

Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Information Collection Request

1140-0089

Open Letter to States with permits that appear to qualify as alternatives to NICS checks

A. Justification

1. Necessity of Information Collection

The Brady law, found in relevant part in Section § 922(t) of the Gun Control Act, generally requires licensed importers, manufacturers, and dealers of firearms to initiate a background check through the National Instant Criminal Background Check System (NICS) before transferring a firearm to an unlicensed individual. While NICS is administered by the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for enforcing the provisions of section 922(t), and advising licensees how to comply with the requirements of the Brady law.

The Brady law provides certain exceptions to the NICS check requirement, including an exception for holders of certain State permits to possess, carry or acquire firearms [Title 18 U.S.C. § 922(t)(3)]. The statute and implementing regulations provide that permits issued within the past five years by the State in which the transfer is to take place qualify as alternatives to a NICS check, as long as certain other requirements are satisfied. Most importantly, the issuing authority must first initiate a background check through NICS, and must deny a permit to anyone prohibited from possessing or receiving firearms under Federal, State, or local law [27 C.F.R. § 478.102(d)(1)].

The permanent provisions of the Brady law took effect on November 30, 1998. Prior to that date, ATF sent open letters to licensees in some States, advising them that certain permits they issue qualified as alternatives to the background check required under the Brady law. ATF's recognition of these permits as Brady alternatives was based on assurances from these States that State law, regulations, and/or written policies required permit officials to conduct NICS checks prior to the issuance or renewal of these licenses, and to deny a license to anyone prohibited from possessing or receiving a firearm under Federal, State, or local law.

On February 5, 2002, ATF published temporary regulations implementing the statutory prohibition on nonimmigrant aliens possessing or receiving firearms, subject to certain exceptions. In an open letter dated July 23, 2002, ATF advised the permit States that in order to satisfy the standards set forth in the Brady law and its implementing regulations, certain queries must be initiated for non-citizen

applicants as part of the NICS check performed prior to the issuance of a qualifying permit. This is to ensure nonimmigrant aliens would not receive firearms.

Specifically, the issuing authority must determine if the applicant is a citizen of the United States. If the applicant is not a U.S. citizen, the issuing authority must obtain information about the applicant's country of citizenship, place of birth, and alien or admission number. Finally, if applicable, the issuing authority must determine the basis for the applicant's claimed exemption from the nonimmigrant alien prohibition.

The open letter explained that these additional steps were now considered an integral part of the NICS check for individuals who are not citizens of the United States. ATF explained that a NICS check that does not include the appropriate queries for non-citizens would not satisfy the standards set forth in ATF's regulations for qualifying permits.

The letter recognized that it might take some time to revise State permit application forms to get the necessary information from applicants who are not U.S. citizens. The letter concluded by advising that ATF would be contacting the permit States in the near future to learn how they were complying with these new requirements.

ATF determined it needed additional information from the permit states to effectively monitor the compliance of the States with the conditions set forth under Federal law and regulations for qualifying permits. Accordingly, ATF is requesting permission to send a letter to the 21 States with permits that currently qualify as NICS alternatives, asking the States to send a written response to ATF explaining how their State licensing authorities comply with the minimum requirements for qualifying permits under the Brady law and its implementing regulations. Conversely, if States believe their State's procedures do not currently comply with those requirements, ATF will ask them to set forth any remedial steps that their licensing authority plans to take to bring those procedures into compliance, and the anticipated date for achieving such compliance. ATF also will ask them to verify that they conduct NICS checks before renewing licenses.

We also want the States to provide us with the names and contact information for the individuals responsible for ensuring that NICS checks are conducted prior to the issuance and renewal of all qualifying permits, and that applications are denied if the applicant is prohibited from possessing or receiving firearms under Federal, State, or local law. The letter should also set forth the steps that the State permit authorities take to find out if individuals with qualifying permits have subsequently incurred firearms disabilities. While this final issue is not required under the Brady law, the Government Accounting Office has asked ATF to study the issue.

These questions are necessary to ensure ATF only allows permits that meet the statutory and regulatory requirements qualify as alternatives to NICS checks. If State permit authorities are not able to meet the minimum requirements set forth in ATF's letter, the permits issued by the State will no longer qualify as alternatives to a background check under the Brady law. If a State is unwilling or unable to take the necessary steps to ensure compliance with these minimum requirements, ATF will advise the firearms licensees in the State that they may no longer accept permits as alternatives to the NICS check required at the time of transfer.

2. Needs and Uses

The purpose of this collection of information gathered from 21 States is to determine if State licensing authorities comply with the requirements for qualifying permits under the Brady law and its implementing regulations. Conversely, if a State believes its procedures do not currently comply with those requirements, they will set forth any remedial steps that their licensing authority plans to take to bring those procedures into compliance, and the anticipated date for achieving such compliance. ATF will evaluate the responses and determine if each State's permit should continue to qualify as an alternative to a NICS check.

3. Use of Information Technology

State authorities may respond electronically both by email and facsimile to reduce the burden on States.

4. Efforts to Identify Duplication

ATF is the only agency responsible for ensuring a State's permit meets the requirements to qualify as alternatives to a NICS checks. Accordingly, no other source has had a reason to capture this information. The ATF subject classification is used to identify duplication. The system ensures that no similar information can be used for the purposes described in item 2 above.

5. Minimizing Burden on Small Business

The collection of information will not impact small businesses or other small entities. We only are asking States for this information and it is information they will have readily available.

6. Consequences of Not Conducting or Less Frequent Collection

Failure to collect this information would harm ATF's ability to determine which State permits qualify as alternatives to a NICS check. If ATF is unable to ensure that the permits, which presently qualify as alternatives, actually meet the

requirements for qualification, persons who are prohibited from possessing or receiving firearms may be improperly obtaining firearms with a permit.

7. Special Circumstances

There are no special circumstances that would cause an information collection to be conducted in any of the ways set forth in this provision.

8. Public Comments and Consultations

We have consulted with the Federal Bureau of Investigation about the information collection. We also have had discussions with the States we are seeking the information from. A notice was published in the Federal Register to solicit comments from the public for 60 days and an additional 30 day notice was published regarding this information collection. No comments were received.

9. Provision of Payments or Gifts to Respondents

No decision of payment or gift is associated with this collection.

10. Assurance of Confidentiality

Confidentiality is not assured. The information the States provide is public information regarding their State permitting process.

11. Justification for Sensitive Questions

No questions of a sensitive nature are asked.

12. Estimate of Respondent's Burden

There are 21 State respondents associated with this information collection. Each respondent will respond one time. Total annual responses are 21. Each letter takes one hour to complete. The total annual hour burden associated with this information collection is 21 hours.

13. Estimate of Cost Burden

The respondent State has the option of mailing, e-mailing, or faxing the requested information. The cost of mailing the information is 46 cents. There is no cost for e-mailing or faxing the information. It is reported that half respond by fax and half by email. The cost to the respondent will be submitted into ROCIS as 0.

14. Cost to the Federal Government

There is no cost to the Federal government.

15. Reason for Change in Burden

There are no program changes or adjustments associated with this collection.

16. Anticipated Publication Plan and Schedule

The results of this collection will not be published. However, if based on the information we receive we determine that a State's permit no longer qualifies as an alternative to a NICS check, that change will be included on a section of the ATF web page entitled "Permanent Brady Permit Chart", which lists the State permits that qualify as alternatives.

17. Display of Expiration Date

ATF does not request approval not to display the expiration date of OMB approval for this collection.

18. Exception to the Certification Statement

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

This collection of information employs no statistical methods.