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the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

§ 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

§ 24.307 Department review.

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

§ 24.308 Judicial review.

Judicial review of final Department decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

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§ 24.309 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart A—The National Instant Criminal Background Check System

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AUTHORITY: Public Law 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

SOURCE: Order No. 2186–98, 63 FR 58307, Oct. 30, 1998, unless otherwise noted.

Subpart A—The National Instant Criminal Background Check System

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence

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Prevention Act (Brady Act), Public Law 103-159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. The regulations in this subpart are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

§ 25.2 Definitions.

Appeal means a formal procedure to challenge the denial of a firearm transfer.

ARI means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Index.

ATF means the Bureau of Alcohol, Tobacco, and Firearms of the Department of Treasury.

Audit log means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

Business day means a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place.

Control Terminal Agency means a state or territorial criminal justice agency recognized by the FBI as the agency responsible for providing state- or territory-wide service to criminal justice users of NCIC data.

Data source means an agency that provided specific information to the NICS.

Delayed means the response given to the FFL indicating that the transaction is in an "Open" status and that more research is required prior to a NICS "Proceed" or "Denied" response.

A "Delayed" response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days, whichever occurs first.

Denied means denial of a firearm transfer based on a NICS response indicating one or more matching records were found providing information demonstrating that receipt of a firearm by a prospective transferee would violate 18 U.S.C. 922 or state law.

Denying agency means a POC or the NICS Operations Center, whichever determines that information in the NICS indicates that the transfer of a firearm to a person would violate Federal or state law, based on a background check.

Dial-up access means any routine access through commercial switched circuits on a continuous or temporary basis.

Federal agency means any authority of the United States that is an "Agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

FFL (federal firearms licensee) means a person licensed by the ATF as a manufacturer, dealer, or importer of firearms.

Firearm has the same meaning as in 18 U.S.C. 921(a)(3).

Licensed dealer means any person defined in 27 CFR 178.11.

Licensed importer has the same meaning as in 27 CFR 178.11.

Licensed manufacturer has the same meaning as in 27 CFR 178.11.

NCIC (National Crime Information Center) means the nationwide computerized information system of criminal justice data established by the FBI as a service to local, state, and Federal criminal justice agencies.

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would violate Federal or state law.

NICS Index means the database, to be managed by the FBI, containing information provided by Federal and state agencies about persons prohibited

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under Federal law from receiving or possessing a firearm. The NICS Index is separate and apart from the NCIC and the Interstate Identification Index (III).

NICS operational day means the period during which the NICS Operations Center has its daily regular business hours.

NICS Representative means a person who receives telephone inquiries to the NICS Operations Center from FFLs requesting background checks and provides a response as to whether the receipt or transfer of a firearm may proceed or is delayed.

NRI (NICS Record Identifier) means the system-generated unique number associated with each record in the NICS Index.

NTN (NICS Transaction Number) means the unique number that will be assigned to each valid background check inquiry received by the NICS. Its primary purpose will be to provide a means of associating inquiries to the NICS with the responses provided by the NICS to the FFLs.

Open means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of “open” responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An “open” response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

ORI (Originating Agency Identifier) means a nine-character identifier assigned by the FBI to an agency that has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System.

Originating Agency means an agency that provides a record to a database checked by the NICS.

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS. A POC will receive NICS

background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under Federal or state law, and respond to FFLs with the results of a NICS background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

Proceed means a NICS response indicating that the information available to the system at the time of the response did not demonstrate that transfer of the firearm would violate federal or state law. A “Proceed” response would not relieve an FFL from compliance with other provisions of Federal or state law that may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d), an FFL may not lawfully transfer a firearm if he or she knows or has reasonable cause to believe that the prospective recipient is prohibited by law from receiving or possessing a firearm.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to information that disqualifies the individual from receiving a firearm, and that contains his or her name or other personal identifiers.

STN (State-Assigned Transaction Number) means a unique number that may be assigned by a POC to a valid background check inquiry.

System means the National Instant Criminal Background Check System (NICS).

[Order No. 2186–98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2727–2004, 69 FR 43900, July 23, 2004]

§ 25.3 System information.

(a) There is established at the FBI a National Instant Criminal Background Check System.

(b) The system will be based at the Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147.

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(c) The system manager and address are: Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 935 Pennsylvania Avenue, NW, Washington, D.C. 20535.

§ 25.4 Record source categories.

It is anticipated that most records in the NICS Index will be obtained from Federal agencies. It is also anticipated that a limited number of authorized state and local law enforcement agencies will voluntarily contribute records to the NICS Index. Information in the NCIC and III systems that will be searched during a background check has been or will be contributed voluntarily by Federal, state, local, and international criminal justice agencies.

§ 25.5 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

(1) Ensuring the accurate adding, canceling, or modifying of NICS Index records supplied by Federal agencies;

(2) Automatically rejecting any attempted entry of records into the NICS Index that contain detectable invalid data elements;

(3) Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and

(4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect.

§ 25.6 Accessing records in the system.

(a) FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS

background check is initiated by an FFL's contacting the FBI NICS Operations Center (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by the ATF whether they are required to initiate NICS background checks with the NICS Operations Center or a POC and how they are to do so.

(b) *Access to the NICS through the FBI NICS Operations Center.* FFLs may contact the NICS Operations Center by use of a toll-free telephone number, only during its regular business hours. In addition to telephone access, toll-free electronic dial-up access to the NICS will be provided to FFLs after the beginning of the NICS operation. FFLs with electronic dial-up access will be able to contact the NICS 24 hours each day, excluding scheduled and unscheduled downtime.

(c)(1) The FBI NICS Operations Center, upon receiving an FFL telephone or electronic dial-up request for a background check, will:

(i) Verify the FFL Number and code word;

(ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(iii) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) "Proceed" response, if no disqualifying information was found in the NICS Index, NCIC, or III.

(B) "Delayed" response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by Federal or state law. A "Delayed" response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a "Delayed" response from the NICS. If state offices in the state in

which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a “Proceed” or “Denied” response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

(C) “Denied” response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law. The “Denied” response will be provided to the requesting FFL by the NICS Operations Center during its regular business hours.

(2) None of the responses provided to the FFL under paragraph (c)(1) of this section will contain any of the underlying information in the records checked by the system.

(d) *Access to the NICS through POCs.* In states where a POC is designated to process background checks for the NICS, FFLs will contact the POC to initiate a NICS background check. Both ATF and the POC will notify FFLs in the POC’s state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system virtually 24 hours each day through the NCIC communication network. Upon receiving a request for a background check from an FFL, a POC will:

(1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system;

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and (3) Transmit the request for a background check via the NCIC interface to the NICS.

(e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in state and local law enforcement and other relevant record systems, and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.

(f) When the NICS receives an inquiry from a POC, it will search the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s) and will

provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

(1) No record response, if the NICS determines, through a complete search, that no matching record exists.

(2) Partial response, if the NICS has not completed the search of all of its records. This response will indicate the databases that have been searched (i.e., III, NCIC, and/or NICS Index) and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

(3) Single matching record response, if all records in the relevant databases have been searched and one matching record was found.

(4) Multiple matching record response, if all records in the relevant databases have been searched and more than one matching record was found.

(g) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will:

(1) Confirm any matching records; and

(2) Notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. “Proceed” notifications made within three business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a “Denied” response.

(h) *POC Determination Messages.* POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: open transactions that are not resolved before the end of the operational day on which the check is requested; denied transactions; transactions reported to the NICS as open and later changed to proceed; and denied transactions that

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have been overturned. The FBI shall provide POCs with an electronic capability to transmit this information. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message (deny or open) before the end of the operational day on which they were initiated will be assumed to have resulted in a proceed notification to the FFL. The information provided in the POC determination messages will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations in accordance with the procedures detailed in § 25.9(b).

(i) *Response recording.* FFLs are required to record the system response, whether provided by the FBI NICS Operations Center or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 178 recordkeeping requirements. The FBI NICS Operations Center response will always include an NTN and associated "Proceed," "Delayed," or "Denied" determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number and/or determination.

(j) *Access to the NICS Index for purposes unrelated to NICS background checks required by the Brady Act.* Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) shall be limited to uses for the purpose of:

(1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or

(2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53).

[Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2727-2004, 69 FR 43900, July 23, 2004]

§ 25.7 Querying records in the system.

(a) The following search descriptors will be required in all queries of the system for purposes of a background check:

- (1) Name;
- (2) Sex;
- (3) Race;
- (4) Complete date of birth; and
- (5) State of residence.

(b) A unique numeric identifier may also be provided to search for additional records based on exact matches by the numeric identifier. Examples of unique numeric identifiers for purposes of this system are: Social Security number (to comply with Privacy Act requirements, a Social Security number will not be required by the NICS to perform any background check) and miscellaneous identifying numbers (e.g., military number or number assigned by Federal, state, or local authorities to an individual's record). Additional identifiers that may be requested by the system after an initial query include height, weight, eye and hair color, and place of birth. At the option of the querying agency, these additional identifiers may also be included in the initial query of the system.

§ 25.8 System safeguards.

(a) Information maintained in the NICS Index is stored electronically for use in an FBI computer environment. The NICS central computer will reside inside a locked room within a secure facility. Access to the facility will be restricted to authorized personnel who have identified themselves and their need for access to a system security officer.

(b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed in paragraphs (c) through (f) of this section are the minimum to be adopted by

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all POCs and data sources having access to the NICS.

(c) State or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users and shall observe all procedures set forth in the NCIC Security Policy of 1992 when processing NICS background checks. The responsibilities of the Control Terminal Agencies and the computer centers include the following:

(1) The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.

(2) Since personnel at these computer centers can have access to data stored in the NICS, they must be screened thoroughly under the authority and supervision of a state Control Terminal Agency. This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state Control Terminal Agency. This screening will also apply to non-criminal justice maintenance or technical personnel.

(3) All visitors to these computer centers must be accompanied by staff personnel at all times.

(4) POCs utilizing a state/NCIC terminal to access the NICS must have the proper computer instructions written and other built-in controls to prevent data from being accessible to any terminals other than authorized terminals.

(5) Each state Control Terminal Agency shall build its data system around a central computer, through which each inquiry must pass for screening and verification.

(d) Authorized state agency remote terminal devices operated by POCs and having access to the NICS must meet the following requirements:

(1) POCs and data sources having terminals with access to the NICS must physically place these terminals in secure locations within the authorized agency;

(2) The agencies having terminals with access to the NICS must screen terminal operators and must restrict

access to the terminals to a minimum number of authorized employees; and

(3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.

(e) FFL remote terminal devices may be used to transmit queries to the NICS via electronic dial-up access. The following procedures will apply to such queries:

(1) The NICS will incorporate a security authentication mechanism that performs FFL dial-up user authentication before network access takes place;

(2) The proper use of dial-up circuits by FFLs will be included as part of the periodic audits by the FBI; and

(3) All failed authentications will be logged by the NICS and provided to the NICS security administrator.

(f) FFLs may use the telephone to transmit queries to the NICS, in accordance with the following procedures:

(1) FFLs may contact the NICS Operations Center during its regular business hours by a telephone number provided by the FBI;

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale, and the name, sex, race, date of birth, and state of residence of the prospective buyer; and

(3) The NICS will verify the FFL Number and code word before processing the request.

(g) The following precautions will be taken to help ensure the security and privacy of NICS information when FFLs contact the NICS Operations Center:

(1) Access will be restricted to the initiation of a NICS background check in connection with the proposed transfer of a firearm.

(2) The NICS Representative will only provide a response of “Proceed” or “Delayed” (with regard to the prospective firearms transfer), and will not provide the details of any record information about the transferee. In cases where potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a “Delayed” response to the FFL. Follow-up “Proceed” or “Denied” responses will be provided by the

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NICS Operations Center during its regular business hours.

(3) The FBI will periodically monitor telephone inquiries to ensure proper use of the system.

(h) All transactions and messages sent and received through electronic access by POCs and FFLs will be automatically logged in the NICS Audit Log described in § 25.9(b). Information in the NICS Audit Log will include initiation and termination messages, failed authentications, and matching records located by each search transaction.

(i) The FBI will monitor and enforce compliance by NICS users with the applicable system security requirements outlined in the NICS POC Guidelines and the NICS FFL Manual (available from the NICS Operations Center, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147).

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Index records that indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law. The NICS will retain such records indefinitely, unless they are canceled by the originating agency. In cases where a firearms disability is not permanent, e.g., a disqualifying restraining order, the NICS will automatically purge the pertinent record when it is no longer disqualifying. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) NICS Audit Log records relating to denied transactions will be retained

for 10 years, after which time they will be transferred to a Federal Records Center for storage;

(ii) NICS Audit Log records relating to transactions in an open status, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry; and

(iii) In cases of NICS Audit Log records relating to allowed transactions, all identifying information submitted by or on behalf of the transferee will be destroyed within 24 hours after the FFL receives communication of the determination that the transfer may proceed. All other information, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use and performance of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transactions may be accessed directly only by the FBI and only for the purpose of conducting audits of the use and performance of the NICS, except that:

(i) Information in the NICS Audit Log, including information not yet destroyed under § 5.9(b)(1)(iii), that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation, may be shared with appropriate authorities responsible for investigating, prosecuting, and/or enforcing such law or regulation; and

(ii) The NTNs and dates for allowed transactions may be shared with ATF in Individual FFL Audit Logs as specified in § 25.9(b)(4).

(3) *Limitation on use.* The NICS, including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922(g) or (n) or by state law. The

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NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

(4) *Creation and Use of Individual FFL Audit Logs.* Upon written request from ATF containing the name and license number of the FFL and the proposed date of inspection of the named FFL by ATF, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on denied transactions, and, with respect to all other transactions, only non-identifying information from the transaction. In no instance shall an Individual FFL Audit Log contain more than 60 days worth of allowed or open transaction records originating at the FFL. The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such Logs to ATF.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part

of a record system created and maintained pursuant to independent state law regarding firearms transactions.

[Order No. 2186–98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2354–2001, 66 FR 6474, Jan. 22, 2001; Order No. 2727–2004, 69 FR 43900, July 23, 2004]

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the “denying agency,” which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.)

(b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (i.e., a claim that the record in question does not pertain to the individual who was denied).

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the denying agency, which will, in turn, verify the record correction

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with the originating agency (assuming the originating agency has not already notified the denying agency of the correction) and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C-3, Clarksburg, West Virginia 26306-0147. Upon receipt of the information, the FBI will investigate the matter by contacting the POC that denied the transaction or the data source. The FBI will request the POC or the data source to verify that the record in question pertains to the individual who was denied, or to verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any state that was the source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS and the denying agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. If the appeal of a contested record is successful and thirty (30) days or less have transpired since the initial check, and there are no other disqualifying records upon which the denial was based, the NICS will communicate a "Proceed" response to the FFL. If the appeal is successful and more than thirty (30) days have transpired since the initial check, the FFL must recheck the NICS before allowing the sale to continue. In cases where multiple disqualifying records are the basis for the denial, the individual must pursue a correction for each record.

(f) An individual may also contest the accuracy or validity of a disquali-

fying record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved.

(g) An individual may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing the future erroneous denial or extended delay by the NICS of a firearm transfer. Such file shall be used only by the NICS for this purpose. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by that individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system. If the FBI finds a disqualifying record on the individual after his or her entry into the Voluntary Appeal File, the FBI may remove the individual's information from the file.

[Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2727-2004, 69 FR 43901, July 23, 2004]

§ 25.11 Prohibited activities and penalties.

(a) State or local agencies, FFLs, or individuals violating this subpart A shall be subject to a fine not to exceed \$10,000 and subject to cancellation of NICS inquiry privileges.

(b) Misuse or unauthorized access includes, but is not limited to, the following:

(1) State or local agencies', FFLs', or individuals' purposefully furnishing incorrect information to the system to obtain a "Proceed" response, thereby allowing a firearm transfer;

(2) State or local agencies', FFLs', or individuals' purposefully using the system to perform a check for unauthorized purposes; and

(3) Any unauthorized person's accessing the NICS.

Subpart B—National Motor Vehicle Title Information System (NMVTIS)

SOURCE: 74 FR 5776, Jan 30, 2009, unless otherwise noted.

§ 25.51 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the National Motor Vehicle Title Information System (NMVTIS) in accordance with title 49 U.S.C. 30502. The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles.

§ 25.52 Definitions.

For purposes of this subpart B:

Acquiring means owning, possessing, handling, directing, or controlling.

Automobile has the same meaning given that term in 49 U.S.C. 32901(a).

Certificate of title means a document issued by a state showing ownership of an automobile.

Insurance carrier means an individual or entity engaged in the business of underwriting automobile insurance.

Junk automobile means an automobile that—

(1) Is incapable of operating on public streets, roads, and highways; and

(2) Has no value except as a source of parts or scrap.

Junk yard means an individual or entity engaged in the business of acquiring or owning junk automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Motor vehicle has the same meaning given that term in 49 U.S.C. 3102(6).

NMVTIS means the National Motor Vehicle Title Information System.

Operator means the individual or entity authorized or designated as the operator of NMVTIS under 49 U.S.C. 30502(b), or the office designated by the Attorney General, if there is no au-

thorized or designated individual or entity.

Purchaser means the individual or entity buying an automobile or financing the purchase of an automobile. For purposes of this subpart, purchasers include dealers, auction companies or entities engaged in the business of purchasing used automobiles, lenders financing the purchase of new or used automobiles, and automobile dealers.

Salvage automobile means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage. Salvage automobiles include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by an insurer under the terms of its policies, regardless of whether or not the ownership of the vehicle is transferred to the insurance carrier.

Salvage yard means an individual or entity engaged in the business of acquiring or owning salvage automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Note to definition of “Salvage yard”: For purposes of this subpart, vehicle remarketers and vehicle recyclers, including scrap vehicle shredders and scrap metal processors as well as “pull-or pick-apart yards,” salvage pools, salvage auctions, and other types of auctions handling salvage or junk vehicles (including vehicles declared a “total loss”), are included in the definition of “junk or salvage yards.”

State means a state of the United States or the District of Columbia.

Total loss means that the cost of repairing such vehicles plus projected supplements plus projected diminished resale value plus rental reimbursement expense exceeds the cost of buying the damaged motor vehicle at its pre-accident value, minus the proceeds of selling the damaged motor vehicle for salvage.

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VIN means the vehicle identification number;

§ 25.53 Responsibilities of the operator of NMVTIS.

(a) By no later than March 31, 2009, the operator shall make available:

(1) To a participating state on request of that state, information in NMVTIS about any automobile;

(2) To a Government, state, or local law enforcement official on request of that official, information in NMVTIS about a particular automobile, junk yard, or salvage yard;

(3) To a prospective purchaser of an automobile on request of that purchaser, information in NMVTIS about that automobile; and

(4) To a prospective or current insurer of an automobile on request of that insurer, information in NMVTIS about the automobile.

(b) NMVTIS shall permit a user of the system to establish instantly and reliably:

(1) The validity and status of a document purporting to be a certificate of title;

(2) Whether an automobile bearing a known VIN is titled in a particular state;

(3) Whether an automobile known to be titled in a particular state is or has been a junk automobile or a salvage automobile;

(4) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state; and

(5) Whether an automobile bearing a known VIN has been reported as a junk automobile or a salvage automobile under 49 U.S.C. 30504.

(c) The operator is authorized to seek and accept, with the concurrence of the Department of Justice, additional information from states and public and private entities that is relevant to the titling of automobiles and to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce. The operator, however, may not collect any social security account numbers as

part of any of the information provided by any state or public or private entity. The operator may not make personally identifying information contained within NMVTIS, such as the name or address of the owner of an automobile, available to an individual prospective purchaser. With the approval of the Department of Justice, the operator may allow public and private entities that provide information to NMVTIS to query the system if such access will assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce.

(d) The operator shall develop and maintain a privacy policy that addresses the information in the system and how personal information shall be protected. DOJ shall review and approve this privacy policy.

(e) The means by which access is provided by the operator to users of NMVTIS must be approved by the Department of Justice.

(f) The operator shall biennially establish and at least annually collect user fees from the states and users of NMVTIS to pay for its operation, but the operator may not collect fees in excess of the costs of operating the system. The operator is required to recalculate the user fees on a biennial basis. After the operator establishes its initial user fees for the states under this section, subsequent state user fees must be established at least one year in advance of their effective date. Any user fees established by the operator must be established with the approval of the Department of Justice. The operator of NMVTIS will inform the states of the applicable user fees either through publication in the FEDERAL REGISTER or by direct notice or invoice to the states.

(1) The expenses to be recouped by the operator of NMVTIS will consist of labor costs, data center operations costs, the cost of providing access to authorized users, annual functional enhancement costs (including labor and hardware), costs necessary for implementing the provisions of this rule, the cost of technical upgrades, and other costs approved in advance by the Department of Justice.

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(2) User fees collected from states should be based on the states' pro rata share of the total number of titled motor vehicles based on the Highway Statistics Program of the Federal Highway Administration, U.S. Department of Transportation, except in cases where states did not report to that program, in which case the states shall make available the most recent statistics for motor vehicle title registrations.

(3) All states, regardless of their level of participation, shall be charged user fees by the operator.

(4) No fees shall be charged for inquiries from law enforcement agencies.

(g) The operator will establish procedures and practices to facilitate reporting to NMVTIS in the least burdensome and costly fashion. If the operator is not the Department of Justice, the operator must provide an annual report to the Department of Justice detailing the fees it collected and how it expended such fees and other funds to operate NMVTIS. This report must also include a status report on the implementation of the system, compliance with reporting and other requirements, and sufficient detail and scope regarding financial information so that reasonable determinations can be made regarding budgeting and performance. The operator shall procure an independent financial audit of NMVTIS revenues and expenses on an annual basis. The Department of Justice will make these reports available for public inspection.

§ 25.54 Responsibilities of the States.

(a) Each state must maintain at least the level of participation in NMVTIS that it had achieved as of January 1, 2009. By no later than January 1, 2010, each state must have completed implementation of all requirements of participation and provide, or cause to be provided by an agent or third party, to the designated operator and in an electronic format acceptable to the operator, at a frequency of once every 24 hours, titling information for all automobiles maintained by the state. The titling information provided to NMVTIS must include the following:

(1) VIN;

(2) Any description of the automobile included on the certificate of title (including any and all brands associated with such vehicle);

(3) The name of the individual or entity to whom the certificate was issued;

(4) Information from junk or salvage yard operators or insurance carriers regarding the acquisition of junk automobiles or salvage automobiles, if this information is being collected by the state; and

(5) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state.

(b) With the approval of the operator and the state, the titling information provided to NMVTIS may include any other information included on the certificates of title and any other information the state maintains in relation to these titles.

(c) By no later than January 1, 2010, each state shall establish a practice of performing a title verification check through NMVTIS before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another state or in cases of title transfers. The check will consist of—

(1) Communicating to the operator the VIN of the automobile for which the certificate of title is sought;

(2) Giving the operator an opportunity to communicate to the participating state the results of a search of the information and using the results to determine the validity and status of a document purporting to be a certification of title, to determine whether the automobile has been a junk or salvage vehicle or has been reported as such, to compare and verify the odometer information presented with that reported in the system, and to determine the validity of other information presented (*e.g.*, lien-holder status, etc.).

(d) By January 1, 2010, those states not currently paying user fees will be responsible for paying user fees as established by the operator to support NMVTIS.

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§ 25.55 Responsibilities of insurance carriers.

(a) By no later than March 31, 2009, and on a monthly basis as designated by the operator, any individual or entity acting as an insurance carrier conducting business within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, a report that contains an inventory of all automobiles of the current model year or any of the four prior model years that the carrier, during the past month, has obtained possession of and has decided are junk automobiles or salvage automobiles. An insurance carrier shall report on any automobiles that it has determined to be a total loss under the law of the applicable jurisdiction (*i.e.*, state) or designated as a total loss by the insurance company under the terms of its policies.

(b) The inventory must contain the following information:

(1) The name, address, and contact information for the reporting entity (insurance carrier);

(2) VIN;

(3) The date on which the automobile was obtained or designated as a junk or salvage automobile;

(4) The name of the individual or entity from whom the automobile was obtained and who possessed it when the automobile was designated as a junk or salvage automobile; and

(5) The name of the owner of the automobile at the time of the filing of the report.

(c) Insurance carriers are strongly encouraged to provide the operator with information on other motor vehicles or other information relevant to a motor vehicle's title, including the reason why the insurance carrier obtained possession of the motor vehicle. For example, the insurance carrier may have obtained possession of a motor vehicle because it had been subject to flood, water, collision, or fire damage, or as a result of theft and recovery. The provision of information provided by an insurance carrier under this paragraph must be pursuant to a means approved by the operator.

(d) Insurance carriers whose required data is provided to the operator through an operator-authorized third

party in a manner acceptable to the operator are not required to duplicate such reporting. For example, if the operator and a private third-party organization reach agreement on the provision of insurance data already reported by insurance to the third party, insurance companies are not required to subsequently report the information directly into NMVTIS.

§ 25.56 Responsibilities of junk yards and salvage yards and auto recyclers.

(a) By no later than March 31, 2009, and continuing on a monthly basis as designated by the operator, any individual or entity engaged in the business of operating a junk yard or salvage yard within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, an inventory of all junk automobiles or salvage automobiles obtained in whole or in part by that entity in the prior month.

(b) The inventory shall include the following information:

(1) The name, address, and contact information for the reporting entity (junk, salvage yard, recycler);

(2) VIN;

(3) The date the automobile was obtained;

(4) The name of the individual or entity from whom the automobile was obtained;

(5) A statement of whether the automobile was crushed or disposed of, for sale or other purposes, to whom it was provided or transferred, and if the vehicle is intended for export out of the United States.

(c) Junk and salvage yards, however, are not required to report this information if they already report the information to the state and the state makes the information required in this rule available to the operator.

(d) Junk and salvage yards may be required to file an update or supplemental report of final disposition of any automobile where final disposition information was not available at the time of the initial report filing, or if their actual disposition of the automobile differs from what was initially reported.

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(e) Junk and salvage yards are encouraged to provide the operator with similar information on motor vehicles other than automobiles that they obtain that possess VINs.

(f) Junk- and salvage-yard operators whose required data is provided to the operator through an operator-authorized third party (*e.g.*, state or other public or private organization) in a manner acceptable to the operator are not required to duplicate such reporting. In addition, junk and salvage yards are not required to report on an automobile if they are issued a verification under 49 U.S.C. 33110 stating that the automobile or parts from the automobile are not reported as stolen.

(g) Such entities must report all salvage or junk vehicles they obtain, including vehicles from or on behalf of insurance carriers, which can be reasonably assumed are total loss vehicles. Such entities, however, are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel, so long as such appraisals are conducted entirely independent of any other interests, persons or entities. Individuals and entities that handle less than five vehicles per year that are determined to be salvage, junk, or total loss are not required to report under the salvage-yard requirements.

(h) Scrap metal processors and shredders that receive automobiles for recycling where the condition of such vehicles generally prevent VINs from being identified are not required to report to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap metal processors and shredders must report these vehicles to the operator based on a visual inspection if possible. If the VIN cannot be determined based on this inspection, scrap metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

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§ 25.57 Erroneous junk or salvage reporting.

(a) In cases where a vehicle is erroneously reported to have been salvage or junk and subsequently destroyed (*i.e.*, crushed), owners of the legitimate vehicles are encouraged to seek a vehicle inspection in the current state of title whereby inspection officials can verify via hidden VINs the vehicle's true identity. Owners are encouraged to file such inspection reports with the current state of title and to retain such reports so that the vehicle's true history can be documented.

(b) To avoid the possibility of fraud, the operator may not allow any entity to delete a prior report of junk or salvage status.

PART 26—DEATH SENTENCES PROCEDURES

Sec.

Subpart A—Implementation of Death Sentences in Federal Cases

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AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

SOURCE: Order No. 1655–93, 57 FR 4901, Jan. 19, 1993, unless otherwise noted.

Subpart A—Implementation of Death Sentences in Federal Cases

§ 26.1 Applicability.

The regulations of this part apply whenever a sentencing hearing conducted in a United States District Court has resulted in a recommendation or determination that a criminal defendant be sentenced to death for