

PAPERWORK REDUCTION ACT SUBMISSION

Supporting Statement

Agency: Federal Bureau of Investigation

Title: National Instant Criminal Background Check System (NICS)

Form: National Instant Criminal Background Check System (NICS) Firearm Disposition Record

OMB No: 1110-AA27

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The FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section is requesting the Office of Management and Budget (OMB) approve the Paperwork Reduction Act submission for a new collection of information on the NICS Firearm Disposition Record.

Use of the NICS Firearm Disposition Record (the Record) is necessary for a Federal, state, tribal, and local criminal justice agency (CJA) to conduct NICS background checks when the CJA wants to transfer a firearm to a private person and wants to be assured that person is not prohibited from receiving or possessing a firearm. Use of the Record will simultaneously record the transfer or chain of custody purposes, provide the information necessary to initiate a NICS check, document an authorized use of the NICS for audit purposes, and record the results of the NICS check.

The Record is required to be signed by the firearm recipient and the CJA official transferring the firearm. The directions section includes directions for the retention of the Record, explanations of the prohibitions to possession or receipt of a firearm, and precautions regarding the identification of the proposed recipient. All completed copies of the Record are kept at the CJA's office. The NICS Section requests to continue the assigned OMB number 1110-AA27 on the Record as it must be completed in order to legally gain and maintain access to initiate NICS checks.

A. JUSTIFICATION

1. Circumstances of the collection

In November 1993, the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, was signed into law and required federal firearms licensees (FFLs) to request background

checks on individuals attempting to purchase a firearm,. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the United States Attorney General to establish the NICS that FFLs may contact by telephone or other electronic means in addition to the telephone for information to be supplied within three business days on whether the receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law. There are other authorized uses of the NICS found at Title 28, Code of Federal Regulations (C.F.R.), section 25.6(j). Authorization for CJAs to initiate a NICS check to assist their transfer of firearms to private individuals was recently published as a proposed change to 28 C.F.R. § 25.6(j) in the Federal Register, Volume 78, Number 18 (Monday, January 28, 2013, pages 5757-5760. If the CJA's state acts as a Point of Contact (POC) on behalf of the FBI, the CJA checks for those states, for the purpose of transferring to private individuals firearms in the possession of a CJA, will also be conducted through the POC. If the FBI currently conducts firearm background checks for the CJA's state, then NICS checks for those states for the purpose of transferring firearms in the possession of law enforcement will be conducted through the FBI.

2. Purpose and Use of the Information

If CJAs choose to conduct NICS background checks to dispose of firearms in their possession, then they are required to complete a NICS Firearms Disposition Record. CJAs must also verify the identity of a person applying for the return of a firearm by examining an identification document presented by the prospective transferee. Additionally, these checks must be conducted by the CJAs through the NICS Electronic Check (E-Check). The NICS Firearms Disposition

Record will include certain mandatory descriptive information as well as optional information about the prospective transferee, such as the person's social security number (not mandatory) and alien registration number. The maximum estimated burden associated with this collection is 25 minutes per respondent or record keeper, depending on individual circumstances. The Record must be retained for at least five years. If the transfer of a firearm is denied or cancelled by the NICS, or for any reason the transfer is not completed (delayed or unresolved) after a NICS check is initiated, the law enforcement agency must retain the Record for at least five years. The estimated total annual recordkeeping burden associated with this requirement is unknown at this time due to the uncertainty of the number of firearms that are currently in the possession of law enforcement and the fact that use of the NICS to dispose of firearms is voluntary. The FBI invites the public to comment on this proposed collection of information to help it

- (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) enhance the quality, utility, and clarity of the information to be collected; and
- (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

3. Use of Automated, Electronic, Mechanical, or Technological Collection of Techniques

The NICS Firearm Disposition Record will be made available on-line at the FBI NICS website along with additional instructions as to how to initiating the check by the NICS E-Check. No paper copies will be produced or mailed to the various Federal, state, tribal, or local CJAs.

4. Efforts to Identify Duplication

The requirement for using the Record is associated with each firearm disposition transacted by a CJA. That is one Record per person to whom the CJA transfers possession on a given occasion, regardless of the number of firearms that are transferred by the CJA. The Record need only be filled out once for each disposition. The NICS Section also approached four separate and differently sized law enforcement agencies soliciting their comments regarding the Record. Those exchanges did not identify any duplication in either the Record itself or its use.

5. Impact on Small Business

The collection of information will not have any impact on small businesses.

6. Consequences of not Collecting Data

If the CJA chooses not to use the NICS Firearm Disposition Record Form, then their use of the NICS to conduct a background check will not be authorized and is a misuse of the system.

7. Special Circumstances

The completed forms are to be kept on file at the CJA's official location for five years.

8. Outside Consultation

The FBI contacted the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to review the data collection instrument and to provide feedback. See also the efforts described in paragraph 4 above.

9. Payment to Respondents

There is no payment made or gift to an individual who provides the required information to the NICS.

10. Assurance of Confidentiality

All information will be held confidential in accordance with 46 U.S.C. § 3789g. Information will be used by the NICS solely in connection with firearm background checks conducted pursuant to the Brady Act and the regulations promulgated thereunder.

11. Justification for Sensitive Questions

The information on the Record regarding the proposed transferee is sensitive in that it is personally identifiable information. Providing the information is voluntary but necessary for CJAs to be able to enter it in the NICS E-Check and initiate a NICS Check. Failure or refusal to provide the information will result in the inability to conduct a NCIS check. In addition to the need for the information to initiate the NCIS check, the personal information is necessary to more accurately identify and discriminate between potential matches returned from the check. For example, providing the transferee's social security number is voluntary but providing it will provide for a more accurate match in the name-based search (check) of the NICS.

12. Estimates of Hour Burden

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated the time burden associated with this collection is 25 minutes per respondent or record keeper, depending on individual circumstances. The total estimated number of respondents that may take advantage of this disposition process is 6,000 criminal justice or law enforcement agencies.

An estimate of the total public burden (in hours) associated with this collection: It is estimated the burden associated with this collection is 25 minutes per respondent or record keeper, depending on individual circumstances. If each of the estimated 6,000 respondents conducts

three dispositions with this authority per year, then it is anticipated the business day burden would be 975 business days per year. A more exact estimate cannot be derived because of the uncertainty of the number of firearms that are currently in the possession of criminal justice or law enforcement agencies and the inability to know how many agencies will use the new authority.

1. Estimates of Cost Burden

The FBI is unable to estimate the cost burden imposed on Federal, state, tribal, and local CJAs by their use of the Record. This inability to estimate is caused by the uncertainty of how many CJAs will avail themselves of this new use of the NICS and the lack of numbers of the potential population of firearms in the hands of CJAs.

14. Estimates of Annualized Cost to the Federal Government

Negligible. Only those costs associated with the effort necessary to post the Record on the FBI website by personnel who are already FBI employees. Publication of this new use of the NICS will be accomplished in the Federal Register and routine FBI communications to law enforcement nation-wide.

15. Reasons for Program Changes

The publication of this new non-Brady use of the NICS is in response to specific requests made by law enforcement agencies for years. It will enhance public safety by assuring private citizens who receive firearms from law enforcement are not prohibited from receiving or possessing them. Use of the Record will also record the firearm transfer for chain of custody purposes, provide the information necessary to initiate a NICS check, document an authorized use of the NICS for audit purposes, and record the results of the NICS check.

16. Plans for Tabulation and Publication

The data collected will be used by the NICS solely in connection with firearm background checks conducted pursuant to the Brady Act and the regulations promulgated thereunder. The information will be maintained as permitted by law in a database for use by FBI employees or FBI contract employees. This information will not be published.

17. Exceptions to the Certification Statement

No exceptions to the certification statement are requested.

B. Collection of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

Attachment 1:

Certification Statement

Paperwork Reduction Act Certification Statement

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and the OMB directives have been complied with, including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under Section 5 CFR 1320.

Paul Wysopal

Section Chief

NICS Section

Date

Attachment 2:

Data Collection Instrument