

**PAPERWORK REDUCTION ACT SUBMISSION**

**Supporting Statement**

Agency: Federal Bureau of Investigation

Title: NICS Checks by Criminal Justice Agencies

Form: None

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 in connection with Notice of Final Rule Making 1110-AA27, authorizing law enforcement agencies

or criminal justice agencies (collectively CJA) to conduct NICS background checks before transferring firearms in their possession to another person.

Prior to conducting these checks, CJAs will have to obtain and verify from the proposed transferee the transferee's name, sex, date of birth, race, and state of residence. That minimum mandatory information must then be entered into the NICS in order for a background check to be conducted on the proposed transferee.

## **A. JUSTIFICATION**

### **. 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). The FBI proposed authorizing CJAs to initiate a NICS check to assist their transfer of firearms to private individuals 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. The FBI is finalizing this change in a soon to be published final rule. 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.

### **1. Purpose and Use of the Information**

The purpose of this collection is to enable CJAs to run NICS background checks of prospective firearms transferees to ensure those transferees are not prohibited from possessing firearms. If CJAs choose to conduct NICS background checks to dispose of firearms in their possession, then they are required to obtain and enter the identifying information described above. 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) or the National Criminal Information Center (NCIC) database. The data for the checks includes the above mandatory descriptive information and may also include optional information about the prospective transferee, such as the person's social security number (not mandatory) or alien registration number.

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

No disposition record is required by the FBI to document this use of the NICS by CJAs. No forms will be produced or mailed to the various Federal, State, tribal, or local CJAs. CJAs can request from prospective transferees, either orally or in writing, the minimal information needed to initiate background checks. CJAs will then enter this information into the NICS E-Check or provide it through the FBI's NCIC communications system.

#### **4. Efforts to Identify Duplication**

This collection does not duplicate other data collections. This is the only collection that enables CJAs to run NICS background checks of prospective firearms transferees.

#### **5. Impact on Small Entities**

The collection of information will not have any impact on small entities. Some CJAs are small government entities. However, the impact of this collection on small entities is likely to be minimal as the FBI requires only a small amount of information to run a background check, the collection is voluntary, and the small local government entities already have in place, or access to, the equipment necessary to conduct the checks.

#### **6. Consequences of not Collecting Data**

If the CJA does not collect and submit the minimum required identifying information, then the NICS will be unable to conduct a background check.

**7. Special Circumstances**

There are no special circumstances.

**8. Outside Consultation**

The FBI contacted the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to review the data collection and to provide feedback.

**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**

Confidentiality of this information is not guaranteed.

**11. Justification for Sensitive Questions**

The identifying information collected 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 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 more accurate determinations in the name-based searches (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 two to three minutes per transaction, depending on individual circumstances. The total estimated number of respondent entities that may take advantage of this disposition process is 18,000 criminal justice or law enforcement agencies.

Estimate of the total public burden (in hours) associated with this collection: It is estimated the burden associated with this collection is two to three minutes per transaction, depending on individual circumstances. If each of the estimated 18,000 respondents conducts three dispositions with this authority per year at three minutes per check, then it is anticipated the business burden would be 2700 hours 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 CJAs

and the inability to know how many agencies will use the new authority.

### **13. Estimates of Cost Burden**

The FBI is unable to accurately estimate the cost burden imposed on Federal, state, tribal, and local CJAs by their use of the authority. This inability 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. However, a range of expense potentially incurred by a CJA using this access authorization can be guessed if one begins the analysis by using the mean hourly wage for a clerical or administrative assistant level employee or a law enforcement officer (Police and Sheriff's Patrol Officer) conducting the checks. The following figures are derived from the Bureau of Labor Statistics as of 2010 for administrative employees and 2012 for law enforcement officers. As noted, the FBI estimates that the entire process of conducting the NICS check should take no more than two to three minutes. The 2010 administrative mean hourly wage is \$16.66. The 2012 mean hourly wage for a law enforcement officer \$27.78. The cost for a secretarial NICS check should be between 56 and 83 cents. If a law enforcement office conducts the check, then the cost should be between 93 cents and \$1.39. The FBI was unable to guess how often any one of the thousands of CJAs might choose to employ the access and which staff member will make the check is similarly unknown.

Beyond the personnel costs, the Department has determined that the CJAs will not incur any start-up or new capital expenses in order to use their new authority. The CJAs already have the

computer and communications equipment necessary for them to access and query the NCIC and the Interstate Identification Index (III) for their day-to-day law enforcement activities. These two FBI criminal history databases are part of the same information system that is employed by a NICS check. Moreover, the CJAs can conduct a NICS check from the same terminals that they use to query the NCIC and III.

#### **14. Estimates of Annualized Cost to the Federal Government**

Negligible. Only those costs associated with the effort necessary to conduct the check by systems and personnel are already in place at the FBI. 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 for years by CJAs. It will enhance public safety by helping to prevent prohibited persons from receiving or possessing firearms. Use of the NICS will also enable CJAs to record the firearm transfer for their chain of custody purposes, provide the information necessary to initiate a NICS check, and permit audits of authorized uses of the NICS.

#### **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 collection 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.**

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**H. Frank Brown**

**Section Chief**

**NICS Section**

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**Date**