225-4656.

And, if you are a constituent of one of the Appropriations Committee members (listed above) send the second letter to him or her via fax or e-mail. Consider also meeting with your legislator in the district while he or she is at home over the August recess.

------------- Clip to fax or e-mail ---------------

Dear Mr. Gingrich:

In July, Senator Smith added an amendment (which protects my rights) to the Commerce-State-Justice appropriations bill. Without his pro-gun language, the FBI will begin registering and taxing gun owners. It would be outrageous if the FBI succeeded in their plans!

Please use your power as House Speaker to ensure the Smith language remains intact!

I especially appreciate the language allowing private citizens to sue the FBI if they violate the Smith provision. I realize that the Speaker does not normally vote on legislation. However, should you happen to vote on this bill, please vote "NO" if any part of the Smith language has been watered down or removed. While Gun Owners of America will be keeping me up-to-date on this issue, please let me know what you intend to do. Thank you.

Sincerely,

____

Send this to members of the Appropriations Committee listed above

------------- Clip to fax or e-mail ---------------

Dear

As you are probably aware, Senator Bob Smith (R-NH) added a pro-gun amendment as a rider to the Commerce-State- Justice bill (S. 2260). The FBI's plan to register and tax gun owners is simply outrageous. They definitely need to get their wings clipped.

As a member of the Appropriations Subcommittee, your continued support is needed to keep the Smith language intact!

I especially appreciate the language allowing private citizens to sue the FBI if they violate the Smith provision. Please vote "NO" on this bill if any part of the Smith language has been watered down or removed. While Gun Owners of America will be keeping me up-to-date on this issue, please let me know what you intend to do. Thank you.

Sincerely,

Up to Home

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International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314-2357
Phone: 703/836-6767; 1-800/THE IACP
Fax: 703/836-4543
Cable Address: IACPOLICE
Web address: www.theiacp.org

August 5, 1998

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the International Association of Chiefs of Police, I am writing to express our concern over two issues related to the implementation of the National Instant Check Background (NICS) System. Specifically, IACP is concerned over recent developments regarding fees for use of the system and the retention of records that are generated as a result of queries to the system.

The IACP has long held that the cost of any background check system for firearm purchasers should be born by the gun purchaser. To require law enforcement agencies, local, state or federal government to bear the cost of operating this vital and necessary system will deprive law enforcement agencies of resources that can be put to greater use. As the transition to the National Instant Check Background System is completed, IACP believes it is vital that the FBI or those states who serve as points of contacts for the NICS system be allowed to assess a reasonable fee for background checks.

The IACP also strongly believes that the FBI must be allowed to retain the records of background checks performed for a reasonable and uniform length of time. Among other benefits this will provide to law enforcement, the retention of these records will allow the FBI to perform audits of the requests being made and thereby safeguard the integrity of the NICS system and protect the privacy of the American public.

The experience of the last five years has clearly demonstrated the value of performing background checks in keeping guns out the hands of those who should not have them. As the transition to the NICS system is completed, it is imperative that we ensure that no factor be allowed to interfere with its efficient and effective operation.

Please let me know if I can be of further assistance to you.

Thank you for your support in this matter.

Sincerely,

Bobby D. Moody
President

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 6, 1998

PRESS BRIEFING BY
DOMESTIC POLICY ADVISER BRUCE REED
AND
SPECIAL ASSISTANT FOR DOMESTIC POLICY JOSE CERDA

The Briefing Room

1:42 P.M. EDT

MR. LOCKHART: Hello, everybody. Welcome. Before Barry and P.J. and the rest come down, the President's Domestic Policy Adviser, Bruce Reed, and Jose Cerda, who is the Special Assistant for Domestic Policy and one of the instrumental people here at the White House in putting the President's crime agenda and the work he's done over the last few years on crime, are here to talk about the President's announcement today on the extension of the Brady Bill.

MR. REED: The President made two announcements today. First, he urged Congress to make the Brady waiting period a permanent requirement before it expires on November 30th of this year. And he strongly opposed efforts by some members of Congress backed by the gun lobby to sabotage the final implementation of the National Insta-Check System under the Brady Bill, with an amendment that passed the Senate that would prohibit the FBI from charging a fee for records checks, would require the FBI to immediately destroy records, and it would permit law suits against the FBI.

Let me explain a little bit about how the Brady Law works, and if you have questions we'll try to answer them. Since the Brady Law went into effect in 1994, in February of 1994, it has stopped 242,000 felons, fugitives, stalkers, and other prohibited purchasers from buying handguns. Twenty-seven states have their own background check or permit systems and are exempt from the Brady Law requirements. In the other 23 states, the Brady Law requires gun dealers to notify local law enforcement of every prospective handgun purchaser, and law enforcement has up to five days to run a background check.

On November 30th of this year, this requirement of the Brady Law will sunset and be replaced by a National Insta-Check System for all firearms, not just handguns. Gun dealers will no longer have to check with local law enforcement, and there will be no waiting period whatsoever unless the national system detects a prior arrest that needs to be investigated.

So today the President endorsed legislation sponsored by Congressman Schumer and Senator Durbin that will require gun dealers to check with local law enforcement as well as with the National Insta-Check System and impose a minimum three-day wait for handguns and give law enforcement up to five days, if necessary, to run the background checks.

As I said, he also expressed his strong opposition to an amendment sponsored by Senator Smith of New Hampshire that would prohibit the FBI from charging a fee for background checks, require the FBI to destroy records from clean background checks, and actually establish a federal right to sue the FBI if records are not immediately destroyed, which demonstrates that congressional Republicans don't want to let patients sue HMOs for denying them medical treatment, but are perfectly happy to sue the FBI for trying to keep handguns out of the hands of criminals.

Q What is the fee that the FBI charges for a background check?

MR. REED: I believe it's about $15 a check.

Q Does this affect long guns?

MR. REED: The waiting period does not. It's just handguns.

Q Would this bill apply to gun shows or to private sales of weapons, and is the administration looking at all at any legislative changes that could impose waiting periods or those types of restrictions on private sales?

MR. REED: This only applies to federally licensed gun dealers. So it wouldn't necessarily apply at gun shows. The Treasury Department has been looking into gun shows and has an active effort to crack down on illegal sales, but we're not extending the reach of the Brady Law to those.

Q Do you have any sense of what volume of sales takes place through licensed gun dealers and what volume takes place in other venues -- other legal venues?

MR. CERDA: I do not. I know that the volume that we expect when we move forward with the Insta-Check system is about 7 million sales that we expect to process. I don't know how it divides the way you asked, though.

Q Where is the bill now? Is it in committee?

MR. REED: Yes, it's been introduced; there's been no action.

Q What's the prospect? Do you have any reading on this?

MR. REED: Well, I think that it is an issue that we're going to press hard for this fall. As I said, the waiting period expires on November 30th, so we're going to make a big push. One of the reasons we wanted to do it before Congress gets back is we want to be able to press this issue hard in September. And I think Congressman Schumer and Senator Durbin and other Democrats will be doing the same.

Q Do you think that the NRA is as powerful as it has been -- as influential?

MR. REED: Well, they clearly have a lot of influence over this Congress. We have been able to make a lot of progress over the last five years. The Brady Bill had been kept waiting for seven years before the President signed it into law. We were able to get the assault weapons ban as part of the crime bill. And we've been able to expand the reach of the Brady Bill; for example, it now covers domestic violence offenders as well. So we've had some victories along the way, but unfortunately they have too much sway over this Congress.

Q Congressman Schumer says that there are a lot of moderate Republicans who will support this bill. Why do you think none of them were here today?

MR. REED: I didn't check the list of attendees, but I think that there is a lot of pressure from the Republican leadership not to let gun issues come up. In the Senate, for example, we have been fighting hard to get a vote on whether to extend the Brady Bill to people with juvenile records. And the Republican leadership has consistently stopped us from even getting a vote on that.

So I think that though there is bipartisan support in the country for these kinds of changes and if it ever came to a vote, a number of moderate Republicans would probably join us, they certainly get pressure from their leadership not to do so.

Q Bruce, on the long guns, long guns are not -- were not part of the waiting period, but they are part of the Insta-Check.

MR. REED: That's correct.

Q Now, is that something that was -- that's an expansion of what the original intent of Brady was, is it not?

MR. REED: But that's a requirement that was passed as part of the -- when the Insta-Check system was first envisioned in '93-94.

Q Bruce, what is the White House argument for the FBI holding onto records of gun buyers it checks and finds no reason for them not to have a gun?

MR. REED: Well, what the Smith amendment would do is require the FBI to destroy those records immediately. And the FBI's concern is that they want to be able to audit records periodically to make sure that there aren't fraudulent records coming in. So they will ultimately destroy these records, but if they have to erase records the day after, they would never be able to tell if someone had fraudulently come in two or three times. So it's a -- it is not a privacy issue, it's just an effort to make sure that nobody is gaming the system.

Q Is the Insta-Check system something that will be fully operational on November 30th? I mean, will it -- it is feasible, there's no mechanical problems or --

MR. REED: No, it will be up and ready and we've invested a considerable amount of money in it. So we have a lot of confidence in the Insta-Check system, but the Insta-Check system will not have access to every set of criminal records. For example, it will take a while before every local infraction is immediately getting reported into the national system, and some may take a very long time -- domestic violence records we've only begun to add in the last year. And as Congressman Schumer has pointed out, the reason that it's important to check with local law enforcement is that some misdemeanor convictions -- often including domestic violence or some minor drug offenses -- aren't likely to show up in the national system. So we think it's important to check with the local law enforcement officer to make sure if there's been a very recent infraction or an infraction that might not show up in the national system.

Q Bruce, why do you think, especially now since the incident that happened on the Hill, the fatal shootings, why do you think that Congresspersons, many Congresspersons are not supporting this the way they should, the way the White House feels that they should?

MR. REED: Well, that's a very good question. (Laughter.) I think that it's a tragedy that just a few hours after the services, that the Senate went back and approved an amendment to allow importation of multi-round clips, for example. And I think that the Capitol shooting has focused the nation's attention once again on the importance of gun safety, and the Brady law and this extension that we've proposed are just commonsense measures that there really isn't any good reason for Congress not to support.

Q But wouldn't you think that the White House would use that as a strategy to kind of pressure some of those Congresspeople to push this through faster? I mean, it's a tragic situation, but that kind of validates your point.

MR. REED: Well, I think that we don't want to comment on the current case. Everyone is fully aware of what happened on Capitol Hill. But the most important thing is that we continue to come back and push for these commonsense measures. And I think that the American people have already made up their minds on the issue of gun safety: they support the Brady Bill, they support the assault weapons ban. It's always been a question of translating that broad bipartisan public support into real action here in Congress against some very powerful interests.

Q Just how instant is Insta-Check? Does a gun dealer call a number and run the name by, or do they have a terminal? How long does it take usually?

MR. REED: It's generally envisioned as a phone-in system, so it can be very quick.

Q Minutes?

MR. REED: Just like calling in to check on a credit card, for example.

Q And it's 24 hours, is it on weekends? I mean, does it operate all the time?

MR. CERDA: I'm actually not sure. But it is quite quick. The vast majority of checks we expect to take less than a minute.

Q What does Insta-Check look for?

MR. REED: Do you want to explain the three databases that it checks?

MR. CERDA: There are three major databases that it taps into. First, a newly created NICS database that includes some of the prohibited categories that have been added over time, like domestic violence and others that aren't in current federal databases. And then two key FBI data bases, what is called the III index and the NCIC, that keep most of the records, both federal, state, and local records of felony convictions.

In addition, in some states where we are working directly with the state, Insta-Check will incorporate whatever other state records are available to the state point of contact that would be working with the FBI. The Justice Department estimates that based on all those databases, if we were to do a handgun check today, we would have about 73 percent of all the pertinent records available to us.

Q What kind of data is returned to the gun dealer if there's a hit?

MR. CERDA: There are three simple answers. If there's no hit, it's proceed; if there's a hit, denied. If there's a hit, it is delayed and there is a period of up to three days, without the Schumer-Durbin bill, that they have to clarify the record to see if it is either an indictment or a conviction, or if it's an arrest record that has been cleared.

Q So the gun dealer doesn't get any information on the offense or the conviction or anything --

MR. CERDA: No, no.

Q -- just denied or delay?

MR. CERDA: Exactly, exactly.

Q Is the cost of the check usually passed on to the purchaser? Is that your understanding?

MR. CERDA: I would say that that's up to the gun dealer. The FBI, it's my understanding, does checks for all sorts of other -- day care providers, schools, and others -- and it charges on average a fee of about $15. That's what they hope to do here. I would say it's up to the gun dealer whether they want to pass it on to the purchaser or not.

I would also add that under the current Brady system, states that are doing the checks and local law enforcement officials that are doing the checks, generally, overwhelmingly from the surveys we've done to keep monitoring how Brady is working, do charge fees -- fees anywhere from $5 to $25, depending on the jurisdiction.

Q If an outstanding arrest warrant comes up in the check, are local police informed that this person was at a gun store in your neck of the woods, and you should check it out?

MR. CERDA: Well, I think you're speaking to one of the reasons that we support the Schumer-Durbin bill. There are currently a network of about 5,400 designated law enforcement officials that get the Brady paperwork and have the ability to do whatever check they think is appropriate. Under NICS, which is a good system and we have tremendous confidence in it, they will not continue to get the paperwork as a matter of course and intervene as they see appropriate. So the Schumer-Durbin bill keeps them in the loop, as I like to say, and makes sure that they continue to get the information so that they can act on it if they see any information like what you've noted.

Q Bruce, on another subject to which you are intimately involved, on tobacco, how serious is the latest snag in the state talks? And is the White House doing anything to try and get those going again?

MR. REED: I don't know how serious the snag is. I talked to Christine Gregoire last week, but I haven't gotten a recent update. We support what the attorneys general are trying to do. We supported their state cases and we hope that they will be able to continue to press the tobacco industry for more concessions.

Q The tobacco legislation on the national level, it's dead, right?

MR. REED: Well, we're extremely disappointed that the House Republican leadership decided last week to put this off yet again. We think that there is bipartisan support in Congress for this kind of legislation and that they should bring it to the floor for a debate.

Q Just out of curiosity, going back to the issues, if somebody were to try to purchase a gun and the information came up "deny", what would that person be able to do about it, because you're not telling them why it's been denied, and where would they go, because of the big database?

MR. CERDA: I am not certain what type of appeal process the FBI will have in place. That's something we'd have to check on. Having said that though, I would say that those records that we do

have accessible are very up-to-date and accurate records and records that are used every day for all sorts of law enforcement purposes.

Q But just like a line of credit, sometimes they can screw it up? There's got to be some --

MR. REED: No, I'm sure that NICS will have procedures for checking into it, but keep in mind, the vast majority of these records are -- it's not like you paid your latest bill; it's a conviction that's there. It's not something that you can expunge. What the NICS system does show is that if there is a record that hasn't been cleared yet, it's not apparent whether it's gone. If there has been an arrest, but it hasn't either been an indictment or a conviction, then you get a big question mark on the screen, and they have to inquire further.

THE PRESS: Thank you.

MR. REED: Thank you.

END 1:00 P.M. EDT

Legislative Activities

Senate Roll Call Votes
105th Congress, 2nd Session

U.S. Senate Roll Call Votes
105th Congress - 2nd Session (1998)

as compiled through Senate LEGIS
by the Senate Bill Clerk under the direction of the Secretary of the Senate

Vote Number: 217 **Bill Number**: S.2260
Vote Date: July 21, 1998, 6:01 PM
Amendment Number: S.AMDT.NO. 3234
Title: Smith (NH) Amdt No. 3234
Req. for Majority: 1/2 **Result**: Amendment Agreed to

Available Reports

Vote Summary
Ordered by Senator
Ordered by Vote

Vote Summary

Yea	Nay	Present	No Vote
69	31	0	0

Alphabetical by Senator

Abraham (MI)Yea
Akaka (HI)Nay
Allard (CO)Yea
Ashcroft (MO)Yea
Baucus (MT)Yea
Bennett (UT)Yea
Biden (DE)Nay
Bingaman (NM)Yea
Bond (MO)Yea
Boxer (CA)Nay
Breaux (LA)Yea
Brownback (KS)Yea
Bryan (NV)Nay
Bumpers (AR)Nay
Burns (MT)Yea
Byrd (WV)Nay
Campbell (CO)Yea
Chafee (RI)Yea
Cleland (GA)Nay
Coats (IN)Yea
Cochran (MS)Yea
Collins (ME)Yea
Conrad (ND)Yea
Coverdell (GA)Yea
Craig (ID)Yea
D'Amato (NY)Yea
Daschle (SD)Yea
DeWine (OH)Yea
Dodd (CT)Nay
Domenici (NM)Yea
Dorgan (ND)Yea
Durbin (IL)Nay
Enzi (WY)Yea
Faircloth (NC)Yea
Feingold (WI)Yea
Feinstein (CA)Nay
Ford (KY)Nay
Frist (TN)Yea
Glenn (OH)Nay
Gorton (WA)Yea
Graham (FL)Nay
Gramm (TX)Yea
Grams (MN)Yea
Grassley (IA)Yea
Gregg (NH)Yea
Hagel (NE)Yea
Harkin (IA)Nay
Hatch (UT)Yea
Helms (NC)Yea
Hollings (SC)Yea
Hutchinson (AR)Yea
Hutchison (TX)Yea
Inhofe (OK)Yea
Inouye (HI)Nay
Jeffords (VT)Yea
Johnson (SD)Yea
Kempthorne (ID)Yea
Kennedy (MA)Nay
Kerrey (NE)Yea
Kerry (MA)Nay
Kohl (WI)Nay
Kyl (AZ)Yea
Landrieu (LA)Nay
Lautenberg (NJ)Nay
Leahy (VT)Yea
Levin (MI)Nay
Lieberman (CT)Nay
Lott (MS)Yea
Lugar (IN)Yea
Mack (FL)Yea
McCain (AZ)Yea
McConnell (KY)Yea
Mikulski (MD)Nay
Moseley-Braun (IL)Nay
Moynihan (NY)Nay
Murkowski (AK)Yea
Murray (WA)Yea
Nickles (OK)Yea
Reed (RI)Nay
Reid (NV)Yea
Robb (VA)Nay
Roberts (KS)Yea
Rockefeller (WV)Yea
Roth (DE)Yea
Santorum (PA)Yea
Sarbanes (MD)Nay
Sessions (AL)Yea
Shelby (AL)Yea
Smith (NH)Yea
Smith (OR)Yea
Snowe (ME)Yea
Specter (PA)Yea
Stevens (AK)Yea
Thomas (WY)Yea
Thompson (TN)Yea
Thurmond (SC)Yea
Torricelli (NJ)Nay
Warner (VA)Yea
Wellstone (MN)Nay
Wyden (OR)Nay

By Vote

-Yeas-Nays-

--- YEAs 69---

Abraham (MI)
Allard (CO)
Ashcroft (MO)
Baucus (MT)
Bennett (UT)
Bingaman (NM)
Bond (MO)
Breaux (LA)
Brownback (KS)
Burns (MT)
Campbell (CO)
Chafee (RI)
Coats (IN)
Cochran (MS)
Collins (ME)
Conrad (ND)
Coverdell (GA)
Craig (ID)
D'Amato (NY)
Daschle (SD)
DeWine (OH)
Domenici (NM)
Dorgan (ND)
Enzi (WY)
Faircloth (NC)
Feingold (WI)
Frist (TN)
Gorton (WA)
Gramm (TX)
Grams (MN)
Grassley (IA)
Gregg (NH)
Hagel (NE)
Hatch (UT)
Helms (NC)
Hollings (SC)
Hutchinson (AR)
Hutchison (TX)
Inhofe (OK)
Jeffords (VT)
Johnson (SD)
Kempthorne (ID)
Kerrey (NE)
Kyl (AZ)
Leahy (VT)
Lott (MS)
Lugar (IN)
Mack (FL)
McCain (AZ)
McConnell (KY)
Murkowski (AK)
Murray (WA)
Nickles (OK)
Reid (NV)
Roberts (KS)
Rockefeller (WV)
Roth (DE)
Santorum (PA)
Sessions (AL)
Shelby (AL)
Smith (NH)
Smith (OR)
Snowe (ME)
Specter (PA)
Stevens (AK)
Thomas (WY)
Thompson (TN)
Thurmond (SC)
Warner (VA)

--- NAYs 31---

Akaka (HI)
Biden (DE)
Boxer (CA)
Bryan (NV)
Bumpers (AR)
Byrd (WV)
Cleland (GA)
Dodd (CT)
Durbin (IL)
Feinstein (CA)
Ford (KY)
Glenn (OH)
Graham (FL)
Harkin (IA)
Inouye (HI)
Kennedy (MA)
Kerry (MA)
Kohl (WI)
Landrieu (LA)
Lautenberg (NJ)
Levin (MI)
Lieberman (CT)
Mikulski (MD)
Moseley-Braun (IL)
Moynihan (NY)
Reed (RI)
Robb (VA)
Sarbanes (MD)
Torricelli (NJ)
Wellstone (MN)
Wyden (OR)

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Last modified on: February 4, 1998

FOR IMMEDIATE RELEASE

JUNE 21, 1998

STATEMENT OF SARAH BRADY RE: NEW DOJ REPORT ON BRADY LAW SUCCESS

(Washington, DC) "The Brady Law is still working to block handgun sales to convicted felons, domestic abusers, the mentally ill and other prohibited purchasers, according to a report released today by the Justice Department's Bureau of Justice Statistics. In 1997 alone, 69,000 people who were prohibited by law from buying handguns, were denied access to these lethal weapons due to background checks. In the four years since the Brady Law was implemented, an estimated 242,000 ineligible purchasers have been stopped from buying handguns.

"Before the Brady Law, guns could be purchased cash-and-carry, no-questions-asked in most states. Today, criminals are still trying to buy guns in gun stores, but now they are walking out empty-handed. Since the law was implemented in 1994, gun-related violent crime has been dropping even faster than violent crime overall, according to a Center to Prevent Handgun Violence (CPHV) analysis of the FBI Uniform Crime Report. A 1997 CPHV study also found that the Brady Law has significantly reduced interstate gun trafficking from states where many crime guns were previously purchased.

"Despite Brady's unequivocal success, the law's five-day waiting period is scheduled to be replaced with a computerized instant background check system on November 30, 1998. Although the Department of Justice and FBI have been successful in centralizing most crime records, some information, like mental health records and recent arrests, will not be available through the system. The Brady Law's waiting period provides local law enforcement with the time to conduct more thorough background checks and to contribute information from state and local records to gun dealers.

"As important, the waiting period serves as a 'cooling off period,' which prevents crimes of passion and impulse suicides. A CPHV study demonstrated that guns recovered as part of homicide investigations make up a disproportionately large share of firearms traced by ATF within one week of the date the guns were purchased. Some guns are certainly purchased for an immediate murder or suicide; retaining the waiting period as a complement to the instantcheck system will certainly save lives.

"There are few laws that have such overwhelming support from the American public and have been proven as effective as the Brady Law. Congress has a responsibility to the American public to ensure that this progress continues by extending the waiting period beyond the November deadline."

###

Handgun Control, Inc., chaired by Sarah Brady, is the nation's largest citizens' gun control lobbying organization. Based in Washington, DC, HCI works to enact stronger federal, state and local gun control laws, but does not seek to ban handguns. Founded in 1974, HCI has more than 400,000 members nationwide and works with local groups around the country to enact and protect reasonable gun control laws.

The Center to Prevent Handgun Violence, also chaired by Sarah Brady, was founded in 1983 to reduce gun violence through education, legal advocacy, research, and outreach to the entertainment community. Based in Washington, DC, CPHV's national initiatives include prevention programs for parents and youth on the risks associated with guns, legal representation for gun violence victims, work with the entertainment community to encourage deglamorization of guns in the media, and research of the risks associated with guns and the efficacy of gun control laws.

TESTIMONY OF TANYA K. METAKSA

EXECUTIVE DIRECTOR

NATIONAL RIFLE ASSOCIATION OF AMERICA

INSTITUTE FOR LEGISLATIVE ACTION

ON H.R. 3949

THE "NO GUN TAX ACT OF 1998"

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME

JUNE 11, 1998

Chairman McCollum, members of the subcommittee, I thank you for inviting me to testify in support of the "No Gun Tax Act of 1998," introduced by the gentleman from Georgia, Mr. Barr.

I represent the nearly three million members of the National Rifle Association. Our members come from all walks of life, and from all levels of American society. I can certainly testify to you from personal experience -- answering my phone and reading my e-mail -- that our members were extraordinarily unhappy when press accounts began to appear about the FBI's plan to charge a "user fee" for background checks conducted under the Brady Act's permanent instant check system.

They had good reason to be concerned. The proposed fee is nothing less than a federal gun tax on the exercise of Second Amendment rights by law-abiding Americans. It is unauthorized by any applicable law, and it will have its greatest impact on low-income Americans and on funding for state conservation programs.

Mr. Chairman, as you know, the NRA was very closely involved in the drafting of the Brady Act's language concerning the instant check system. During those discussions, the idea of charging a fee for background checks was not only considered, but rejected on the basis that identifying the rare criminal or other prohibited person who attempts a commercial gun purchase is a public good, and paying for it a public responsibility. As a result, the Brady Act contains no language authorizing the charging of a fee, nor have Brady Act supporters ever tried to amend the Act to allow for such a fee.

Instead, the FBI points to appropriations language passed before the Brady Act, in 1991, which was intended to allow for fees on employment- or licensing-related background screening through the National Criminal Information Center (NCIC), which is a separate system from the National Instant Check System (NICS). Obviously, the 1991 language the FBI refers to couldn't have been intended to allow for a fee under an Act that wasn't passed until two years later.

The next question is, who will bear the burden of this new gun tax? At the individual level, it will fall most heavily on ordinary working Americans of modest means. For many Americans -- including some who must hunt for subsistence rather than for sport, as well as those most vulnerable to crime and most sorely in need of firearms for self-defense -- a tax of thirteen to thirty dollars will be a prohibitive addition to the cost of a simple, affordable hunting rifle or self-defense handgun.

Beyond that, the added cost will likely have an adverse effect on the overall level of gun sales, which will be a major drain on the funds collected through the Pittman-Robertson excise tax. That tax, which gun owners have willingly paid for over sixty years, funds state fish and game agencies and wildlife conservation programs, which could well suffer from the imposition of this new tax.

Finally, we have concerns about the tax from administrative and jurisdictional grounds. The FBI has essentially conjured the authority to levy a tax. Since it derives its authority for the tax from the imagination, only the imagination limits the tax we will be charged today and how much more we might be charged tomorrow. Moreover, the FBI has also created the authority to obtain and retain the taxes collected -- directly -- rather than transfer the funds to the Treasury. The FBI is a highly respected law enforcement team. It is not, however, the U.S. Congress. If the agency perceives a need for a budget increase, it should make its case before Congress, not start collecting new taxes from American gun owners.

As an aside, I'd like to mention another concern that many members have brought to my attention. Although I am aware this isn't an FBI matter, it certainly is troublesome. At some of the federal seminars on the instant check system, licensees have been told that a background check will be required for returns of firearms to their owners, both by pawnbrokers and by gunsmiths.

The law says that a background check is required for a "transfer" of a firearm. Yet in these cases, there is no change in title or ownership -- that is, no "transfer" -- of the firearm; a pawned firearm is still owned by the individual while it is held as collateral for a loan, and of course a firearm that is brought to a gunsmith or factory for customization or repair is still owned by the individual who wants the work done. It is a legal absurdity to say that a gun owner who sends a defective firearm back to the factory, or brings a gun to his local gunsmith for a minor repair, has performed a "transfer" for purposes of the Gun Control Act and should have to undergo a background check to get back his own property. To charge a fee in this situation just adds insult to injury. We would urge the FBI and the BATF to remedy this situation administratively, and if it is not remedied, we hope the subcommittee will consider an appropriate legislative solution.

I would like to turn to the second section of Representative Barr's bill, which would forbid the FBI to retain records of approved checks. As I said earlier, the NRA worked very closely with this subcommittee during the drafting of the Brady Act, and I am sure many of the members of the subcommittee will remember that maintaining the privacy of gun owners was of paramount importance to us then, as it is now.

For that reason, the Brady Act clearly states that upon approval of a firearms transaction, the instant check system "shall ... destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the transfer." 18 USC §922(t)(2).

The Act doesn't say that the records can be maintained for 18 months. It doesn't say that the FBI can decide to do whatever it wants to do with the records. It says the system "shall destroy" the records.

This is consistent with other provisions of federal law, such as the Firearms Owners' Protection Act of 1986, which stated in part, that no "rule or regulation ... may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States, or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established." Pub.L. 99-308, May 19, 1986, 100 Stat. 456.

Even more outrageously, the FBI is proposing to violate the Brady Act itself, which specifies that

"No department, agency, officer, or employee of the United States may -

"(1) require that any record or portion thereof generated by the system established under this section may be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

"(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions except with respect to person, prohibited by section 922 (g) or (n) of title 18, United Stated Code State law, from receiving a firearm." Sec. 103(I), Public Law 103-159, 107 Stat. 1542 (Nov. 30, 1993).

We believe that the FBI would be hard pressed to explain how their proposed 18-month record retention squares with these prohibitions, since they clearly are planning to retain portions of required records in a federal facility, and to establish a *de facto* system of registration of firearm transactions and gun owners themselves.

The creation of a gun registration system is possibly the most dangerous step the federal government can take toward destroying Americans' Second Amendment rights. The lessons of history are vivid in the minds of gun owners who value their rights. From gun confiscation schemes launched by the former Soviet Union against Lithuania to turn-guns-in-or-go-to-jail policies in California, gun lists become gun losses, and gun owners know it. In December, 1993, when the gun owner licensing scheme known as 'Brady II' was introduced by Handgun Control, Inc., and Rep. Charles Schumer, the proposal drew immediate fire from law enforcement. Fraternal Order of Police President Dewey Stokes said he opposed "a situation where we have gun registration." Echoing this sentiment was South Carolina FOP President Charles Canterbury who said, that law enforcement officers "are adamantly opposed to registration of guns.

Time after time, firearms registration systems have led inexorably toward firearms confiscation, despite all the promises of anti-gun politicians, bureaucrats, and media figures. In New York City, for example, the New York Times editorialized that the city's 1967 rifle registration law was "... not ... to prohibit but to control dangerous weapons." In 1991, following passage of a new city gun ban, some owners of legally registered rifles received letters ordering them to turn in those firearms. Just last year in Washington state, Initiative 676 -- a gun owner

licensing and registration scheme -- was soundly rejected by voters 71 to 29 percent. It appears axiomatic that registration is anathema to liberty.

Mr. Chairman, the NRA has supported instant check systems for ten years, based on our desire to create an efficient system to effectively screen criminals from buying guns at the retail level while protecting the privacy of honest gun owners. In 1993, we believed that the permanent provisions of the Brady Act had created such a system. But the FBI's plans to use the system to burden gun buyers with an unjustified and unauthorized tax on their right to keep and bear arms, and to create an intrusive and unlawful gun owner registration system, have sorely strained our support.

In conclusion, I would urge the subcommittee to heed the words of Chief Justice Marshall, who stated that "the power to tax is the power to destroy." I would add that the power to register firearms is the power to confiscate them. Representative Barr's bill would prevent the FBI from violating the letter and intent of the Brady Act in both of those areas and restore the instant check to the purpose for which it was intended. The National Rifle Association strongly supports H.R. 3949, and urges the subcommittee to work toward its speedy passage. Thank you.

[Neither the National Rifle Association of America nor any entity it represents has received any federal grant, contract, or subcontract in the current and preceding two fiscal years.]

TESTIMONY OF

LT. COLONEL CYNTHIA R. SMITH

BUREAU OF DRUG AND CRIMINAL ENFORCEMENT

MARYLAND STATE POLICE

BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON CRIME

JUNE 11, 1998

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM LT. COLONEL CYNTHIA R. SMITH, CHIEF, BUREAU OF DRUG AND CRIMINAL ENFORCEMENT FOR THE MARYLAND STATE POLICE.

ON BEHALF OF COLONEL DAVID B. MITCHELL, OUR SUPERINTENDENT, THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU TODAY.

THE TROOPERS SEATED BEHIND ME REPRESENT THE SUBJECT MATTER EXPERTS IN THE AREA OF FIREARMS REGISTRATION AND ENFORCEMENT.

THE MARYLAND STATE POLICE IS THE POINT OF CONTACT FOR ALL REGULATED FIREARMS PURCHASES IN MARYLAND.

IN 1966 MARYLAND INITIATED AN APPLICATION PROCESS TO PURCHASE HANDGUNS. THIS PROCESS INCLUDED A SEVEN DAY WAITING PERIOD AND A BACKGROUND CHECK.

SINCE THE BACKGROUND CHECK WAS INITIATED THERE HAVE BEEN OVER 15,000 PERSONS DISAPPROVED TO PURCHASE A HANDGUN. THIS REPRESENTS APPROXIMATELY 1% OF THE TOTAL APPLICATIONS TO

PURCHASE HANDGUNS.

IN 1993, DUE TO RISING ADMINISTRATIVE COSTS, THE MARYLAND LEGISLATURE INITIATED A $10.00 FEE FOR EACH APPLICATION RECEIVED.

IN 1996, GOVERNOR GLENDENING AND THE MARYLAND LEGISLATURE PASSED A COMPREHENSIVE GUN VIOLENCE ACT WHICH LIMITED THE PURCHASE OF A REGULATED FIREARM TO ONE IN A THIRTY DAY PERIOD AND REQUIRED A BACKGROUND CHECK AND SEVEN DAY WAITING PERIOD FOR SECONDARY SALES.

AS A RESULT OF THIS LEGISLATION MARYLAND EXPERIENCED A SIGNIFICANT REDUCTION OF APPROXIMATELY 50% IN THE NUMBER OF APPLICATIONS RECEIVED TO PURCHASE REGULATED FIREARMS SINCE 1994.

IN 1997 THE MARYLAND STATE POLICE RECEIVED 21,500 APPLICATIONS TO PURCHASE REGULATED FIREARMS. OF THOSE ROUGHLY 2,100 REQUIRED COMPREHENSIVE FOLLOW UP INVESTIGATIONS BY TROOPERS RESULTING IN 275 DISAPPROVALS. THIS 1% REPRESENTS APPLICANTS THAT WERE CONVICTED FELONS, DRUG ABUSERS, PERSONS CONVICTED OF DOMESTIC VIOLENCE AND THOSE WITH EXISTING EX PARTE ORDERS AS WELL AS THOSE PERSONS SUFFERING FROM MENTAL ILLNESSES.

EACH DISAPPROVAL TELLS A DRAMATIC STORY. I'D LIKE TO GIVE YOU TWO EXAMPLES. THE FIRST IS THAT OF A 54 YEAR OLD RESIDENT RECENTLY RELEASED FROM MARYLAND'S PRISONS AFTER SERVING 17 YEARS FOR MURDERING HIS WIFE WITH A HANDGUN DURING A DOMESTIC DISPUTE. ONCE RELEASED THE INDIVIDUAL MADE APPLICATION TO PURCHASE A REGULATED FIREARM. THE SECOND EXAMPLE IS OF A 24 YEAR OLD RESIDENT SUFFERING FROM MENTAL ILLNESS. THE BACKGROUND CHECK REVEALED A CRIMINAL CONVICTION WHICH LED TO FURTHER INVESTIGATION WHICH REVEALED THAT THE INDIVIDUAL WAS CONTEMPLATING SUICIDE. BECAUSE OF MARYLAND'S BACKGROUND CHECK AND SEVEN DAY WAITING PERIOD, THESE PERSONS WERE

DISAPPROVED.

MARYLAND IS VERY PROUD OF ITS PROACTIVE FIREARMS LAWS. IN CLOSING, MARYLAND WILL MAINTAIN OUR PROVEN SYSTEM OF KEEPING REGULATED FIREARMS AWAY FROM PROHIBITED PERSONS. OUR CONCERN IS THAT WITH THE PASSAGE OF THIS BILL, OTHER STATES THAT FAIL TO **CHECK LOCAL RECORDS THAT CANNOT BE ACCESSED BY FEDERAL COMPUTERS MAY ALLOW PERSONS THAT ARE FUGITIVES, UNDER COURT RESTRAINING ORDERS, CONVICTED OF MINOR DRUG OFFENSES AND DOMESTIC VIOLENCE OFFENSES WILL BE ALLOWED TO PURCHASE HANDGUNS.**

THESE PERSONS ARE THEN FREE TO MOVE ABOUT THE COUNTRY WITH THEIR GUNS AND AS SUCH A PERSON MAY LEGALLY MOVE INTO THE STATE OF MARYLAND WITH THESE WEAPONS THAT ARE ILLEGAL FOR THE INDIVIDUAL TO POSSESS UNDER MARYLAND LAW. IT IS ONLY THROUGH OUR THOROUGH BACKGROUND CHECKS OF NATIONAL AND **LOCAL RECORDS** AS WELL AS OUR SEVEN DAY WAITING PERIOD THAT WE CAN ENSURE THE SAFETY OF OUR CITIZENS.

SHOULD THE NATIONAL INSTANT CHECK SYSTEM NO FEE INSTA- CHECK BE IMPLEMENTED, I URGE THAT OUR STATE SYSTEM WILL NOT BE CIRCUMVENTED BY STATES THAT REFUSE TO FULLY PARTICIPATE AND CONDUCT LOCAL RECORD CHECKS.

THANK YOU AGAIN FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

Judiciary Homepage

Department of State Police

Virginia Firearms Transaction Program

Lieutenant Robert G. Kemmler June 11, 1998

The VFTP, which became operational November 1, 1989, provides for a timely, point-of-sale, approval/disapproval decision regarding the sale of firearms, based upon the results of a criminal history record information check concerning the prospective purchaser.

This program authorizes properly licensed and registered gun dealers to request criminal history record information checks on prospective purchasers by calling the Department of State Police via a toll-free number. The purchaser's name and certain personal descriptive data are immediately entered into a computer system while the dealer remains on the telephone. This program covers the pre-approval of all firearms sales or transfers, except antique weapons.

Effective July 1, 1993, firearms dealers were required to report to the State Police the number of firearms by category intended to be transferred and to prohibit any person whois not a licensed firearms dealer from purchasing more than one handgun within any thirty-day period without approval from State Police.

The design of this program eliminates the traditional waiting periods associated with other programs of this type by electronically accessing criminal history records and "wanted" databases at the National Crime Information Center (NCIC) and the Virginia Central Criminal Records Exchange (CCRE) and providing an almost instantaneous approval/disapproval decision to firearms dealers concerning the firearms sale or transfer.

The computer simultaneously accesses six national and/or state databases. Four of the databases are maintained by the Virginia State Police, accessible by the Virginia Criminal Information Network (VCIN): Virginia's wanted and missing persons files and protective orders, Virginia's criminal history record files, a calendar file of handgun purchases required to monitor and enforce lawful handgun limitations and Virginia's database of adjudications of legal incompetence and incapacity, and involuntary commitments to mental institutions.

The fifth database accessible during this background check is the National Crime Information Center (NCIC), which contains the national wanted and missing persons files. The sixth database accessed is the Interstate Identification Index (III) which contains the national criminal history record files maintained by the Federal Bureau of Investigation.

If an identification is not made in one or more of these files, the computer responds "Yes," the sale is approved and a unique computer-generated approval number is provided to the firearms dealer for that transaction. If an identification is made, however, the computer responds "NO, THE SALE IS NOT APPROVED AT THIS TIME" and review of criminal history information is required to determine lawful eligibility of the prospective firearms purchaser to possess or purchase a firearm. On the average, it takes approximately two minutes to provide a firearms dealer with an approval/disapproval decision.

Virginia's program was designed to address certain public safety concerns regarding the transfer of firearms to prohibited persons. Since its inception, through May 31, 1998, 1,450,594 firearms transactions have been processed through the Firearms Transactions Program. Of this amount, 14,723 were disapproved because the prospective purchaser was prohibited by state or federal law from purchasing or possessing a firearm. The total amount of disapprovals would not have been accomplished without Virginia having developed this program. Virginia has enacted laws which we believe were necessary in determining which additional persons should be prohibited from purchasing a firearm. These laws are the one handgun in thirty days, and the misdemeanor drug conviction prohibition. An outside law enforcement agency would not be in a position to enforce the laws of Virginia. Additionally, this outside agency would not be able to query Virginia's Mental Health Files, the thirty day calendar clock or the Virginia Criminal Information Network Wanted or Protective Order Files. If an outside agency had been conducting Virginia's instant checks from January 1, 1993 to may 31, 1998, it would have failed to deny 2,692 of the 10,327 denied transactions or 26 percent of the total denied transactions. A total of 987 fugitives have been identified, with 456 or approximately 46% apprehended as a result of this program. An outside agency would not be in the proper position to effectively contact a law enforcement agency to respond to a firearms dealer to arrest a fugitive.

Beginning July 1, 1993, the State Police found it necessary to become the leading agency for all investigations of illegal attempt to purchase firearms. The State Police has confirmed 3,234 arrests for falsifying documents related to the sale of firearms.

In conclusion,

The VFTP has begun its tenth year of operation and significant success has been noted:

- Virginia no longer has the street or media reputation of being the chief east coast gun supplier for crimes committed elsewhere.
- ***The General Assembly has come back and repaired weaknesses to strengthen and support its intent to fight crime.***
- ***456 fugitives have been apprehended that might not have been otherwise.***
- ***Over 14,739 individuals, prohibited from owning, possessing, or transporting firearms, have been denied access to firearms. Of these prohibited persons, 2,692 resulted because of Virginia's Program.***

Judiciary Homepage

WHAT WILL HAPPEN IN MY STATE WHEN THE BRADY LAW WAITING PERIOD EXPIRES?

BACKGROUND

On November 30, 1998, the five-day waiting period for handgun purchasers required by the Brady Handgun Violence Prevention Act, or Brady Law, will expire. It will be replaced by a mandatory, computerized National Instant Check System (NICS), which will provide the information for criminal background checks on all firearm purchasers, not just those buying handguns. Most background checks and firearm sales conducted under this system will be completed within minutes, without a waiting period. **The impact of this change in the federal law will vary from state to state.**

23 STATES COMPLY ONLY WITH THE FEDERAL LAW.

These states now comply with the Brady Law's five-day waiting period and background check but will switch to NICS when the mandatory waiting period expires. These states are: **Alabama, Alaska, Arizona, Arkansas, Colorado, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Vermont, West Virginia, Wyoming**

IN 9 STATES, BACKGROUND CHECKS ON ALL FIREARM PURCHASERS ARE REQUIRED BY STATE LAWS WHICH EXEMPT THEM FROM THE BRADY LAW.

These states will continue to use their current systems to conduct background checks on firearms purchasers, but will also run applicants through NICS. (Note: Permits, licenses, and firearm identification cards all require background checks; most require waiting periods.)

STATE	CURRENT LAW
California	10-day waiting period and background check
Connecticut	Permit to purchase with 14-day waiting period
Florida	Instant check on all firearms; 3-day waiting period for handgun purchasers
Hawaii	Permit system for all firearms
Illinois	Firearm Owners Identification Card required for all firearms
Massachusetts	Firearms Identification Card for all firearm purchasers
New Jersey	Permit required for all firearms purchasers
Tennessee	Permit system will change to a state instant check on all firearms effective 11/30/98
Virginia	Instant check on all firearms

IN 18 STATES, BACKGROUND CHECKS ON HANDGUN PURCHASERS ARE REQUIRED BY STATE LAWS WHICH EXEMPT THEM FROM THE BRADY LAW.

As of 11/30/98, these states will also be required to conduct background checks on all long guns. Both handgun and long gun purchasers must be run through NICS, and handgun purchasers will also be run through state-required background checks. Some states may also begin to require long gun purchasers to go through state background checks in addition to the federal NICS check. (Notes: Permits, licenses, and firearm identification cards all require background checks; most require waiting periods. Two states, **Maryland** and **Minnesota**, also regulate assault weapon purchases, but not purchases of other long guns.)

State Current Law

Delaware	Instant check on handgun purchases
Georgia	Instant check on handgun purchases
Idaho	Instant check on handgun purchases
Indiana	Currently requires a 7-day waiting period and background check for handguns, but will switch to a state instant check on handguns effective 11/30/98
Iowa	Permit to purchase handguns
Maryland	Background check and 7-day waiting period for regulated firearms (handguns/assault weapons)
Michigan	Permit to purchase handguns
Minnesota	Permit to purchase handguns and assault weapons (7-day waiting period)
Missouri	Permit to purchase handguns (7-day waiting period)
Nebraska	Permit and/or state instant check on handguns (up to 2 days to process permit)
New Hampshire	Instant check on handgun purchases
New York	Permit to purchase handguns (up to 6 months to process permit)
North Carolina	Permit to purchase handguns (up to 30 days to process permit)
Oregon	Instant check on handgun purchases
Pennslyvania	Instant check on handgun purchases
Utah	Instant check on handgun purchases
Washington	Five-day waiting period and background check for handgun purchases
Wisconsin	Instant check on handguns with 2-day waiting period

FOR IMMEDIATE RELEASE

July 15, 1998

SENATORS DURBIN, LAUTENBERG, REP. SCHUMER INTRODUCE BILL TO SAVE BRADY WAITING PERIOD

(Washington, D.C.) Senator Dick Durbin of Illinois, Senator Frank Lautenberg of New Jersey and Representative Charles Schumer of New York today introduced a bill that will establish a minimum three-day waiting period for the purchase of firearms when the original Brady Law sunsets at the end of November, 1998. The original Brady Law, which mandated a waiting period and background check for all handgun purchasers, is due to be replaced by a National Instant Check System (NICS), which relies on computerized federal data to immediately check prospective firearms purchasers for felony convictions and other barriers to purchase. Without a mandatory waiting period, local police departments will not have time to participate in the background check, and gun purchasers considering crimes of passion or impulse suicides will no longer have a "cooling-off" period to protect themselves or their victims.

"We need to protect the Brady Law's waiting period for gun purchases so that there is time for the police to check the records on the buyer and time for tempers to cool," said Senator Durbin, who has long supported stricter standards for the ownership and use of guns. "We can not allow the gun lobby to override the police and endanger American families."

Since the implementation of the Brady Law in 1994, almost a quarter-million prohibited purchasers have been stopped from buying handguns in gun stores. Additionally, a 1997 study by the Center to Prevent Handgun Violence demonstrated that states that began conducting background checks on handgun purchasers when the Brady Act was implemented in 1994 are as much as 86% less likely to be sources of guns used in crimes in other states than they were prior to when the checks were performed. Despite a 1997 Supreme Court decision that struck down the federal mandate for background checks based on Tenth Amendment limits on federal power to enforce commands to state and local officials, more than 95% of the nation's law enforcement officers continue to do background checks on a voluntary basis.

"Police support the original Brady provisions because they know that waiting periods save lives," said Sarah Brady, Handgun Control, Inc. chair. "The Justice Department has done its job, but the federal database will not contain many of the records that police would use to disqualify firearms purchasers. The police need time to provide that information to gun dealers and federal authorities, and to discourage ordinary people who want a gun immediately for a crime of passion or suicide."

The Brady Law, first introduced in 1987, took seven years to pass Congress and garner White House support. The sunset provisions eliminating the waiting period after five years in favor of Instant Check were contained in a successful amendment sponsored by the National Rifle Association. The amendment's passage allowed the NRA to claim a victory to its membership and to the public – despite its long fight against the Brady Bill and despite the amendment's provision that will extend background checks to long guns on November 30.

Every national public opinion poll since the early '90's has demonstrated overwhelming support from the American public, including gunowners, for both background checks and waiting periods.

"We are about to take a giant step backward in the fight to keep guns out of the hands of criminals", said Representative Charles Schumer, who authored the Brady Law which passed the House in 1993. "We shall see if this Congress can stand up to the NRA to do what everyone knows is right."

###

Handgun Control, Inc., chaired by Sarah Brady, is the nation's largest citizens' gun control lobbying organization. Based in Washington, DC, HCI works to enact stronger federal, state and local gun control laws, but does not seek to ban handguns. Founded in 1974, HCI has more than 400,000 members nationwide and works with local groups around the country to enact and protect reasonable gun control laws.

www.gunowners.org
Jul 1998

Smith "Anti-Brady" Amendment Passes the Senate 69-31! -- Hats off to GOA members and activists for their tremendous efforts!

by Gun Owners of America
8001 Forbes Place, Suite 102, Springfield, VA 22151
(Wednesday, July 22, 1998)

As we told you to expect, Sen. Bob Smith (R-NH) introduced his "Anti-Brady" amendment as a rider to the State- Justice-Commerce Appropriations bill (S. 2260) yesterday. The amendment passed overwhelmingly, and, unless it's stripped out in a conference committee, the amendment should become law later this year!

The Smith amendment would do three things. As explained by Smith himself yesterday:

> Stated simply, my legislation will put a stop to the FBI's plan to keep records of private identifying information on law-abiding citizens who buy guns. . . . Why would we want the FBI to maintain a file on a law-abiding gun owner who did nothing [except] exercise his constitutional right to own a gun? They want 18 months to keep these files. I don't want 18 seconds. I want these files destroyed immediately. That is point one in my amendment. . . . Secondly, the amendment prevents the FBI from imposing a tax on these people. Thirdly, it allows a person to go to court if the FBI does that. We have seen abuses by the FBI. We have seen files held in the White House. Do you want this to go on? That is what this issue is about. That is what my amendment is about.

Members and activists of Gun Owners of America deserve a lot of credit for this victory. Smith's staff has told GOA that during the past month, they have seen boxes of postcards come in to the Senate in favor of his amendment. Your other contacts were also helpful in overcoming some institutional opposition in the Senate.

High-level Senate sources reported that NRA lobbyists were "camped out" in the Senate cloakroom, pushing an alternative to the Smith amendment. They were concerned that Smith's amendment was too tough and that it didn't have enough votes to pass. But despite these objections, your grassroots efforts prevailed!

Indeed, Senator Smith's amendment is tougher than other bills that try to stop the FBI from registering gun owners. Smith's proviso actually allows individuals to "punish" the FBI by suing them for any infringement of privacy (i.e., gun owner registration), and then recover all the attorney's fees that one spends on the lawsuit.

Strange coalition forms to back Smith amendment

Sen. Smith's amendment would, obviously, benefit gun owners first and foremost. But Sen. Smith also appealed to those Democrats who were interested in the issue of privacy. "This is more than a

gun issue," he told his colleagues. "This is a privacy issue [as well]."

The privacy issue can often cut across party lines. Some liberal, Democratic Senators voted with Smith purely because of the privacy implications. And thus, Smith was able to garner a filibuster-proof and veto-proof majority. To make matters simpler, we have listed the 31 "bad" Senators who voted AGAINST Smith:

```
Akaka (HI)          Kohl (WI)
Biden (DE)          Landrieu (LA)
Boxer (CA)          Lautenberg (NJ)
Bryan (NV)          Levin (MI)
Bumpers (AR)        Lieberman (CT)
Byrd (WV)           Mikulski (MD)
Cleland (GA)        Moseley-Braun (IL)
Dodd (CT)           Moynihan (NY)
Durbin (IL)         Reed (RI)
Feinstein (CA)      Robb (VA)
Ford (KY)           Sarbanes (MD)
Glenn (OH)          Torricelli (NJ)
Graham (FL)         Wellstone (MN)
Harkin (IA)         Wyden (OR)
Inouye (HI)
Kennedy (MA)
Kerry (MA)
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Fight moves to the House

The House version of the Commerce-State-Justice appropriation bill will be coming up for a vote soon. GOA will keep you updated on our efforts to attach a Smith-type amendment on the House bill. Doing so would help guarantee that a House- Senate conference committee will not strip the amendment from the bill. Please stay tuned.

Up to Home

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Vienna

7/20/98

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Jack Lew

FROM: ~~Donald R. Arbuckle~~

SUBJECT: Heads-up on the Department of Justice's proposed rule NICS User Fee Charge

This week, we will be completing review of a Department of Justice (DOJ) proposed rule that would require a $13-$16 user fee for the National Instant Check System (NICS). The NICS requires a firearm licensee to call into NICS for a background check of the firearm applicant at the time of a purchase. This proposed regulation is a companion to the DOJ proposed rule, published in June, establishing rules and procedures for NICS. The user fee proposal sets a fee that would allow full cost recovery; essentially the collected fees would fully fund the operation of NICS. The NICS system is required to be operational by November, 1998, as mandated by the Brady Handgun Violence Prevention Act of 1993. DOJ plans to issue a final rule in October that combines the user fee rule with the larger rules and procedures rule.

The funding of NICS with a user fee is consistent with the President's budget; however, there is some controversy on the Hill about DOJ's authority to charge a user fee for the system. In fact, S.2128, introduced by Senator Stevens, would eliminate DOJ's ability to charge a user fee for NICS. The Subcommittee on Crime, House Judiciary Committee held a hearing on June 11, 1998, that also addressed this issue. The lobbying effort to eliminate the user fee seems to primarily be from the gun lobby. If the bill were to pass it would have significant implications for the government's ability to fund NICS, roughly an estimated $63 million system annually. DOJ would like to move forward with this proposal, however; they believe the proposed rule needs to be published in order to meet their statutory obligations and administrative requirements. We agree with their decision to proceed with the proposal.

Please let me know if you have any questions.

cc: Maria Echaveste
Rahm Emanuel
Larry Stein
Ron Klain
Thurgood Marshall, Jr.
Ann Lewis
Sally Katzen
Minyon Moore
John Podesta

Bruce Reed
Gene Sperling
Elena Kagan
Barry Toiv
Michael Waldman
Janet Yellen
Mickey Ibarra
Michael Deich

REGULATORY REVIEW WORKSHEET

OMB NUMBER:	1105-A044	RECEIVED :	07/06/1998
RIN NUMBER:	1105-AA51	E.O. DUE DATE:	10/04/1998
CHRONOLOGY:	1105-A041 04/15/1998	EXTENDED :	__ (Y/N)
		APPEALED :	__/__/____

AGENCY : Department of Justice
SUBAGENCY : Legal Activities

TITLE: Notice of the Proposed Rulemaking for the NICS User Fee Charge

STAGE: Proposed Rule
LEGAL DEADLINE: No

ECONOMICALLY SIGNIFICANT: No
UNFUNDED MANDATE : No

DESK OFFICER: Victoria Wassmer
ANALYST : Richard Theroux

ACTION:
__ (1) Consistent Without Change
__ (2) Consistent With Change
__ (3) Withdrawn by Agency
__ (7) Returned - Sent Improperly
__ (9) Returned for Reconsideration
__ (11) Emergency
__ (12) Statutory or Judicial Deadline

ECONOMICALLY SIGNIFICANT: __Yes __No
MAJOR : __Yes __No
UNFUNDED MANDATE : __Yes __No
(If yes, check all that apply)
__ State, local, tribal governments
__ Private Sector

REGULATORY IMPACT:
__ (D) Deregulatory
__ (R) Regulatory
__ (N) Nonregulatory

SIGNATURES AND DATES:

RMO	Desk Officer	Economist	OIRA
----------------	----------------	----------------	----------------
Date: ________	Date: ________	Date: ________	Date: ________

AGENCY NOTIFIED: __/__/____

TITLE:
Operation of the National Instant Criminal Background Check System

RIN: 1105-AA51 (NO STAGE)

REGULATORY PLAN: No

PRIORITY: Other Significant.
Major status under 5 USC 801 is undetermined.

REINVENTING GOVERNMENT:
This rulemaking is not part of the Reinventing Government effort.

LEGAL AUTHORITY:
18 USC 922 to 925 Brady Handgun Violence Prevention Act

CFR CITATION:
28 CFR 20

LEGAL DEADLINE:
Other, Statutory, November 30, 1998.
The Brady Handgun Violence Prevention Act requires the NICS be established not later than 60 months after enactment (11/30/93).

ABSTRACT:
This rule notifies State and local law enforcement agencies and Federal Firearms Licensees of the establishment of the National Instant Check System (NICS) and sets forth policies and procedures regarding use of the system, including regulations pertaining to the security and privacy of information.

TIMETABLE:

ACTION	DATE	FR CITE
NPRM	07/00/98	
NPRM Comment Period End	09/00/98	

SMALL ENTITIES AFFECTED: None

GOVERNMENT LEVELS AFFECTED: State, Local, Tribal, Federal

Operation of the National Instant Criminal Background Check System

AGENCY CONTACT:
Emmet A. Rathbun,
Research and Development Unit,
Department of Justice,
Federal Bureau of Investigation,
Criminal Justice Information Services Div.,
1000 Custer Hollow Road,
Clarksburg, WV 26306-0147,
304 625-2000,
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EXECUTIVE ORDER 12866 SUBMISSION

Important

Please read the instructions on the reverse side before completing this form.

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Washington, D. C. 20503

1. Agency/Subagency originating request
Department of Justice
Federal Bureau of Investigation

2. Regulation Identifier Number (RIN)
1105-AA51
1105-A044

3. Title
Notice of the Proposed Rulemaking for the NICS User Fee Charge

4. Stage of Development
- ___ Prerule
- _X_ Proposed Rule
- ___ Interim Final Rule
- ___ Final Rule
- ___ Final Rule - No material change
- ___ Notice
- ___ Other

Description of Other

5. Legal Deadline for this submission
a) ☐ Yes ☒ No

b) Date ____ / ____ / ____
DD MM YYYY

c) ☐ Statutory ☐ Judicial

6. Designations
a) Economically Significant (E.O. 12866)
☐ Yes ☒ No

b) Unfunded Mandate (2 U.S.C. 1532)
☐ Yes ☒ No

If either of the above is "Yes," submit four (4) complete packages to OIRA

7. Agency Contact (person who can best answer questions regarding the content of this submission)
Monica Snider

Phone (304)-625-3856

Certification for Executive Order 12866 Submissions

The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E. O. 12866 and any applicable policy directives.

Signature of Program Official	Date
Emmett A Rathbun	5/14/98
Signature of Authorized Regulatory Contact	**Date**
[signature]	5/15/98

OMB 83-R

Revision 12/97 (Previous versions obsolete)

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG ORDER No. XXX]

RIN 1105-AA51

National Instant Criminal Background Check System User Fee Regulation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The rule will provide for and establish a user fee to be assessed to Federal Firearms Licensees (FFLs) for the processing by the FBI of National Instant Criminal Background Check System (NICS) background checks. A NICS background check will determine whether information available to the system provides reasonable cause to believe that transfer of a firearm to an individual who is not licensed under 18 USC 923 would violate state or federal law. In states in which the state government has not agreed to designate a Point of Contact (POC) to receive and process requests from FFLs for NICS background checks, FFLs will be required to contact, either by telephone or other electronic means, the NICS Operations Center at the FBI to initiate and process a NICS background check.

There are substantial costs associated with operating the FBI's NICS Operations Center. The $200 million authorized to be appropriated by the Brady Handgun Violence Prevention Act, Public

Law 101-159, section 106(b), was limited to the purpose of improving the criminal history record systems of the states. A small portion of those funds was made available to the FBI to help design the NICS. The funds are not available, however, to cover the FBI's annual operating cost for the NICS. Therefore, FFLs will be assessed a processing fee for each NICS background check processed by the FBI's NICS Operations Center. The purpose of the fee is to recover the full cost of providing this service to FFLs doing business in states where the FBI is contacted directly by the FFLs. This rulemaking sets forth the FBI's legal authority to charge a user fee for NICS background checks and the cost analysis to be used to calculate the fee.

DATES: Written comments must be received on or before September 2, 1998, or [Insert date 30 days after date of publication in the FEDERAL REGISTER], whichever is later.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306-0147.

FOR FURTHER INFORMATION CONTACT: Mr. Emmet A. Rathbun, Unit Chief, 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." In order to provide this service directly to certain FFLs and recover the associated costs, the FBI will assess FFLs a user fee in states where the FBI is contacted directly by the FFLs.

NICS Background Checks

The Brady Act provides that before a firearm may be transferred, FFLs must request a NICS background check on a prospective firearm purchaser who is not licensed under 18 USC 923. A Notice of Proposed Rulemaking establishing regulations to protect the security and privacy of the information in the NICS and describing the manner in which the system will function was published in the Federal Register on June 4, 1998. Generally, a NICS background check will consist of a search of the NICS Index (an FBI database containing information concerning certain individuals prohibited by law from possessing firearms), the

National Crime Information Center (NCIC), and the Interstate Identification Index (III), for matching records that may provide reason to believe that the transfer of a firearm to a prospective purchaser would violate Federal or state law.

The method by which an FFL will request background checks will depend upon the state where the FFL is conducting business. In states that agree to designate a POC, state or local law enforcement agencies will serve as POCs for the purpose of processing NICS checks. As POCs, these agencies will receive inquiries by FFLs, check state and local record systems for disqualifying records, initiate NICS background checks through electronic access to the NICS via the NCIC communications network, analyze any matching records, provide responses back to the FFL, and process appeals. The FBI will not charge the state agencies or the FFLs a fee for NICS background checks processed by state POCs. The comparatively minor cost to the FBI of providing automated record responses to POCs (who research and analyze the records) will be covered by funds appropriated to the FBI rather than by a NICS user fee. Charging FFLs a fee to recover the POC's cost of processing NICS background checks is at the discretion of the state.

Where the state will not be a POC, the FFLs will telephonically contact the NICS Operations Center, a unit run by the FBI. The FBI is also planning to make electronic dial-up access to the NICS Operations Center available to FFLs in the future. Inquiries made by telephone will be answered by a NICS Customer Service Representative. The NICS Operations Center will perform the NICS background check, analyze any matching records, provide a response back to the FFL, and process appeals. In order to interpret and evaluate matching records, the FBI will use personnel who are specially trained to analyze records in the NICS Index, NCIC, and III. FFLs who directly contact the NICS Operations Center to initiate a background check will be assessed a fee. This fee will allow the Federal Government to recover the full cost of processing these background checks conducted by the NICS Operations Center. Likewise, when electronic FFL access is available, a fee will be charged. This fee will be less than the telephonic access fee since a NICS Customer Service Representative will not be needed to take a telephone call.

Legislative Authority

The legislative authority for the fee is the Departments of Commerce, Justice, and State, Appropriations Act, for Fiscal Year 1991, Public Law 101-515, (104 Stat. 2113, Nov. 5, 1990) which provides the FBI authority to establish, collect and retain fees to, among other things, process name checks for non-criminal justice purposes. Authority is also provided by the Independent

Offices Appropriation Act, 1952 (31 U.S.C. 9701), which generally requires that a benefit or service provided to or for any person by a federal agency be self-sustaining to the fullest extent possible. Charges are to be fair and equitable, taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts.

Cost Analysis

In accordance with the guidelines issued by the Department of Justice (DOJ), User Fee Program (Supplement, Department of Justice Budget Formulation and Execution Calls), and Office of Management and Budget (OMB) Circular Number A-25 relating to the assessment of fees for Federal Government services, the FBI is establishing the user fee for the processing of a NICS background check by the NICS Operations Center in order to recover the full cost of providing service to FFLs doing business in states where the FBI is contacted directly by the FFLs. The full cost includes both the direct and indirect costs associated with the FBI's provision of the background check service to FFLs.

Direct costs are those which are proximate and directly traceable to the unit of output for which the fee is charged. Direct costs for the NICS program include the personnel and non-personnel costs of FBI-employed NICS analysts and technical support. The personnel and non-personnel costs were calculated using the modular costing tools described in the FBI's Fiscal Year 1999 budget submission to the OMB. Additionally, any contractor-supported operator and billing functions are included within the FBI's direct costs.

Indirect costs are those costs which are more distant, general in nature, and not directly traceable to the product or service produced. The FBI has allocated a portion of its general management, administration, finance, and security functions as indirect costs to the NICS program. These costs were allocated based upon the ratio of positions in the NICS program to positions in all other Criminal Justice Information Services Division programs.

The costs to be recovered include, but are not limited to, an appropriate share of: (a) direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement, (b) physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, and travel, (c) management and supervisory costs, and (d) the costs of enforcement, collection, research, establishment of standards, and regulation.

Cost Figures

Because NICS is a service which has not been previously offered, cost figures are based on information currently available regarding firearm background checks, the number of states that are expected to serve as POCs, and ongoing contracting efforts. Upon the establishment of the system on November 30, 1998, the FBI will charge a fee of not less than $13.00 nor more than $16.00 per inquiry. The fee range was determined by estimating the resources needed to satisfy the projected volume of background checks and related work, determining the direct and indirect costs of these resources, and working with the FBI's prime developmental contractor to cost the portion of services which will be furnished by an outside contractor. Negotiations are ongoing with the developmental contractor for outsourcing the NICS Call Center and billing functions. Until a final contract is negotiated, the exact fee to be charged beginning November 30, 1998, is unknown.

NICS USER FEE	
CATEGORY	**YEARLY TOTAL**
WAGES & OTHER COMPENSATION	$27,484,592
APPEALS	553,446
FURNITURE & SUPPLIES	1,420,222
TRAVEL & TRAINING	1,077,671
HARDWARE & SOFTWARE MAINTENANCE	291,285
MISCELLANEOUS	2,541,474
PROJECTED CONTRACTOR COSTS	35,891,990

NICS USER FEE	
TOTAL	$69,260,680

In order to estimate the number of NICS background checks that will be performed, the FBI used the firearms related inquiries of III for Fiscal Year 1997. These background checks were performed primarily for handgun sales as required under the Interim Provision of the Brady Act. For purposes of this calculation, the FBI estimates that it will perform handgun checks and/or long gun checks in approximately 31 non-POC states. Using III inquiries in these states for firearms checks performed under the Interim Provision of the Brady Act, the FBI has computed the estimated number of firearms (handguns and long guns) sold annually in these states to be 4,392,411. Based on the cost of the estimated resources necessary to process 4,392,411 inquiries per year, and including in this estimate the highest estimated outsourcing cost, the FBI estimates that its total annual costs will be $69,260,680. Using the highest estimated outsourcing cost, the cost per inquiry, rounded to the nearest dollar, is $16.00; however, the FBI believes the final transaction cost will be less than this amount when the final outsourcing contract is signed, but will not be less than $13.00. The transaction cost includes both the direct and indirect cost categories of the NICS, set forth in the chart above and described generally below. To be assured that these cost figures were accurately calculated, the FBI hired an independent accounting firm to review the FBI's fee analysis. The firm validated the FBI's methodology in developing this user fee.

The Wages and Other Compensation category includes NICS Customer Service Representatives' salaries and benefits and support staff's salaries and benefits. Based on the projected number of inquiries per year, the NICS Operations Center will require an estimated staff of 353. This staffing level is required in order to provide prompt service to FFLs seven days a week.

When an individual is denied the purchase of a firearm, the individual may appeal that decision. If an individual resides in a POC state, it is anticipated that the individual will appeal the denial to the state according to the state's appeals procedures. If the denial was given by the NICS Operations Center, the individual would appeal directly to the FBI. The estimated cost to the FBI of processing appeals is incorporated into the initial user fee; individuals who appeal a denial will not be charged a separate fee. The estimated appeals cost anticipates that in the appeals process, individuals may need to submit a fingerprint card to verify their identity. Fingerprint cards submitted for appeals will be processed using the FBI's current procedure for handling non-criminal justice fingerprint card submissions; and the existing (and separate) fee of $18.00 for processing such submissions will be waived.

The Furniture and Supplies category is comprised of a combination of NICS staff and support staff requirements for these items. These costs are based upon the OMB's 1999 Cost Module which sets a per-employee rate to be used for these calculations. An additional amount has been added for the purchase of telephone headsets for the NICS Customer Service Representatives.

The Travel & Training category includes costs for NICS personnel who need to travel to meet with FFLs and obtain feedback on the NICS. Specially trained NICS Representatives will need to report to various governmental agencies that have a direct interest in the NICS, including Congress. The Training category will allow NICS personnel to be trained on new NICS developments and techniques in order to improve service to the FFLs. Indirect travel and training expenses are also included in this category. These costs are also based upon the OMB's 1999 Cost Module which sets a per-employee rate to be used for these calculations.

The Hardware and Software Maintenance category includes the maintenance on computer terminals and software that the NICS Representatives will need in order to perform this service for FFLs. Software license renewals and maintenance agreements are required for software products used on FBI computers. Because these software products are proprietary and specialized, licensing and maintenance contracts must be executed with the original developer. Contract hardware maintenance will be necessary for the efficient and continued operation of the NICS computers and peripheral equipment. This will include preventive and on-call hardware maintenance support for FBI computers and peripheral equipment. Without this preventive and on-call hardware maintenance, the NICS could experience disruptions in service.

The Miscellaneous category is composed of FBI employee background investigation contract costs, physical location costs (based on the standard Government Services Administration (GSA) rate for government office space) and depreciation.

The Contractor Cost category includes the cost of all contractor services provided to support the operation and maintenance of the NICS Operations Center, including, but not limited to telecommunication, billing and call center service costs. Such telephone-intensive functions are subject to workload variations which may be more economically managed using contractor support. The FBI therefore anticipates engaging a private contractor with up to 200 Customer Service Representatives to answer phone calls from FFLs, forward information to NICS, and respond to FFLs with proceed or delay messages. The projected contractor costs have been derived from preliminary and ongoing contracting efforts, using government cost estimates. The proposed user fee will be established based upon actual contract costs.

The NICS fee is being established in order for the Federal Government to recover the full cost of processing NICS background checks for FFLs doing business in states in which the FBI is contacted directly by the FFLs. This fee will not generate a profit. Evaluation of the NICS fee will be an ongoing process. Cost figures will be evaluated from time to time and the Director of the FBI may change the fee schedule when appropriate. The Director of the FBI may also clarify, supplement, or amend provisions related to these fees.

Billing FFLs for NICS User Fees

It is general Federal policy that user charges will be collected in advance of, or simultaneously with, the rendering of services. However, strict adherence to this policy here would conflict with the Brady Act's mandate for "instant" checks, and the following procedures are accordingly established as an exception to this general policy. FFLs being serviced by the FBI will incur a non-refundable user fee charge for each requested NICS check immediately upon issuance by the FBI of the unique NICS Transaction Number (NTN) associated with the check. However, such FFLs will be afforded two payment options, real-time credit card charges by individual transaction or monthly invoicing.

Prior to initiating its first NICS check, an FFL will notify the FBI, via an enrollment process, as to which payment option it will use. Only a single payment option can be used. FFLs will be able to direct the FBI to change their payment option with a minimum of 30 days notice before the beginning of the changed billing period.

Under the real-time credit card payment option, the FFL's credit card will be billed for each NICS check at the time the FBI issues the associated NTN. A record of each NICS check, including the fee, transaction date, and NTN, will be provided on the FFL's monthly credit card bill. The FBI will accept the following major credit cards: VISA, Master Card, American Express, and Discover.

Under the invoicing payment option, a record will be compiled of all NICS checks initiated by the FFL during the billing period for which an NTN was issued, and the FFL will be invoiced for payment. The invoice will include a record of each transaction including the date and time of NICS check, fee, and the NTN. Invoice billing periods will be on a calendar month basis. Payment will be due within 30 days of the invoice date. Invoices will be dated according to their mailing date, which will be approximately 15 days after the close of the subject billing period. The FFL will forward invoice payment (either in check form or via Electronic Funds Transfer [EFT]) to a "Lock Box" or other Automated Clearing House (ACH) depository identified by the FBI. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. A charge may be imposed if a check in payment of a fee or any other matter is not honored by the bank or other financial institution on which it is drawn.

The FBI will discontinue service, i.e., providing NICS checks, to FFLs whose NICS financial accounts are not in good standing.

Waiver of Fee in Cases of Successful Appeal

Individuals who are denied the purchase of a firearm by the NICS Operations Center may appeal the denial by challenging the record upon which the denial is made. When the appeal is successful and less than 30 days has elapsed since the date of the initial NICS check, a "proceed" response and an NTN is forwarded to the FFL which will allow the transfer of the firearm. If more than 30 days have elapsed before a denial is overturned, the FFL must perform a new NICS check before transferring the firearm. In such cases, the purchaser will be provided a written statement by the NICS Operations Center that will allow the FFL to request the new NICS check without charge.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601-612, the FBI has evaluated the effects of this rule on small entities. A small entity is any entity that has under $5.0 million in annual gross receipts as defined by 13 C.F.R. 121.201. Firearm retailers are included in the Standard Industrial Class (SIC) Code 5941. Based on the evaluation, the FBI certifies that this action will not have a significant economic impact on a substantial number of small entities. While this proposed rule may generate up to $69 million annually in fees, these fees will not have a significant economic impact on businesses. The ultimate impact of the fee will likely be on firearm purchasers since FFLs are expected to recoup NICS user fees from the purchasers in the same way FFLs recoup the cost of fees charged in connection with checks under the interim provision of the Brady Act.

The FBI will be sending a notice, including a letter describing NICS and a NICS brochure, to each FFL in the 31 states that are currently expected to be serviced directly by the FBI. The FBI has also met with FFLs at regional firearm seminars conducted by the Bureau of Alcohol, Tobacco and Firearms to inform FFLs about NICS plans and to solicit comments needed to finalize these plans. These efforts were made by the FBI to satisfy the "outreach" provisions of 5 U.S.C. 609. The obligation of FFLs to contact the NICS before transferring a firearm is imposed by the Brady Act. The fee charged for the NICS checks allows the Federal Government full recovery of costs to process NICS checks for FFLs doing business in states where the FBI is contacted directly by the FFLs. In addition, the user fee will be evaluated from time to time to account for any changes that may affect the fee.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The DOJ 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.

Executive Order 12612

This regulation 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 applications 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 the United States-based companies to compete with foreign-based companies in domestic and export markets. The cost to the FFLs is expected to be inconsequential, because the FFLs are likely to recoup the fees from firearm purchasers.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

List of Subjects in 28 C.F.R. Part 25

Automatic Data Processing, Business and Industry, Credit, Employee Benefit Plan, Firearms, Reporting and Recordkeeping Requirements, and Telecommunications.

Accordingly, Title 28 of the Code of Federal Regulations is amended by adding the following new Section 25.12 to Subpart A of 28 CFR Part 25:

Part 25 -- DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart A - The National Instant Criminal Background Check System

§25.12 User Fee Charge

(a) FFLs who directly contact the NICS Operations Center to request a NICS background check will be assessed a fee that represents the reasonable costs of the associated services.

(b) In cases where a denial of a firearm transaction has been overturned through an appeal and more than 30 days have passed since the initial NICS check, the purchaser will be provided a written statement that will allow the FFL to contact the NICS Operations Center and request that a new NICS check be performed without charge.

(c) The Director of the FBI may from time to time determine and establish the reasonable amount of the fee or fees to be assessed under this authority. The Director of the FBI may also clarify, supplement, or amend the provisions of this section. The FBI Director shall provide appropriate notice to affected persons of any exercise of the foregoing authorities; notice relating to provisions of general applicability shall be published in the Federal Register.

OFFICE OF POLICY DEVELOPMENT
UNITED STATES DEPARTMENT OF JUSTICE

950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

TO: **Victoria Wassmer**
Office of Management and Budget
NEOB, Room 10212
17th St. & Pa. Ave. N.W.
Washington, D.C. 20503
PH: 395-5871
FAX: 395-7285 **■115**

FROM: **BOB HINCHMAN**
Main Building, Room 4258
PH: (202) 514-8059
FAX: (202) 514-9112

DATE: July 13, 1998 9:45 am

Number of Pages (excluding this one) 6

Victoria,

Attached are the FBI's responses to OMB's comments concerning the FBI's proposed rule *"National Instant Criminal Background Check System User Fee Regulation"* (RIN 1105-AA51.)

Please let me know if OMB has any further questions.

The Department appreciates OMB's prompt review of this important regulation.

Bob

OMB COMMENTS RE FBI NAT'L INSTANT CRIMINAL BACKGROUND CHECK SYSTEM USER FEE RULE RIN 1105-AA57

p. 8-- "... the FBI will charge a fee of not less than $13.00 nor more than $16.00 per inquiry." Although the discussion on page 9 indicates that the FBI believes the range for the fee has been narrowed to $13-$16, should the rule make an absolute statement given that negotiations with contractors are not completed?

p. 8, chart

-- shouldn't the title be "Estimated Annual NICS Costs"? It's not really the "user fee"

-- was the agent module or professional support module used to calculate costs for non-clerical positions?

-- what is included in the "appeals" cost--just personnel compensation? If so, should it be so labeled? (The first line could read "Compensation and benefits--Inquiries" and the second line could read "Compensation and benefits--appeals")

-- were "miscellaneous" costs based on the modules?

-- Drop "projected" on contractor costs? All the costs shown are projected (and "estimated" would appear in the revised title).

p. 10-- what percentage of inquiries are expected to generate appeals? How was this determined?

p. 13-- evaluation of fee structure. A positive and precise statement should be made about a review of costs after one year and to whom this information will be provided. This seems necessary given the many uncertainties of the cost estimates. (e.g., number of participating states, number of inquiries, number of appeals, contractor costs)

FBI RESPONSE TO OMB COMMENTS ON NICS FEE RULE (RIN 1105-AA57)

COMMENTS REPLY

#1 P.8 This has been reworded to reflect "the FBI anticipates charging a fee of not less than $13 nor more than $16 per inquiry."

#2 P.6 The chart has been labeled "Estimated Fiscal Year 1999 NICS Costs".

#3 P.8 The professional support module was used for calculations.

#4 P.8 The appeals cost is derived from the FBI's current procedure for handling non-criminal justice fingerprint card submissions as stated in the appeals explanation paragraph on pg. 11. This cost includes equipment, supplies, personnel, etc.

#5 P.8 In the Miscellaneous Costs category, the FBI employee background investigation contract costs were based on the professional support module and the depreciation costs were based on DOJ guidelines.

#6 P.8 "Projected" has been deleted from the contractor cost category.

#7 P.10 The percentage of inquiries expected to appeal is .07%. This was based on a survey taken from states who currently perform background checks.

#8 P.13 This portion has been revised to reflect a Fiscal Year 1999 review and necessary subsequent reviews. However, changes will be made and published as needed.

general in nature, and not directly traceable to the product or service produced. The FBI has allocated a portion of its general management, administration, finance, and security functions as indirect costs to the NICS program. These costs were allocated based upon the ratio of positions in the NICS program to positions in all other Criminal Justice Information Services Division programs.

The costs to be recovered include, but are not limited to, an appropriate share of: (a) direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement, (b) physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, and travel, (c) management and supervisory costs, and (d) the costs of enforcement, collection, research, establishment of standards, and regulation.

Cost Figures

Because NICS is a service which has not been previously offered, cost figures are based on information currently available regarding firearm background checks, the number of states that are expected to serve as POCs, and ongoing contracting efforts. Upon the establishment of the system on November 30, 1998, the FBI anticipates charging a fee of not less than $13.00 nor more than $16.00 per inquiry. The fee range was determined by estimating the resources needed to satisfy the

OMB #1

projected volume of background checks and related work, determining the direct and indirect costs of these resources, and working with the FBI's prime developmental contractor to cost the portion of services which will be furnished by an outside contractor. Negotiations are ongoing with the developmental contractor for outsourcing the NICS Call Center and billing functions. Until a final contract is negotiated, the exact fee to be charged beginning November 30, 1998, is unknown.

OMB #2

CATEGORY	YEARLY TOTAL
WAGES & OTHER COMPENSATION	$27,484,592
APPEALS	553,446
FURNITURE & SUPPLIES	1,420,222
TRAVEL & TRAINING	1,077,671
HARDWARE & SOFTWARE MAINTENANCE	291,285
MISCELLANEOUS	2,541,474
CONTRACTOR COSTS	35,891,990
TOTAL	$69,260,680

OMB #6

In order to estimate the number of NICS background checks that will be performed, the FBI used the firearms related inquiries of III for Fiscal Year 1997. These background checks were performed primarily for handgun sales as required under the Interim Provision of the Brady Act. For purposes of this calculation, the FBI estimates that it will perform handgun checks and/or long gun checks in approximately 31 non-POC states.

The Miscellaneous category is composed of FBI employee background investigation contract costs, physical location costs (based on the standard Government Services Administration (GSA) rate for government office space) and depreciation.

The Contractor Cost category includes the cost of all contractor services provided to support the operation and maintenance of the NICS Operations Center, including, but not limited to telecommunication, billing and call center service costs. Such telephone-intensive functions are subject to workload variations which may be more economically managed using contractor support. The FBI therefore anticipates engaging a private contractor with up to 200 Customer Service Representatives to answer phone calls from FFLs, forward information to NICS, and respond to FFLs with proceed or delay messages. The projected contractor costs have been derived from preliminary and ongoing contracting efforts, using government cost estimates. The proposed user fee will be established based upon actual contract costs.

The NICS fee is being established in order for the Federal Government to recover the full cost of processing NICS background checks for FFLs doing business in states in which the FBI is contacted directly by the FFLs. This fee will not generate a profit. Evaluation of the NICS fee will be an ongoing process.

OMB #8

The validity of this estimate will be evaluated during Fiscal

OMB #8

Year 1999, and the results of this evaluation and any appropriate changes to the NICS fee will be published in the Dederal Register no later than November 30, 1999. Subsequently, the NICS fee(s) will be periodically evaluated and adjusted as may be warranted. The Director of the FBI may also clarify, supplement, or amend provisions related to these fees. The FBI Director shall provide appropriate notice to affected persons of any exercise of the foregoing authorities; notice relating to provisions of general applicability shall be published in the Federal Register.

Billing FFLs for NICS User Fees

It is general Federal policy that user charges will be collected in advance of, or simultaneously with, the rendering of services. However, strict adherence to this policy here would conflict with the Brady Act's mandate for "instant" checks, and the following procedures are accordingly established as an exception to this general policy. FFLs being serviced by the FBI will incur a non-refundable user fee charge for each requested NICS check immediately upon issuance by the FBI of the unique NICS Transaction Number (NTN) associated with the check. However, such FFLs will be afforded two payment options, real-time credit card charges by individual transaction or monthly invoicing.

Prior to initiating its first NICS check, an FFL will notify the FBI, via an enrollment process, as to which payment option it