

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	FBI to Jose Cerda [partial] (2 pages)	12/29/1998	b(7)(C), b(6)
002. fax	NICS Update for White House [partial] (1 page)	12/29/1998	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 17179

FOLDER TITLE:

NICS [National Instant Criminal Background Check System] Miscellany

2016-0931-S
rc2300

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

that ruling, and the Justice Department has moved to dismiss the complaint.

The briefs supporting and opposing the motion to dismiss neither change nor illuminate the picture presented by the motion for preliminary injunction. The merits dispute in this case centers on conflicting interpretations of S 922(t)(2) of the Brady Law and the appropriations rider. Such a case requires application of the deferential standard of review established in Chevron U.S.A., Inc. v. National Resources Defense Council, 467 U.S. 837 (1984). Plaintiffs' application for a preliminary injunction was denied because Congress had not spoken directly to the question at issue and because defendant's construction of the Brady Law was permissible. See Memorandum Opinion, Jan. 27, 1999 at 5. Plaintiffs did not offer and have not offered any basis for departing from Chevron. All reasonable inferences from the alleged facts must be drawn in favor of plaintiffs, see, e.g., Schuler v. United States, 617 F.2d 605, 608 (D.C. Cir. 1979), but these plaintiffs have not alleged a "set of facts in support of [their] claims which would entitle [them] to relief." Kowal v. MCI Communications Corp., 16 F.3d 1271, 1276 (D.C. Cir. 1994).

An appropriate order accompanies this memorandum.



JAMES ROBERTSON
United States District Judge

July 7, 1999

TOTAL P.05

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIANATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., et al.,

Plaintiffs,

v.

JANET RENO, Attorney General of
the United States,

Defendant.

Civil Action No. 98-2916 (JR)

FILED

JUL - 7 1999

KIMMY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURTORDERUpon a review of the record, it is this 7th day of

July 1999,

ORDERED that defendant's motion to dismiss [# 15] is

granted.

JAMES ROBERTSON
United States District Judge

Children Killed, 0500

Restraining order didn't prevent sale of gun used in shootings

CASTLE ROCK, Colo. (AP) A restraining order that required a man to stay away from his family did not show up on a federal background check, allowing him to purchase a handgun that police say he used hours later to kill his three daughters.

Court records show that Simon Gonzales' estranged wife obtained a temporary restraining order in late May and a petition was filed to make it permanent on June 16. Gonzales bought the gun from a federally-licensed firearms dealer Tuesday evening.

But because Gonzales had not been served with the order, it was not entered into his background record and it did not turn up during the required check, investigators said Thursday. Authorities did not say why Gonzales was never served.

"The ATF has confirmed that this was a legal transaction, a legal sale," said Michael Knight, a spokesman for the District Attorney's Office and an investigator in the case.

John Keating of the Bureau of Alcohol, Tobacco and Firearms in Washington said a restraining order temporary or permanent will prevent an applicant from buying a gun once it has been served and has entered the system.

Gonzales was killed by police in a pre-dawn shootout Wednesday after he drove in front of the police station and fired through a window, narrowly missing an officer inside.

Moments later, police found his daughters, Rebecca, 10, Katheryn, 8, and Leslie, 7, dead inside his bullet-riddled truck. An autopsy Thursday concluded that the girls died of gunshot wounds before the shootout.

Friends said Gonzales picked the girls up near their house in Castle Rock after Mrs. Gonzales gave him permission to take them out Tuesday evening.

Around 6 p.m., Gonzales called a gun dealer who had advertised a handgun in a newspaper for \$375 dollars, said police. The background check took about one hour.

Police said the girls were shot in the truck. Gonzales' wife, Jessica, 33, her son, Jessie, relatives and friends struggled to understand what happened.

"We just can't conceive it. It can't even be real to us now, because you can't do that to kids," said Tommy Rivera, Mrs. Gonzales' sister.

The Gonzaleses were married in 1990, separating last year, according to court documents.

In an application for a restraining order filed last month, Mrs. Gonzales said her husband tried hang himself in front of children.

Mrs. Gonzales called police twice in the hours before the shootout because she was concerned about the children's welfare. She said her husband had suicidal tendencies.

Gonzales had worked for the past year maintaining computer systems at Natural Balance, Inc. in Castle Rock, a dietary supplement company where supervisors said he was a valued employee who had shown no signs of personal problems.

He had served in the Navy and received a monthly disability payment.

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Talking Points re Washington Post Article of June 25, 1999 re NICS and FBI

In covering a very important story today about the operation of the Brady background check system, the Post inexplicably chose to distort the facts in order to make it sound as if the FBI's National Instant Check System (NICS) was defective.

The type of journalism displayed in the article is very unfair, and not worthy of the Post.

The FBI's NICS personnel are doing their jobs extremely effectively, and do not deserve to be characterized by any source as having "bungled" the federal background checks.

The problem of criminals getting guns despite the Brady checks is a real one, but it is one that is created by the operation of the Brady Law, not by the FBI.

Indeed, this problem is the one that the President, the Justice Department, the FBI and the Treasury Department have identified and been talking about in connection with pending federal legislation regarding gun shows. The problem is that the Brady Law provides law enforcement only 3 business days to complete all Brady background checks.

The FBI handles *all* Brady background checks immediately, seven days a week. In 73% of all cases, the licensed firearms dealer who is seeking the check is given a "proceed" response literally within minutes, during the first phone call by the dealer to the NICS. And in 95% of all cases, the FBI is able to give the licensed firearms dealer a definitive answer regarding the buyer within 2 hours. For the other 5% of calls, the FBI needs additional time, usually because a state court record must be checked, and that record is not yet automated and available to the FBI. This means that state court personnel must retrieve the record and tell the FBI what it contains *before the FBI can legally deny the prospective buyer the gun*. Often, the state court personnel get back to the FBI with information about the cases within the 3 business days, and the gun transfer is denied. Sometimes, however, state personnel are not able to get the record before the 3 business days have lapsed.

Whether it is during or after the 3 business days, as soon as the state personnel tell the FBI about the disposition, the FBI acts on the state's information immediately. The first step is that the FBI contacts the licensed firearms dealer who requested the check. If the person has been convicted of a felony, or is under indictment for a felony, or is otherwise not allowed to have a gun, the dealer is told to deny the sale. If the 3 business days have lapsed, sometimes the dealer will have already let the buyer have the gun. (Some dealers, including K-Mart and WalMart, have decided that they will not transfer the gun until the FBI gives them an affirmative "proceed" for the transaction. Although this is obviously a prudent decision, nothing in the Brady Law requires this action by the dealer.) Since November 30, 1998, there have been 1,663 instances in which guns have been transferred by dealers under these circumstances. Immediately upon learning that a gun has been transferred, the FBI contacts both ATF and local law enforcement in the relevant location. As discussed in your story, ATF then takes action to quickly investigate the situation and attempt to retrieve the weapon.

Obviously, law enforcement strongly prefers to be able to *prevent* the illegal possession of the firearm, rather than having to retrieve these weapons from persons who are potentially dangerous.

This is the point that we have been repeatedly making in connection with the attempt to address and close the gun show loophole. In that debate, some have tried to *shorten* the time that law enforcement has to complete the check from 3 business days to just 24 hours. And we have been explaining what effect that will have; which is that it will allow *more* criminals to get guns. In fact, the President has sought, in the legislation he proposed, to have the period of time to complete checks extended by 2 business days, to restore the period to 5 business days, as it was under the interim Brady Law period that ended on November 30, 1998.

The Brady checks by the FBI have stopped over 48,000 felons, fugitives and other prohibited persons from getting guns, and the FBI is doing all it can to prevent even those few who are still getting guns from getting them. Your article inaccurately and unfairly places blame on the FBI for a problem created by the realities of the our criminal justice record system.

I cannot urge you strongly enough to rectify the injustice done by your prominent publication of this destructive and inaccurate piece.

West Virginia Facility Is Site of Gun Detective Work

TRACE, From A6

certainly a sense of urgency," he recalled, "but you try to keep your composure about everything."

As soon as the call came in, he turned to the records on more than 200 million firearms transactions ATF has accumulated since 1968. Scads of records have been handed over since 1994, when dealers by the thousands closed after the ATF made it tougher and more expensive to secure a federal firearms license. The regulations effectively reduced the

number of licensed dealers from 287,000 in 1993 to 105,000 today.

Stely initially was stumped in tracing the two old shotguns. Scouring through microfilm, he discovered they were made by a defunct manufacturer that had turned over its inventory of serial numbers.

There are 90 million serial numbers—permanent IDs attached to a weapon—stored at the center. Pinning down a weapon's number is more complicated than it seems. Each gun manufacturer may have its own numbering system—so the

same number often appears on many different firearms.

Eventually, Stely found the correct numbers and the wholesalers who had handled the shotguns in 1969. He identified the dealer who had first sold one of the shotguns. Then the trail went cold.

Stely and Southard had more luck tracing the 9mm carbine. Southard used records to identify the manufacturer, Hi-Point Firearms in Mansfield, Ohio, then found the guns shipment to a wholesaler and then to a California shop. Southard tele-

phoned the dealer, whom ATF has declined to identify, at home. The dealer offered to go back to her shop to comb through sales records. ATF was able to get information on that gun the same night.

Stely was less fortunate in tracking the TEC-DC9, a used gun that would sell for \$100 to \$150, that night. He tried to telephone the emergency number of Navegar, the gun's maker, in Miami, but there was no answer.

By the time Stely's colleagues telephoned ATF agents in Littleton at 10:30 a.m. Thursday—17 hours

after the original phone call—here was what was known:

There was nothing to show who had originally bought the Savage shotguns—a mystery that would have to be solved through interviews. The Hi-Point had been traced to the California dealer. The TEC-DC9 remained untraced.

Stely would not disclose names of wholesalers or dealers, but the Denver Post has reported that the TEC-DC9 was shipped to Zander Sporting Goods in Illinois, then to a gun shop outside Denver.

Five days later, federal and local investigators determined through gumshoe work that Klebold's girlfriend, Robyn Anderson, 18, bought

the two shotguns and the Hi-Point carbine (which sells used for \$85 to \$100) at a gun show.

On Tuesday, the ATF found the person who acted as a go-between to furnish the TEC-DC9 to the teenagers—a pizza shop co-worker.

Webb says the tracing process could be vastly accelerated by making dealers register all sales.

Still, last year the center had 197,000 trace requests and tracked 52 percent of them to the wholesaler. It lost track of 25 percent of these firearms after reaching the retailer level. The rest it could not trace at all.

Staff researcher Alice Crites contributed to this report.

June 15th, 1999

To the staff of NICS

I would like to take this oppurnity to tell you that you are doing an outstanding job. I know that there were growing pains when this background started however you have come a long way. First of all I would compliment you for the professionalism that your people extend to us the customer. They always act in a friendly manner and their speech is clear and conscience.

This past weekend I attended a gun show in Wichita, Kansas. During that period I ran 40 to 50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of. I feel that the public thinks that there is some type of conspiracy going on when they get a delay. Little do they know how the system works. Again thanks for a job well done.

David Stalnaker DBA
Dave's Gun Shop
Winfield, Kansas

ROD R. BLAGOJEVICH
5TH DISTRICT, ILLINOIS

COMMITTEE ON
NATIONAL SECURITY

COMMITTEE ON
GOVERNMENT REFORM
AND OVERSIGHT

Congress of the United States
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Washington, DC 20515-1305

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Fax Transmission

Date: 7/15/99.

To: Jose

From: Deanne

Phone: _____

Fax: 958-7028

Message: - NICS Notification Bill. -

This fax includes 4 pages (including this cover sheet.)

Please call 202/225-4061 if you encounter problems with this transmission.

CHICAGO
SUN-TIMES

Front Page
7/15/99.

NEW gun checks planned

Tougher law proposed after Smith's ramp

BY FRANK MAIN
AND ROBERT C. BERGUTH
STAFF REPORTERS

Attempts to buy firearms illegally from gun shops are being immediately reported to local police under a State Police program initiated in the wake of Benjamin Nathaniel Smith's rampage, the Chicago Sun-Times has learned.

U.S. Rep. Rod Blagojevich said he will introduce a bill this week to make the program national policy—requiring the FBI and other agencies responsible for Brady Law background checks to notify police when a gun purchase is denied.

At Blagojevich's request, the Il-

linois State Police is announcing a notification program, said Lt. Dave Sanders, spokesman for the State Police.

Such notification came to Blagojevich on the day he was shot days before his two sons were left two dead and one wounded, Blagojevich said.

Also Wednesday, a bill to let the state know more about the World Church of the Creator, which Smith followed, introduced by Illinois Attorney General Jim Ryan, who is seeking to have the group declared a charity. Such a designation would require the group to submit to more government scrutiny, Ryan said.

■ Details, Page 10

s doctors

eye doctors agree. Prolonged exposure can lead to skin cancer.

"ridiculous," Amy Paller, chief of dermatology at Children's Memorial, said of the Internet letter. "Sunscreen is in use for a long time now, and lots of

Turn to next page

Umps
threaten
to quit

Back Page

(2)

10

Thursday, July 15, 1999

State sues over status of church

Supremacist group faces scrutiny

BY FRANK MAIN
AND ROBERT C. HERGUTH
STAFF WRITERS

Illinois officials moved to fight gun violence and hate on two fronts Wednesday in the aftermath of the two-state rampage of white supremacist Benjamin Nathaniel Smith.

To increase government scrutiny of the white supremacist World Church of the Creator, which Smith followed, Attorney General Jim Ryan filed a lawsuit seeking to declare the nonprofit group a charity. That designation would mean it would have to register with his office, pay a \$15 annual fee and file annual reports on revenue and spending.

Ryan said he wants to know whether the money is being solicited and spent properly.

"This isn't about First Amendment rights," Ryan said. "They can believe and talk about whatever they want."

If the group is found to have been operating as a charitable organization, Ryan said, he could seek to freeze its assets and seek a \$1,000 fine.

Ryan said his goal is not to shut down the group, but make it accountable to the public. He said he

is not accusing the group of fraud. Meanwhile, U.S. Rep. Rod Blagojevich (D-Ill.) said he will introduce legislation this week that would have alerted local police to Smith's activities before his killing spree started July 2 and ended with his suicide two days later.



Jim Ryan
Not alleging fraud

The Illinois State Police already have started notifying local law-enforcement agencies, under a pilot program, when firearms applicants fail background checks, spokesman Lt. Dave Sanders said. The department acted in response to a request about a week ago from Blagojevich.

His bill would require the FBI and other agencies that perform Brady Law background checks to notify police when someone is rejected for a gun purchase.

The National Rifle Association, which has opposed Blagojevich on several gun-control efforts, said he is "moving in the right direction" by trying to prosecute people who attempt to buy guns by providing false information for background checks.

On June 24, the State Police blocked Smith from buying two pistols and a shotgun from a Peoria Heights gun shop after he failed a background check. He lied on a federal form saying he did not have

③

10 Thursday, July 15, 1999

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Jim Ryan
Not alleging fraud

F:\M6\BLAGOJ\BLAGOJ.040

H.L.C.

106TH CONGRESS
1ST SESSION**H. R.** _____

IN THE HOUSE OF REPRESENTATIVES

Mr. BLAGOJEVICH introduced the following bill; which was referred to the
Committee on _____

A BILL

To require State and local law enforcement authorities and the Bureau of Alcohol, Tobacco, and Firearms to be notified when the national instant criminal background check system determines that a person is ineligible to receive a handgun.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

F:\M6\BLAGO\BLAGOJ.040

H.L.C.

2

1 SECTION 1. REQUIREMENT THAT STATE AND LOCAL LAW
 2 ENFORCEMENT AUTHORITIES BE NOTIFIED
 3 WHEN THE NATIONAL INSTANT CRIMINAL
 4 BACKGROUND CHECK SYSTEM DETERMINES
 5 THAT A PERSON IS INELIGIBLE TO RECEIVE
 6 A HANDGUN.

7 Section 922(t) of title 18, United States Code, is
 8 amended by redesignating paragraphs (3) through (6) as
 9 paragraphs (4) through (7), respectively, and by inserting
 10 after paragraph (2) the following:

11 "(3) If the system determines that receipt of the fire-
 12 arm by the person would violate subsection (g) or (n) or
 13 State law, the ^{FBI or a designee of the FBI} ~~system~~ shall immediately notify the ^{chief law enforcement officer} ~~law on~~
 14 ~~of the State or that person's residence, and such other law enforcement authorities of the~~
 15 ~~forcement authorities of the State and locality in which~~ ^{state of such persons} ~~the licensee is located,~~ ^{residence} and the field office of the Bureau
 16 of Alcohol, Tobacco and Firearms with jurisdiction over
 17 the place where the licensee is located, of the determina-
 18 tion, and of the name and place of residence of the per-
 19 son."

Add

DEFINITION

"For the purposes of this bill, Chief Law Enforcement Officer is defined as the chief of police, the sheriff or an equivalent office or the designee of such individual."

(Billing Code: 4810-31-P)

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[T.D. ATF- ; Ref: Notice No. 857]

RIN: 1512-AB67

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

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

ACTION: Final rule, Treasury decision.

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

DATES: This rule is effective November 30, 1998.

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

SUPPLEMENTARY INFORMATION:

Background

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

Permanent Provisions of the Brady Law

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

("NICS") that a firearms licensee must contact before transferring any firearm to an unlicensed individual. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law apply to all firearms. Furthermore, the law provides that the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation of law.

National Instant Criminal Background Check System

The Brady law requires that the Attorney General establish a permanent national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information on whether receipt of a firearm by a prospective transferee would violate Federal or State law. The law requires that the permanent system be established not later than November 30, 1998. It is expected that the NICS will be established by October 31, 1998, although licensees will not be required to contact NICS until November 30, 1998.

Upon establishment of the system, the Attorney General is required to notify each firearms licensee and the chief law enforcement officer of each State of the existence and purpose of NICS and the means to be used to contact NICS. Beginning on the date that is 30 days after the Attorney

General notifies firearms licensees that NICS is established, the permanent provisions of Brady, 18 U.S.C. 922(t), become effective.

Statutory Requirements

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

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

Exceptions to NICS

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

1. The transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which allows the transferee to possess or acquire a firearm, and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that available information does not indicate that possession of a firearm by the transferee would be in violation of the law;
2. Purchases of firearms which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms); or
3. Purchases of firearms for which the Secretary has certified that compliance with NICS is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Penalties for Noncompliance

Section 922(t) provides that a firearms licensee who transfers a firearm and knowingly fails to comply with the requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, is subject to license suspension or revocation and a civil fine of not more than \$5,000.

Notice of Proposed Rulemaking

On February 19, 1998, ATF published in the Federal Register a notice proposing regulations to implement the requirements placed on Federal firearms licensees by section 922(t) (Notice No. 857; 63 FR 8379). The comment period for Notice No. 857 closed on May 20, 1998.

On June 4, 1998, pursuant to section 103(h) of the Brady law, the Department of Justice issued proposed regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system and appeal procedures for individuals who are determined by NICS to be ineligible to purchase a firearm (63 FR 30429, 30430, and 30514). Accordingly, these issues were not addressed in ATF's proposed regulations.

Prior to the close of the comment period, two commenters requested that public hearings be held on the proposed regulations and one commenter

requested that the comment period be extended. ATF believes that it is necessary to advise Federal firearms licensees of their responsibilities under the permanent provisions of the Brady law as much in advance of the November 30, 1998, effective date as possible. An extension of the comment period and the holding of public hearings would delay the issuance of final regulations. Furthermore, ATF believes that 90 days is a sufficient amount of time for all interested parties to respond to the issues raised in the notice. Finally, ATF believes that any information received during an extension of the comment period or presented in oral testimony at a public hearing would be similar to that received during the 90-day comment period. Accordingly, ATF is not extending the comment period or holding public hearings on the proposed regulations.

Analysis of Comments

In response to Notice No. 857, ATF received 8,492 comments, representing 8,779 signatures. Comments were submitted by Federal firearms licensees, licensed firearms collectors, nonlicensed individuals, industry trade groups, and other organizations (e.g., National Association of Arms Shows, Inc., National Pawnbrokers Association, Violence Policy Center, Gun Owners of America, and the National Rifle Association of

America), members of Congress, State representatives, and law enforcement officials.

Approximately 125 commenters addressed issues which were outside the scope of the notice. These include user fees for NICS checks, hours of operation that NICS will be available for background checks, how firearms licensees will receive final notification from NICS in the event a background check is delayed, provisions for a toll-free appeal hotline that firearms purchasers can contact in the event of a wrongful denial of a purchase, and ATF's assurance that in most cases a NICS check will be instantaneous. These issues are being addressed in the Department of Justice's rulemaking proceeding.

Twenty-three commenters expressed opposition to the Brady law and urged its repeal. One hundred sixty-six commenters requested other changes that would also require legislative action. These include eliminating the provision of the law which authorizes NICS to take up to three business days to respond to a request for a background check, restricting the Department of Justice's role in implementing any provisions of the Brady law, exempting State "instant check" and "point of sale check" systems from a NICS check, and prohibiting NICS from containing information on certain categories of persons prohibited from receiving or possessing firearms

(such as renunciates and persons discharged from the military under dishonorable conditions). ATF is not adopting any of these comments because they are inconsistent with the language of the statute.

Long Guns, Antique Firearms, and Licensed Collectors of Curios or Relics

Forty-seven commenters contend that the permanent provisions of the Brady law either do not apply or should not apply to transfers of long guns. Some commenters point out that the title of the statute, the "Brady Handgun Violence Prevention Act," clearly shows that Congress intended the law, both the temporary and permanent provisions, to apply only to handguns. Other commenters argue that since the interim provisions of the Brady law apply only to handguns, it is apparent that the permanent provisions should apply only to handguns as well. These commenters maintain that ATF has exceeded its authority under the Brady law by proposing to require NICS checks for all firearms, including rifles and shotguns.

While the title of the statute is the "Brady Handgun Violence Prevention Act," the plain language of the law clearly states that the permanent provisions apply to all firearms, including rifles and shotguns. In that regard, section 922(t)(1) provides that a Federal firearms licensee "shall not transfer a firearm" to an unlicensed individual unless before the completion of the transfer, the licensee contacts NICS. Section 103(j)(2) of the Brady law

provides that the term "firearm" has the meaning prescribed in § 921(a) of the GCA. This section defines "firearm," in part, as "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; . . ." Thus, the term "firearm" clearly includes rifles and shotguns.

Two commenters inquired whether antique firearms are subject to the permanent provisions of the Brady law. Pursuant to section 921(a)(3), the term "firearm" does not include an antique firearm (as defined in section 921(a)(16)). Accordingly, the transfer of an antique firearm is not subject to the Brady law.

Several commenters requested clarification whether the permanent provisions of the Brady law apply to licensed collectors of curios or relics. The transfer of a firearm by a licensed collector is not subject to section 922(t), since the law by its terms applies only to the transfer of a firearm by a licensed importer, manufacturer, or dealer to an unlicensed person. Furthermore, since the permanent provisions of Brady do not apply to transfers among licensees, the transfer of a curio or relic firearm to a licensed collector is not subject to permanent Brady. However, in transactions involving firearms not classified as curios or relics, the licensed collector has the same status as a nonlicensee. Thus, a licensed collector's

acquisition of a firearm that is not a curio or relic from an importer, manufacturer, or dealer is subject to the requirements of permanent Brady.

Pawn Transactions

In Notice No. 857, ATF advised that the proposed regulations would apply the permanent provisions of the Brady law to the redemption of a pawned firearm. As ATF noted, the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, amended § 922(s) of the GCA to specifically exempt transactions involving the return of a handgun to the person from whom it was received. However, no such exemption appears in § 922(t).

Three hundred thirty-eight commenters disagreed with ATF's interpretation that the permanent provisions of the Brady law apply to the redemption of a pawned firearm. Many of the commenters argue that the law was intended to apply only to the sale of a firearm and not to pawn transactions involving the redemption of a firearm. A national trade association representing 3,600 pawnbrokers suggested that Congress did not intend to cover the redemption of a pawned firearm, and that the term "transfer" in the Brady law referred to a transfer of title. The commenter further contends that the amendment of § 922(s) of the GCA by the Violent Crime Control and Law Enforcement Act of 1994 "indicates their [Congress']

intent to not apply Brady to pawn loans.” Several commenters suggested that because pawn loan customers would not have the disposable income to pay for a NICS check, they would instead sell their firearms on the street through unregulated sources.

After carefully considering the arguments raised by the commenters, ATF has concluded that the permanent provisions of the Brady law apply to the redemption of a pawned firearm. Unlike § 922(s) of the GCA, there is no provision in § 922(t) which exempts transactions involving the return of a firearm to the person from whom it was received.

Furthermore, ATF does not agree with the commenters who suggested that the return of a redeemed firearm is not a “transfer” within the meaning of the permanent provisions of the Brady law. The redemption of a pawned firearm has always been treated as a disposition under the GCA, and a Form 4473 has always been required for such redemptions. Furthermore, in Huddleston v. United States, 415 U.S. 814 (1974), the Supreme Court held that the redemption of a pawned firearm was an acquisition within the meaning of the GCA. Thus, there is no basis for exempting the redemption of a pawned firearm from the permanent provisions of Brady.

Consignments

ATF has received inquiries regarding the return by a licensee of a consigned firearm to an unlicensed individual. In these cases, the unlicensed individual has delivered a firearm to the licensee for sale. Sales of the firearm are handled in the same manner as other firearm sales. However, if the licensee does not sell the firearm, it may be returned to the unlicensed individual.

ATF has always treated the return of consigned firearms as a transfer or disposition within the meaning of the GCA. The individual to whom the consigned firearms are returned must complete a Form 4473 in the same manner as any unlicensed individual who is acquiring a firearm from a licensee. Accordingly, the final regulations do not provide any exemption for the return of a consigned firearm.

Repaired and Replacement Firearms

While this issue was not specifically addressed in the proposed rule, approximately 55 comments dealt with the application of permanent Brady to repaired and replacement firearms. Most of those commenters argued that the return of a repaired firearm to the person from whom it was

received should not be considered a "transfer" for purposes of the Brady law.

The notice of proposed rulemaking did not propose that such transactions should be subject to permanent Brady. After carefully considering the comments on this issue, ATF agrees that the return of a repaired or replacement firearm by a licensee is not a "transfer" within the meaning of the Brady law.

Historically, the return of a repaired or replacement firearm by a licensee has been treated in a different fashion from other dispositions under the GCA. Since the enactment of the GCA in 1968, the regulations have provided that a Form 4473 "shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received." See 27 CFR 178.124(a).

The final rule does not require NICS checks in any situation in which the transferee is not required to complete a Form 4473. Accordingly, transactions falling within the exemption found in section 178.124(a) are not subject to the requirement for a NICS check.

Time of NICS Check

As proposed in Notice No. 857, § 178.102(c) provided that a NICS check may be relied upon by the licensee only for use in a single transaction and for a period not to exceed 30 days. If the transaction is not completed within the 30-day period, the licensee must initiate a new NICS check prior to completion of the transfer.

ATF received approximately 40 comments on this proposal. Many commenters objected to the proposal that a separate NICS check must be conducted for each separate transaction. They contend that this requirement is unnecessary and places a burden on both NICS and the licensee. Two commenters stated as follows:

The purpose of the check is to ensure the individual who wishes to purchase a firearm is not a prohibited possessor under the law. In this instance, there is no reason to require a separate NICS check if an individual purchases more than one firearm within a 30 day calendar period.

Many other commenters were concerned about the validity of a NICS check with respect to the return or exchange of a newly purchased firearm.

The Brady law provides that a licensee may not transfer a firearm to an unlicensed individual unless, before the completion of the transfer, the licensee contacts NICS. It is clear that the law contemplates that once the transfer is completed, any additional transfer of a firearm to the same

individual would be a separate transfer that would require a separate NICS check. With respect to the return or exchange of a newly purchased firearm, replacement firearms are not subject to a NICS check. However, if the firearm is being returned and exchanged for a different firearm, this constitutes a separate transaction and another NICS check would be required.

Several commenters objected to ATF's proposal that a NICS check should only be valid for 30 calendar days. Three commenters argued that the Brady law does not specify or impose any time limit on the validity of a NICS check. Three other commenters suggested that a NICS check should be acceptable for multiple purchases for 5 years, the same period of time for which a permit is valid.

Another commenter, a trade organization representing approximately 300 firearms dealers, asserted that the proposed 30-day limitation is unreasonable and unnecessary. This commenter states that customers often order firearms and then later return to the licensee's premises to effect the transfer. Based on the experience of its membership, this commenter believed that many transfers do not take place within 30 days, due to the customer's own business commitments or the customer's personal

circumstances. Accordingly, this commenter proposed that the NICS check should be valid for a period of 60 days. Another commenter expressed similar concerns, and recommended that the check should be valid for 45 days "to allow normal transactions to occur, given delays and distances normally encountered in firearms sales situations."

As ATF stated in Notice No. 857, it is clear that the Brady law contemplates that the licensee should contact NICS immediately prior to the transfer of a firearm. However, ATF recognized that many States have waiting periods which mandate a delay of up to 10 days before the firearm may be transferred. Thus, the proposed rule provided that a NICS check would be valid in a single transaction for a period of up to 30 days. This would allow the purchaser a reasonable period of time to come back for the firearm in States with lengthy waiting periods.

After carefully considering the comments, ATF has decided not to extend the period in which a NICS check retains its validity. ATF believes that the 30-day period is reasonable in that it allows sufficient time for a purchaser to return to take possession of a firearm. In situations where a purchaser has ordered a custom-made firearm and a longer delay is required, the licensee may choose to conduct the NICS check after the firearm comes in, rather than at the time that the order is placed. In any event, licensees

should try to avoid lengthy delays between the time the NICS check is conducted and the time the firearm is transferred. The 30-day limit provides a concrete limit beyond which the firearm may not be transferred pursuant to a "stale" NICS check.

Permits

The Brady law provides that a licensee is not required to initiate a NICS check where the purchaser presents a permit that allows the purchaser to "possess or acquire a firearm." The final rule clarifies that the permit must be valid under State law. Section 178.102(d)(1)(i) of the proposed regulations clarified that this exception includes permits to carry concealed weapons as well as permits specifically authorizing the purchase of a firearm.

Five commenters expressed opposition to ATF's proposal that a permit to carry concealed weapons was included within the permit exemption provided by permanent Brady. Four of the commenters contend that the proposed regulation expands the scope of the exemption and that the clear language of the Brady law limits the exemption to a permit to "possess or acquire" a firearm. Two commenters maintain that this provision of the law applies only to permits specifically authorizing the purchase of a firearm.

Some commenters assert that excepting concealed weapons permit holders from a NICS check would significantly increase the number of

exempt firearms transactions. For example, one commenter noted that “[t]his expansion will dramatically increase the possibility of unlawful firearms purchase[s] in part because the varying state systems for revocation of the permits frequently involve considerable delay.”

Notwithstanding these comments, it is ATF’s conclusion from the plain language of the Brady law that a permit to “possess” a firearm includes a permit to carry concealed weapons. Furthermore, ATF’s position in this matter is consistent with that taken with respect to the permit alternative under the interim provisions of the Brady law. Accordingly, § 178.102(d)(1)(i) is being adopted in the final regulations as proposed.

NICS Checks in Conjunction With the Issuance of Permits

The law provides that for a permit to qualify as an alternative to the NICS check at the time of transfer, it must have been issued not more than 5 years earlier by the State in which the transfer is to take place. Furthermore, the permit is a valid alternative under permanent Brady only if the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.

In construing the language of the statute, the proposed regulations provided that as of November 30, 1998, "the information available to" State officials who issue permits will include a NICS check. The proposed regulations also clarified that if a State did not disqualify all individuals prohibited under Federal law, the permits issued by that State would not be accepted as alternatives under the permanent provisions of the Brady law.

Approximately 3,700 commenters objected to ATF's proposal that the acceptance of permits as alternatives was conditioned upon the State running a NICS check prior to issuing the permit. Most of the commenters contend that the statute does not mandate that State officials conduct a NICS check on all permit applicants. Two commenters argued that "[t]his portion of the proposed regulation violates Prinz [sic] v. United States. Here the United States Supreme Court held that 'The Federal Government may not compel the States to enact or administer a federal regulatory program.'"

The issuance of regulations setting standards for permits that meet the criteria of the statute in no way implicates Tenth Amendment or Federalism concerns. Neither the Brady law nor the regulations require States to establish or administer permit systems at all. However, the law does set forth certain standards that State permits must meet in order to be recognized as valid Brady alternatives.

As of November 30, 1998, "the information available to" State officials will include NICS. As indicated in Notice No. 857, a NICS check will provide a more extensive background check of the purchaser than other record systems containing only criminal records. NICS will include records from the Department of Defense concerning dishonorable discharges, records from the Department of State regarding individuals who have renounced United States citizenship, and other information not available in criminal records.

Accordingly, § 178.102(d)(1)(iii) is adopted as proposed.

One commenter noted that Notice No. 857 was silent with respect to State permits issued prior to the effective date of the permanent provisions of the Brady law. Prior to November 30, 1998, the information "available to" State permit officials did not include NICS. Permits issued prior to that date that were recognized by ATF as valid alternatives under interim Brady will continue to be recognized as valid alternatives after November 30, 1998, notwithstanding the fact that no NICS check was conducted prior to the issuance of the permits. These permits will be "grandfathered" for a period not to exceed 5 years or the duration of the permit, whichever is shorter.

Firearms Transaction Record (Form 4473)

In general, the regulations provide that prior to the transfer of a firearm to a prospective purchaser, the buyer must complete, sign, and date a

firearms transaction record, Form 4473. The form requests certain information, including the transferee's name, sex, height, weight, race, residence address, date of birth, and place of birth. In Notice No. 857, ATF proposed amending the regulations to solicit additional optional information about the purchaser, including the transferee's social security number, to facilitate the transfer of a firearm (§ 178.124(c)(2)). ATF noted in Notice No. 857 that ATF Form 5300.35, Statement of Intent to Obtain a Handgun (Brady form), currently requests the purchaser's social security number as optional information.

Approximately 8,000 commenters addressed this proposal. Twenty-five commenters misunderstood the proposal and were under the impression the proposed regulation was requiring purchasers to provide their social security number on Form 4473. The remaining commenters expressed other concerns and urged ATF to withdraw the proposed regulation. Many commenters contend that requesting the purchaser's social security number violates the individual's right to privacy. The commenters are also concerned about the possible misuse of the information, including the establishment of a national registry of firearms owners. Other commenters are concerned that the request for a purchaser's social security number as additional optional information may eventually become a requirement. These

commenters also believe that a firearm transfer may be unnecessarily delayed or the purchaser subjected to additional scrutiny if the social security number is not provided.

The final regulations will include the purchaser's social security number on Form 4473 as optional information. The social security number is a unique identifier. ATF believes that providing this information on Form 4473 will facilitate the transfer of a firearm. As discussed in Notice No. 857, ATF believes this additional information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law. For example, by providing this information the transferee might avoid confusion with a prohibited buyer who has the same name and date of birth as the transferee. Nevertheless, providing the social security number on Form 4473 is optional under the proposed regulation and the purchaser is not required to provide such information.

With respect to the commenters' concern regarding the establishment of a national registry of firearms owners, ATF would note that the registration of firearms, firearms owners, or firearms transactions or dispositions is specifically prohibited by 18 U.S.C. 926(a) and section 103(i) of the Brady law. ATF would further note that Forms 4473 are maintained by dealers, not the Federal Government.

In Notice No. 857, ATF proposed that in any transaction for which a licensee receives a unique identification number from NICS, such number will be recorded on Form 4473 and retained in the records of the licensee, regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred (27 CFR 178.102(b)). Several commenters objected to the proposed requirement that licensees retain copies of Form 4473 for denied NICS checks or where there is no transfer of a firearm. The commenters argue that this requirement is unnecessary and only serves to increase the paperwork burden on licensees. ATF disagrees with the commenters and finds the requirement to be both necessary and warranted. As explained in the notice, requiring licensees to retain Form 4473 in all cases will enable ATF to determine compliance with the law by licensees and purchasers. Accordingly, the regulation is being adopted as proposed. The final rule clarifies that the unique identification number provided by NICS shall include either a NICS transaction number or, in States where the State is recognized as a point of contact for NICS checks, a State transaction number.

Seven commenters contend that the Brady law requires Form 4473 to be destroyed after each firearm transaction. Specifically, § 922(t)(2)(C)

provides that if a NICS check indicates receipt of a firearm by a prospective purchaser would not violate Federal or State law,

[T]he 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 person or the transfer.

The Brady law does not require the Form 4473 to be destroyed after each firearm transaction. The "system" mentioned in the law refers to the national instant background check system (NICS) established by the Attorney General. In addition, the Department of Justice has issued proposed regulations with respect to the destruction of records in the NICS (AG Order No. 2158-98; June 4, 1998, 63 FR 30430).

Several commenters misinterpreted § 178.124(c)(3) as proposed by ATF. It is their understanding that the regulation requires licensees to provide NICS with information regarding the firearm being transferred (e.g., type, model, caliber or gauge, etc.). The commenters are opposed to NICS collecting and maintaining such information. The proposed regulation was not intended to require licensees to provide NICS with specific information about an individual's firearms purchase. For clarification purposes, ATF is amending § 178.124(c) and revising Form 4473 to specify that information about the firearm being transferred (e.g., the name of the manufacturer, the

type, model, caliber, etc.) will be recorded on the Form 4473 by the licensee after the completion of the NICS check.

Civil Penalties

As explained in the notice of proposed rulemaking, section 922(t)(5) of the GCA provides that a licensee who knowingly transfers a firearm and knowingly fails to comply with the provisions of section 922(t)(1) with respect to the transfer may be subject to revocation or suspension of the license for up to 6 months and a civil fine of not more than \$5,000. This provision applies only where at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate section 922(g) or (n) of the GCA, or State law.

The GCA, 18 U.S.C. 923(e), already provides ATF with authority to revoke a firearms license, after notice and opportunity for hearing, where the licensee has willfully violated any of the provisions of the GCA or the regulations issued thereunder. Furthermore, section 923(f) provides that revocation actions are subject to de novo judicial review by the district court in which the licensee resides or has his principal place of business.

ATF is amending Subpart E of Part 178 to provide that the existing procedures for revocation of licenses will also apply to the suspension and revocation of licenses under section 922(t)(5), as well as the imposition of a civil fine under this provision. The final rule also clarifies that such actions are subject to de novo judicial review by the district court.

Miscellaneous

Approximately 3,700 commenters expressed opposition to proposed § 178.97(b). This section requires a NICS check where a club or similar organization temporarily furnishes firearms to participants in a trap or similar shooting activity for use off the premises. The commenters contend that this requirement "is neither required by, nor is consistent with, the statute." ATF views the activity mentioned above in the same manner as the loan or rental of a firearm to a nonlicensee for temporary use off the licensed premises for lawful sporting purposes. In that regard, § 178.97(a) requires the licensee to record the transaction in his permanent records of acquisition and disposition and on Form 4473. It is ATF's position that such a transfer is subject to the requirements of the Brady law. Accordingly, § 178.97(b) is adopted in the final regulations as proposed.

ATF is amending § 178.102(c) by revising Example 2 at the end of the section to clarify that a firearms transaction is completed when the licensee

executes the Form 4473 and the firearm is transferred to the purchaser.

Some commenters believe the wording of the proposed regulation is confusing and implies that a firearms transaction is completed when the licensee executes the Form 4473, regardless of when the actual transfer of the firearm takes place.

The proposed regulation in § 178.125(e) would have required dealers to record in their records of disposition the identification number provided by NICS. ATF has determined that requirement is unnecessary since the final regulations require licensees to record the unique identification number provided by NICS on Form 4473 and to retain each Form 4473 for a period of not less than 20 years after the date of sale or disposition. Accordingly, ATF is not amending the regulation.

Finally, section 178.125a(a) is being amended to provide that licensees are not required to comply with the provisions of § 178.102 when selling firearms from the licensee's personal collection, provided that the licensee has maintained the firearm as part of his or her personal collection for at least one year.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512-0544. Other collections of information contained in this final rule have been approved under control numbers: 1512-0520, 1512-0006, and 1512-0524 (§ 178.129(c)) and 1512-0129 and 1512-0526 (§ 178.129(d), (e), and (f)). An agency may not

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

The collections of information in this final rule are in 27 CFR 178.102, 178.124(c), 178.129(b), 178.131, and 178.150. This information is required to implement the provisions of Public Law 103-159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The collections of information are required to ensure compliance with the law. The likely respondents and/or recordkeepers are individuals and businesses.

Estimated number of respondents: 106,000.

Estimated burden hours: 1 hour.

However, the above mentioned regulations which implement the Brady law require amendments to ATF Form 4473. In order to prevent a duplication of burden hours, the burden hours that are associated with the collections of information in these regulations (1,136,266 hours) will be reported under OMB control number 1512-0129, the Supporting Statement for ATF Form 4473, Firearms Transaction Record, Part I. The following paragraphs explain the additional burden hours.

Section 178.102 requires, with some exceptions, licensees to contact NICS before transferring any firearm to an unlicensed individual. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 824,000 hours. Section 178.124(c) requires licensees to record on Form 4473 the date the licensee contacts NICS and any identification number provided by NICS. The licensee must also verify the identity of the person acquiring the firearm by examining an identification document presented by the transferee. Form 4473 will include certain optional information about the purchaser, such as the person's social security number and alien registration number. Section 178.131 requires licensees to maintain certain records for firearms transactions not subject to a NICS check. The estimated total annual reporting and/or recordkeeping burden associated with §§ 178.124(c) and 178.131 is 308,266 hours. Section 178.129(b) requires licensees to retain a completed Form 4473 for a period of not less than 5 years where the transfer of a firearm is not made. The estimated total annual recordkeeping burden associated with this requirement is 4,000 hours. Section 178.150 provides for an alternative to NICS in certain geographical locations. Licensees must submit a written application to the Director containing certain information. The same requirement currently applies to the waiting period provision of the Brady law

for transfers of handguns. Since this requirement was established in 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. As such, ATF does not believe that there is any reporting and/or recordkeeping burden associated with the requirements of § 178.150 with regard to NICS.

Certain collections of information contained in § 178.129(b), previously approved under control numbers 1512-0520, 1512-0006, and 1512-0524, are merely being redesignated as § 178.129(c) in this final rule. Similarly, the collections of information in § 178.129(c), (d), and (e), previously approved under control numbers 1512-0129 and 1512-0526, are being redesignated as § 178.129(d), (e), and (f) in the final regulation.

Comments concerning the accuracy of these burden estimates and suggestions for reducing the burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

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

Drafting Information

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

List of Subjects

Part 178

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

Part 179

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

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Parts 178 and 179 as follows:

Part 178--COMMERCE IN FIREARMS AND AMMUNITION

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

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

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

§ 178.11 Meaning of terms.

* * * * *

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

* * * * *

Par. 3. Section 178.73 is revised to read as follows:

§ 178.73 Notice of revocation, suspension, or imposition of civil fine.

(a) Basis for action. Whenever the regional director (compliance) has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may

be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the regional director (compliance) has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. § 922(t)(1) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. § 922(g) or 922(n) or State law.

(b) Issuance of notice. The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The regional director (compliance) shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to suspension or revocation of the license, or imposition of a civil fine. If the licensee does not file a timely request for a hearing, the regional director (compliance) shall issue a final notice of suspension or revocation and/or imposition of a civil fine on ATF Form 4501, as provided in § 178.74.

Par. 4. Section 178.74 is revised to read as follows:

§ 178.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

If a licensee desires a hearing after receipt of a notice of suspension or revocation of a license, or imposition of a civil fine, the licensee shall file a request, in duplicate, with the regional director (compliance) within 15 days after receipt of the notice of suspension or revocation of a license, or imposition of a civil fine. On receipt of such request, the regional director (compliance) shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held. Such notification shall be made no less than 10 days in advance of the date set for the hearing. On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the regional director (compliance) shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked, or, in actions under 18 U.S.C. § 922(t)(5), that the license should be revoked or suspended, and/or that a civil fine should be imposed, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If

the decision is that the license should not be revoked, or in actions under 18 U.S.C. § 922(t)(5), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee shall be notified in writing.

Par. 5. Section 178.78 is revised to read as follows:

§ 178.78 Operations by licensee after notice.

In any case where denial, suspension, or revocation proceedings are pending before the Bureau of Alcohol, Tobacco and Firearms, or notice of denial, suspension, or revocation has been served on the licensee and he has filed timely request for a hearing, the license in the possession of the licensee shall remain in effect even though such license has expired, or the suspension or revocation date specified in the notice of revocation on Form 4500 served on the licensee has passed: Provided, That with respect to a license that has expired, the licensee has timely filed an application for the renewal of his license. If a licensee is dissatisfied with a posthearing decision revoking or suspending the license or denying the application or imposing a civil fine, as the case may be, he may, pursuant to 18 U.S.C. § 923(f)(3), within 60 days after receipt of the final notice denying the application or revoking or suspending the license or imposing a civil fine, file a petition for judicial review of such action. Such petition should be filed with the U.S. district court for the district in which the applicant or licensee

resides or has his principal place of business. In such case, when the regional director (compliance) finds that justice so requires, he may postpone the effective date of suspension or revocation of a license or authorize continued operations under the expired license, as applicable, pending judicial review.

Par. 6. Section 178.96 is amended by revising the first sentence in paragraph (b), and by revising paragraph (c) to read as follows:

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

* * * * *

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

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun that is a curio or relic to a nonlicensed resident of

a State other than the State in which the licensee's place of business is located if--

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

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

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

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

(2) For purposes of paragraph (c) of this section, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

Par. 7. Section 178.97 is revised to read as follows:

§ 178.97 Loan or rental of firearms.

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

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

Par. 8. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of firearms on and after November 30, 1998.

(a) Background check. Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer (the

licensee) shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless the licensee meets the following requirements:

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

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

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

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

Example 1 for par. (a). A licensee contacts NICS on Thursday, and gets a "delayed" response. The licensee does not get a further response from NICS. If State offices are not open on Saturday and Sunday, 3 business days would have elapsed on the following Tuesday. The licensee may transfer the firearm on the next day, Wednesday.

(b) Unique identification number. In any transaction for which a licensee receives a unique identification number from NICS (which shall include either a NICS transaction number or, in States where the State is recognized as a point of contact for NICS checks, a State transaction number), such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

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

Example 1. A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However,

the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

Example 2. A purchaser completes the Form 4473 on January 25, 1999, and arranges for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee executes the Form 4473, and the firearm is transferred, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

Example 3. A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date, the Form 4473 is executed by the licensee, and the firearm is

transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

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

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 1512-0544)

Par. 9. Section 178.124 is amended by revising paragraph (c), by removing "paragraph (c)(1)(ii)" in paragraphs (d) and (e) and adding in its place "paragraph (c)(3)(ii)", by revising the first sentence in paragraph (f), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c)(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the

transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; whether the transferee is a citizen of the United States; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce.

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

(3) After the transferee has executed the Form 4473, the licensee:

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

(ii) Shall, in the case of a transferee who is an alien legally in the United States, cause the transferee to present documentation establishing

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

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

(4) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm.

(5) The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.

* * * * *

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing

or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located. * * *

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control number 1512-0544; paragraph (f) approved by the Office of Management and Budget under control number 1512-0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129)

Par. 10. Section 178.124a is amended by removing the period at the end of the introductory text of paragraph (e) and adding in its place a colon.

Par. 11. Section 178.125a is amended by adding "comply with the provisions of § 178.102 or" after the phrase "is not required to" in the introductory text of paragraph (a).

Par. 12. Section 178.129 is amended by revising paragraph (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), by adding new paragraph (c), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.129 Record retention.

* * * * *

(b) Firearms transaction record. Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has received a transaction number from NICS for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record the transaction number on the Form 4473, and retain the Form 4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): Provided, That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms. Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of

Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control number 1512-0544; Paragraph (c) approved by the Office of Management and Budget under control numbers 1512-0520, 1512-0006, and 1512-0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512-0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129)

Par. 13. Section 178.130 is removed.

Par. 14. Section 178.131 is revised to read as follows:

§ 178.131 Firearms transactions not subject to a NICS check.

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

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

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

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

(Approved by the Office of Management and Budget under control number 1512-0544)

Par. 15. Section 178.150 is revised to read as follows:

§ 178.150 Alternative to NICS in certain geographical locations.

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 1512-0544)

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

Par. 16. The authority citation for 27 CFR Part 179 continues to read as follows:

AUTHORITY: 26 U.S.C. 7805.

Par. 17. Section 179.86 is amended by adding a sentence at the end of the section to read as follows:

§ 179.86 Action on application.

* * * In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a

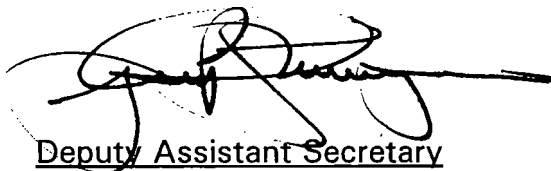
firearm would place the transferee in violation of law, the Director shall
contact the National Instant Criminal Background Check System.

Signed: **OCT 1 1998**

John W. Magaw

Director

Approved: *Oct 16, 1998*

A handwritten signature in black ink, appearing to be "Jeffrey" followed by a stylized surname, with a long horizontal line extending to the right.

Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., et al.,

Plaintiffs,

v.

JANET RENO, Attorney General of
the United States,

Defendant.

Civil Action No. 98-2916 (JR)

FILED

JAN 27 1999

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM ORDER

This case involves the Justice Department's implementation of the National Instant Criminal Background Check System (NICS). At issue is the Justice Department's interpretation of a provision of the Brady Act requiring that, once a prospective gun transfer is approved, NICS must "destroy all records of the system with respect to the [background check] call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer." 18 U.S.C. § 922(t)(2)(C). The Justice Department has announced its intention to retain NICS records for up to six months before destroying them, in order to ensure that NICS is functioning properly. Plaintiff's position is that the statute requires immediate destruction, and they seek a preliminary injunction giving effect to that position. Because the statute does not on its face require immediate destruction of NICS records, and because the Justice Department's interpretation

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12

of the statute is reasonable, the plaintiff's likelihood of success on the merits is too slight to support a preliminary injunction.

FACTS

The Attorney General's regulations launching the National Instant Criminal Background Check System (NICS) went into effect on November 30, 1998. The regulations were implemented pursuant to the Brady Act, which authorized the Attorney General to establish a background check system for the transfer of guns and directed that it be operational within sixty months. Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536, codified at 18 U.S.C. § 922 & note (Supp. 1998). The Brady Act directs the Federal Bureau of Investigation (FBI) and points of contact in each of the states (POC's) to implement NICS by determining whether a prospective firearms transferee is a convicted felon, a fugitive, an illegal alien, the subject of a domestic violence restraining order, a resident of a mental institution, or someone who is otherwise barred from possessing a firearm. Id. To satisfy the concerns of some, such as the NRA, who were concerned that NICS might become a national register of gun owners, the statute also directs that "the system shall...destroy all records of the system with respect to the call...." 18 U.S.C. § 922(t)(2)(C).

The Attorney General's regulations authorize the FBI to maintain records of approved firearm transactions on an "audit log" for up to six months. See 63 Fed. Reg. 58,303 (1998) (to be codified at 28 C.F.R. pt. 25). The audit log includes the name, sex, race, date of birth, state of residence, and NICS transaction number of the prospective owner (but not the make, model, amount and serial number of the weapon(s) purchased, nor the address, phone number or social security number of the transferee). 63 Fed. Reg. 58,310 (1998) (to be codified at 28 C.F.R. § 25.7). The regulation states that the purposes of the audit log are "to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system." 63 Fed. Reg. 58,311 (1998) (to be codified at 28 C.F.R. § 25.9(b)(2)).

ANALYSIS

The statute does not on its face require immediate destruction of NICS records. In fact, the statute is silent as to time, requiring only that the system "destroy all records of the system with respect to the call." The omission of a timetable from the statute presents a classic Chevron interpretation question, for "[i]f...the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on

the statute.... Rather...the question for the court is whether the agency's answer is based on a permissible construction of the statute." Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984). The Justice Department's interpretation of the statute is that it does not forbid the retention of some data elements for a brief period of time, under careful security, in order to perform quality control checks on the system's operations and to provide internal technical support for the software system. See Def. Ex. E, paragraph 9, Declaration of John Yankowski, FBI Systems Deployment Unit Chief, Criminal Justice Information Systems Division. ("Most computer software programs that I am aware of use audit logs to ensure proper functioning and quality control. It is hard to conceive of a software system of this type operating without generating an audit log.")

It is true that the Department expects to make uses of the audit log that go beyond quality control and technical support. These other purposes can be characterized as law-enforcement purposes: determining, for example, whether gun dealers are running checks on people who have not applied to buy guns, or determining whether gun buyers have stolen the identities of unsuspecting people or have otherwise submitted false information. See 63 Fed. Reg. 58,303, 58,304 (1998). Neither the language of the Brady Bill nor any legislative

history known to this Court suggests, however, that Congress meant to forbid the Department from employing a law enforcement tool that might serendipitously become available through NICS. It is hard to imagine that Congress intended the creation of a criminal background check system that could be abused without leaving any tracks of misuse.¹

The Department's construction of the statute appears to be a "permissible" one --that is, "rational and consistent with the statute," National Labor Relations Board v. Food and Commercial Workers, 484 U.S. 112, 123 (1987). It is not for this Court to second-guess that interpretation. It thus does not appear that plaintiffs have demonstrated a reasonable likelihood of success on the merits of this case. See, e.g., Smith, Bucklin & Associates v. Sonntag, 83 F.3d 476 (D.C. Cir. 1996).

A plaintiff making only a minimal showing of one factor of the preliminary injunction test must compensate with a strong showing in the other factors, CityFed Financial Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995). These plaintiffs have failed to do so. The only irreparable injury demonstrated is a theoretical loss of a privacy interest. There is no substantial evidence that the hardship to the plaintiff

The next question -- but one for another case -- will presumably be whether an audit log that helps to identify an unlawful use of NICS may be used as evidence if it is more than six months old -- or even if it is less than six months old.

outweighs the cost to the government of dismantling what has taken sixty months to put together -- the replacement of which would cost \$1.5 million and would cause the system to be completely shut down for six months. Plaintiffs have not demonstrated that the public interest would be served by issuing an injunction.

It is accordingly this 26th day of January 1999 ORDERED that the motion for preliminary injunction [# 2] is denied.



JAMES ROBERTSON
United States District Judge

Proud of gun checks, but more to be done

By Bob Dole

On Monday, the Federal Bureau of Investigation opened up the National Instant Criminal Background Check System. Anyone who tries to purchase a firearm, including a rifle or shotgun, will now be subject to a virtually instantaneous check to prevent felons and some others from buying guns.

Instant check is an extraordinary achievement, linking more than 500 federal, state, local, and international criminal record databases. I can't help but take a little fatherly pride in it. I've been involved in passing laws to identify gun buyers since authoring the legislation that created the FBI's Interstate Identification Index of federal offenders 19 years ago.

Despite delays and only tepid support from the Clinton administration, the instant check system is now in place. It covers all retail sales of firearms, all transactions involving the quarter million fully automatic weapons lawfully owned by private citizens and, for the first time, pawn shop gun sales.

Instant check is a huge leap forward in keeping guns away from criminals, while protecting the Constitutional right of citizens to keep and bear arms. But more must be done.

The President and the Congress should provide funding to improve the instant check system at federal and state levels: One-third of state felony "rap sheets" are not in the system. Authorities have no effective way to identify convicted felons from some states. Less than half of states have their own instant check systems, and the FBI is lagging behind its original deadlines for upgrading identification systems.

Access denied

A 1994-1995 study of background checks showed 4.8% of handgun purchases in the study were denied. Basis for 18,570 denials:

- ▶ 48.7% for criminal records
- ▶ 0.8% for restraining orders
- ▶ 7.6% for traffic offenses
- ▶ 42.9% for administrative or other reasons

Source: General Accounting Office

That's because the Clinton administration provided virtually no federal money to the states to assist them in automating court-conviction records or developing their own state-level instant-check systems, despite the Congress having provided millions of dollars in the 1993 Brady Act for this very purpose.

The president and the Congress should earmark \$30-\$40 million of the \$1 billion in the newly signed Crime Identification Technology Act to improve checks at state and federal levels.

The Congress should expand the system to stop violent juve-

nile offenders from buying guns when they become adults: Many states now prohibit access by law enforcement to the records of juveniles who have committed felonies, despite the fact that states that do check for serious felony convictions before allowing the sale of guns have stopped many criminals from buying guns. If you commit an adult crime as a juvenile, you shouldn't be able to buy a gun when you turn 18 or 21.

The Congress should reexamine the list of categories of people prohibited by federal law from purchasing guns: Current federal law prohibits gun sales to convicted felons, those under felony indictment, fugitives, stalkers and spouse abusers, illegal aliens, the mentally ill, drug addicts, dishonorable discharges from the armed services, juveniles, and individuals who renounced their U.S. citizenship, among others. This list has changed little since 1968 and its terms are confusing.

The Congress should maintain the current prohibition on fees to state and local law enforcement agencies for instant checks by the FBI: The FBI does not charge other law enforcement agencies for other law enforcement inquiries, so why charge for instant checks? A case might be made for very limited fees for private gun dealers who submit instant check inquiries directly to the FBI — to encourage states without their own instant check systems to get their act together.

The U.S. Justice Department should help states improve the integrity and reliability of identification documents, including driver's licenses, to avoid fraud in gun purchases.

The U.S. Justice Department should work with the states to cut down on document fraud, while protecting the privacy rights of law-abiding citizens: Why not encode some disqualifying information, such as felony convictions and immigration status, right on the license so that it cannot be used to buy a gun? Federal and state agencies have much to learn from credit card agencies in this regard.

The FBI should immediately notify state and local law enforcement when a fugitive tries to buy a gun, and the fugitive should be arrested on the spot. Pretty obvious, isn't it? But in many states, this isn't possible. Let's put into place the agreements and procedures that will correct this shortcoming.

When I ran for president in 1996, I pledged that if elected I'd make the instant check system operational by November 1997 with strong federal support for state efforts. During the campaign, the press virtually ignored the merits of instant check and my role in the legislation that made it a reality.

The national instant check system — whatever its current limitations — will be a huge success in the coming years. When government leaders put politics, posturing, and polemics aside, and let facts, not emotion, govern the enactment of legislation, it is the American people who win.

Bob Dole, former Republican senator from Kansas, was Senate majority leader.

POLITICS & POLICY

National Gun-Check System Draws Fire From Both Sides

By DAVID S. CLOUD

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—It will be a harried holiday season for Jim Kessler. Thousands of telephone calls an hour will be coming his way, each one representing a customer seeking a gun.

Mr. Kessler isn't a businessman. He is a Federal Bureau of Investigation agent who is overseeing development of a national computer system designed to conduct nearly instantaneous background checks on almost anyone buying a firearm. The nationwide database, aimed at weeding out felons and others prohibited from owning guns, will start next month when the checks become mandatory. But it isn't finished yet.

"I've had some long nights," the 52-year-old Mr. Kessler says. "We want this to succeed."

Ambivalence on Both Sides

At times, it seems no one else does. Major gun-control groups, such as Handgun Control Inc., are ambivalent about the so-called instant-check system, upset that it will replace the five-day federal waiting period for handgun purchases in force since 1994. Even its arch rival, the National Rifle Association, which proposed computerized background checks in the early 1990s as a less-onerous alternative to the waiting period, is cooling on the idea as the Dec. 1 start-up date approaches.

"We are in favor of instant-check systems," says the NRA's chief lobbyist, James Baker. "But we're not in favor of a number of things the FBI is doing."

It is an enormous undertaking. The nation's 70,000 licensed gun dealers will have to get approval each time a customer wants to buy any type of firearm, including rifles and shotguns. In most states, dealers will contact the FBI directly through a toll-free telephone number; in others, they will go through a state contact linked to the FBI's criminal-records system. In either case, the FBI is expecting tens of thousands of calls a day and as many as 10 million a year.

The agency has brought on 500 new workers at its Clarksburg, W. Va., data-processing center to conduct the checks, although initial screening will be done by a subcontractor. In 80% of the cases, the FBI predicts, approval of the gun purchase will take no more than a few minutes, while a customer's name and date of birth are run through the system. If no hits turn up, the sale will be immediately approved. If the name turns up a criminal history, the FBI has three days to investigate further to determine whether the buyer is prohibited from owning a weapon.

The FBI system pulls together in electronic form millions of criminal records stored in the agency's own databases and in states across the country, but it remains very much a work in progress. Many state records aren't close to being fully automated, even though the Justice Department has handed out more than \$250 million since 1994 to help tackle the job.

The FBI has a very complete record of

No Sale on Guns

Law-enforcement officials conducted nearly 2.7 million background checks on prospective handgun buyers in 1997. About 69,000, or 2.6%, were rejected based on state or federal laws, including the Brady Handgun Violence Prevention Act of 1993.

Reasons for Rejections

Felony convictions or under indictment	61.7%
Fugitives	5.9
Domestic violence:	
Misdemeanor convictions	9.1
Restraining orders	2.1
State prohibitions	6.1
Mental illness or disability	0.9
Drug addicts	1.6
Local prohibitions	0.9
Other ¹	11.7

Rates in the States

Rejection rates in selected states in various regions of the U.S.

	NUMBER OF APPLICATIONS	NUMBER REJECTED	RATE
ARKANSAS	14,566	202	1.4%
CALIFORNIA	204,409	1,839	0.9
IDAHO	22,761	790	3.5
NEW JERSEY	25,386	1,214	0.4
OHIO	56,074	473	0.9
VIRGINIA ²	180,527	2,364	1.3

¹ Includes illegal aliens, juveniles and dishonorable military discharges ² Includes handguns and long guns.

Source: Department of Justice

felony arrests, which is a good starting point for deciding whether individuals can legally buy a gun. But in order to determine definitively, the FBI must know what happened to the people after the arrest: Were they convicted? Is an indictment still pending? Are they fugitives? The problem is that electronic records about case dispositions are even spottier.

In general, big states such as California, New York and Pennsylvania are well along in the process; others aren't even close. "We're just in the infant stages," concedes Jimmy Dukes, head of Mississippi's effort to improve its criminal-records database.

Local Jurisdictions

According to the latest Justice Department estimates, there were 57 million records on criminals nationwide at the end of 1997. Of these, 34 million are electronically available, but only 20 million of the criminal histories specify the disposition of cases.

Without the dispositions available online, the FBI will have the laborious task of tracking down individual names manually by calling local jurisdictions to determine the outcome of an arrest. In those cases, the "instant" check system slows to a crawl. If no case disposition is found within three days, the FBI policy will be to reject the sale.

There are even bigger holes in the system. Firearms sold by nonlicensed dealers at gun shows will be exempt from background checks altogether—a loophole President Clinton recently said should be closed. Likewise, the system is supposed to kick out names of illegal immigrants who, by law, are prohibited from purchasing guns. But the Immigration and Naturalization Service still hasn't supplied the FBI with its database of names of undocumented workers in useable form.

Then there are statutory reasons why the instant-check system may never be complete. Some states, including Colorado

and Illinois, restrict access to medical records that show whether someone was committed to a psychiatric institution. In many cases, such individuals are barred from owning guns. Also hard to track are misdemeanor charges for domestic assault, which disqualify people from owning a gun.

For these and other reasons, the system has its skeptics. Robert Walker, president of Handgun Control, says one result will be to remove responsibility for conducting background checks now routinely done in many states by local law enforcement and put it in the hands of the FBI, which isn't as familiar with local records and dealers.

The FBI's Mr. Kessler concedes: "Somebody from Ohio who has been there most of their life can read those things

quick. We're going to have to learn this process."

Gun-shop owners worry about losing sales if the system is swamped with calls. Virginia and a handful of other states already do automated background checks, and dealers there have had mixed assessments. "When it works, it's great," says Barry Hopkins, a manager of Green Top Sporting Goods near Richmond, Va. "When it doesn't, it's a nightmare."

Last-Minute Changes

Just getting the FBI system going hasn't been easy. This summer, the Justice Department decided that gun sales by pawn shops would be covered, which forced the FBI to find the capacity to handle another two million calls a year.

Then, in October, at the urging of the NRA and other gun-owner groups, Congress repealed authority for the FBI to charge dealers a user fee of as much as \$18 for each background check. Instead, Congress opted to appropriate \$47 million to pay for the cost. But the move had an unintended consequence. Many of the 25 states that have volunteered to help the FBI conduct the checks had planned to charge their own fees to gun shops. Now at least three states, Florida, Colorado and New Mexico, are threatening to withdraw; the loss of Florida, a major gun-sales state, would especially put a strain on the FBI system. Justice Department officials are scrambling to come up with a way to reimburse states for their costs.

The FBI remains confident in the system. "It's as full court a system as you could design," says Doug Domin, the FBI's deputy assistant director in the information-services division. "And we're dealing with the changes, even though it's at the 11th hour."

Date: 12/01/98 Time: 15:31

UGun lobby sues over instant background checks

WASHINGTON (AP) Accusing the U.S. government of illegal snooping, the National Rifle Association sued in federal court Tuesday to bar the FBI from keeping lists of law-abiding people who buy guns under a newly revised law.

The Justice Department says FBI records on new gun buyers will be kept only for six months or less. It says the time is needed to permit audits to assure that all gun purchases are truly legitimate and that weapons do not end up in the hands of criminals or mentally unstable people.

The NRA lawsuit, which named Attorney General Janet Reno as a defendant, said lists should be kept only of people barred by law from owning guns because of felonies or other problems uncovered in a new computerized system of instant background checks.

NRA lawyers said at a news conference that keeping government lists of people found fully eligible to own a firearm represents an illegal bid to establish a national gun registry of new gun buyers.

``Lists on law abiding people have never been a good idea,'' said NRA executive vice president Wayne LaPierre. ``This is about privacy and freedom from government snooping into our lives.''

The new FBI instant-check system, which governs the purchase of handguns, shotguns and rifles, took effect on Monday. The system it replaced applied to handguns only, was conducted by local and state law enforcement authorities, and involved a five-day waiting period.

The NRA suit contends that the Brady Act, the law that requires a background check before a gun can be legitimately sold, forbids establishing a registry of gun buyers and directs the justice Department to ``destroy all records.''

APNP-12-01-98 1544EST

N.R.A. Sues To Challenge New Rules On Firearms

By STEVEN A. HOLMES

WASHINGTON, Dec. 1 — The National Rifle Association filed a lawsuit today in Federal District Court here in an effort to block a Federal database of gun purchases generated from new instant background checks of people buying guns.

The group's suit seeks to stop the F.B.I. from keeping a record of gun transactions for six months to conduct audits to determine if gun dealers are following the law and to check for fraud and abuse of the system.

The N.R.A. contends the Brady Law, under which the background checks are done, specifically bans the Federal Government from retaining records and keeping what the group contends is a central registry of gun purchases. The N.R.A. is joined in this assertion by some privacy groups.

"I'm not a particularly big gun fan myself," said David Banisar, policy director of the Electronic Privacy Information Center. "I don't have one and don't intend to get one. But you are talking about something that is constitutionally protected and now you're talking about the F.B.I. collecting information on people exercising their constitutional rights. That is troublesome. If this were to happen in the First Amendment context, people would be up in arms."

The new rules were mandated by the Brady Law, the Federal legislation named after James Brady, former President Ronald Reagan's press secretary who was critically wounded in a 1981 assassination attempt on Mr. Reagan. President Clinton has often called the measure one of his major crime-fighting achievements, saying it has prevented more than 250,000 handguns from being bought by felons.

Since it was enacted in 1993, the law required handgun buyers to undergo a check of their backgrounds and wait five days before taking possession of their guns. But starting on Nov. 30, the waiting period was dropped, and the Federal Bureau of Investigation was required to set up a national computerized system that would allow for instant checks into the background of potential buyers. In addition, the law automatically expanded to cover purchases of rifles and shotguns.

Jeff Roehm, chief of public affairs for the Bureau of Alcohol, Tobacco and Firearms, said, "This system is set up to prevent guns from going to people you and I don't want to have them: convicted felons, drug dealers, illegal aliens and people who are adjudicated mentally deficient."

At the time of a purchase, gun dealers must now call an 800 telephone number that hooks into two calling centers — one in Moundsville, W.Va., another in Uniontown, Pa. — run by private companies under F.B.I. contracts totaling \$42 million. Workers at the centers will check a national database established by the F.B.I. to determine if the customer should be disqualified.

A person can be disqualified for an arrest for a felony or a misdemeanor involving domestic violence, being committed by a court to a mental institution, dishonorable discharge from the military, being an illegal alien or having renounced American citizenship.

If a potential buyer is disqualified on the first check, the F.B.I. has three business days to conduct a more thorough search to determine the details of the reasons, checking, for example, to see if the felony arrest actually resulted in a conviction. If the Bureau turns up nothing untoward, the purchase is allowed.

The new system has brought opposition from both the rifle association and gun control groups. "We now have a hybrid system which doesn't entirely satisfy the N.R.A.'s concerns," said Robert Walker, president of a gun control organization, Handgun Control Inc., "nor does it satisfy ours."

Mr. Walker said the five-day waiting period had prevented some crime of passion. He added that the waiting period allowed the local police to search records that might not be in the F.B.I.'s national database.

"We've always felt, that as far we can see into the future there are certain pieces of information that are unlikely to be included in any kind of national background check," Mr. Walker said. "So the waiting period would serve as both a cooling off period and a time when other people can have input."

N.R.A. leaders say they also intend to lobby Congress to revise the bill, only this time the goal would be to remove rifles and shotguns from the list of weapons that lead to a background check.

Wayne LaPierre, the N.R.A.'s executive vice president, said, "I think, for a number of reasons, starting with the work load, the monetary savings and the fact that they have not been proved to be a problem, we ought to look at scaling the law down and knocking out rifles and shotguns."

Each side plans to lobby the new Congress for changes when it convenes in January.

New York Times
12/2/98

REMEMBER THE NEEDIEST!

PHOTOCOPY
PRESERVATION

During the first four weeks of the operation of the National Instant Criminal Background Check System (NICS), the FBI has denied over 8,000 sales of guns to prohibited persons, and some of the denials issued by the NICS Operations Center have resulted in the apprehension of wanted criminals. For example, as a result of NICS checks, a man wanted in Oklahoma for embezzlement, a woman wanted in Texas for tampering with government records, a man wanted in Indiana for child neglect, and a man wanted in Texas for criminal non-support have all been denied guns and then been taken into custody by local law enforcement agencies.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	FBI to Jose Cerda [partial] (2 pages)	12/29/1998	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 17179

FOLDER TITLE:

NICS [National Instant Criminal Background Check System] Miscellany

2016-0931-S
rc2300

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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FBI FACSIMILE COVER SHEET

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(202) 456-7028

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Name of Office

Subject: Update

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NICS Update for the White House

The National Instant Criminal Background Check System (NICS) began full operation on Monday, November 30, 1998, at 9:00 a.m. EST. At that time, Federal Firearms Licensees (FFLs) throughout the nation were required by the Brady Handgun Violence Prevention Act to initiate a background check on all persons who attempt to purchase a firearm.

The NICS Program conducts background checks on all firearm purchases for 23 states, the District of Columbia, and U.S. territories and on long gun purchases for 11 states. Sixteen states conduct their own background checks through the NICS.

During the first four weeks of operation (November 30 to December 27, 1998), 779,171 transactions were executed through the NICS. The states conducted 333,890 of these checks, while the NICS Operations Center handled 445,281. Although the state check systems provide no statistical data, of the checks handled through the NICS Operations Center, approximately 75 percent resulted in a "Proceed" with the sale without further delay. The NICS Operations Center has issued 7,954 denials, some of which resulted in the apprehension of wanted criminals.

On the first day of operation, a convicted felon and an illegal alien from Pakistan were denied the right to purchase a firearm. Since then, a man wanted in Oklahoma for embezzlement, a woman wanted in Texas for tampering with government records, a man wanted in Indiana for child neglect, and a man wanted in Texas for criminal non-support have all been taken into custody by local law enforcement agencies.

The process of conducting a background check through the NICS Operations Center begins when calls from FFLs come in to the NICS Call Centers in Moundsville, W.Va., and Uniontown, Pa. TeleTech, a private contractor, has 368 employees in Uniontown and 87 in Moundsville who take the incoming calls to NICS. The Call Center customer service representatives enter information on the prospective buyer into the computer system which conducts an initial background check and provides a response of "Proceed" if no disqualifying record is found or a "Delay" if there appears to be a match in the NICS data base.

The "Delay" calls immediately go into a delay queue at the FBI NICS Operations Center in Clarksburg, W.Va., where a NICS Examiner takes possession of a delayed case for further investigation. The NICS Examiner reviews the record to determine if the subject may be identical with the prospective purchaser and whether the record provides reason to believe the individual is prohibited from buying a firearm.

If a hit occurs on any of the three NICS data bases--the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index--and the NICS Examiner determines that the hit is a match with the purchaser, the FFL is instructed to "Deny" the sale. If no positive identification is apparent, the sale may "Proceed." The NICS Examiner has up to three business days to respond with a determination to the FFL. If no disqualifying record is identified within the three business day time frame, the firearm may be transferred to the prospective purchaser at the discretion of the gun dealer. The NICS Operations Center notifies the Bureau of Alcohol, Tobacco, and Firearms of all denials.

If, after three business days, it is determined that the transaction should have been a "Deny," the FFL is contacted. If the FFL has gone ahead with the transfer of a firearm to a buyer who is a disqualified individual, the NICS Operations Center contacts the Bureau of Alcohol, Tobacco, and Firearms and the local police department in the state in which the transaction took place providing them with the subject's name, descriptive data, and any other information pertinent to the case. It is then at the discretion of the local police department whether to retrieve the firearm.

Prepared by (b)(6), (b)(7)c 12/29/98

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Prepared by (b)(6), (b)(7)c 12/29/98

[002]



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

FBI NATIONAL PRESS OFFICE
(202) 324-3691

IMMEDIATE RELEASE
JANUARY 11, 1999

More than one million persons attempted to obtain firearms during the first 41 days of the new National Instant Criminal Background Check System (NICS), the Federal Bureau of Investigation said today.

NICS was created by Congress in the Brady Act to prevent handguns, rifles, and shotguns from being purchased by convicted felons, wanted persons, illegal aliens, and the mentally ill.

Of the checks conducted by the FBI, 11,584 transfers of firearms were denied by the Bureau because of disqualifying provisions of the Act. Most of the denials were to convicted felons.

A total of 1,030,606 background checks nation-wide were processed from November 30 to January 10 (a period that excludes Christmas Day).

There are 27 so-called "Point of Contact" states where federally-licensed firearms dealers contact state agencies that make background checks under a Brady Act option: 16 states conduct all of their own background checks; and 11 others check for handguns only, with the FBI making their long-gun checks. The FBI conducts all background checks on prospective gun purchasers for the remaining 26 states/territories.

The 16 "Point of Contact" states making all their own checks and the 11 states making only handgun checks processed 462,298 firearms applications during the first 41 days of the NICS program. Under the Brady Act, statistics on the total number of checks in those states are available to the FBI but not the number of applications approved or denied.

Of the FBI checks in the 26 states/territories, and the long-gun checks in 11 other states, about 75 percent resulted in immediate clearance to transfer a weapon. The remaining 25 percent required further analysis by the FBI, with 11,584 transfers denied under Brady Act provisions.

Since the NICS program began, the FBI has determined that

1,541 of the 11,584 applicants denied firearms were the subjects of outstanding arrest warrants in the 37 states/territories where the Bureau conducts all or some of the checks.

When a "hit" occurs in checking an applicant through the National Crime Information Center's computerized files of wanted persons, the FBI first verifies that the warrant is still in effect. If so, the FBI then notifies the state so the relevant law enforcement entity--for example, the state police or state fugitive task force--can then seek to apprehend the wanted person. If the check determines there is a valid federal warrant, the FBI then notifies either the relevant federal agency or one of its own field offices if it is a Bureau case.

There are no statistics yet available on the total number of wanted persons arrested as a result of seeking to purchase firearms. However, arrests on outstanding warrants of firearms applicants include these wanted persons: a man in Oklahoma for embezzlement, a woman in Texas for tampering with government records, a man in Indiana for child neglect, a man in Texas for criminal non-support, a man in Missouri for fraud, a woman in Nebraska for fraud, a man in Indiana for larceny, and a man in Mississippi for fraud.

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