

§ 25.1

25.9 Retention and destruction of records in the system.

25.10 Correction of erroneous system information.

25.11 Prohibited activities and penalties.

AUTHORITY: Pub. L. 103-159, 107 Stat. 1536.

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 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 of-

28 CFR Ch. I (7-1-02 Edition)

fices 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 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.

Department of Justice

§ 25.2

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 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 Operations Center means the unit of the FBI that receives telephone or electronic inquiries from FFLs to perform background checks, makes a determination based upon available information as to whether the receipt or transfer of a firearm would be in violation of Federal or state law, researches criminal history records, tracks and finalizes appeals, and conducts audits of system use.

NICS Operations Center's regular business hours means the hours of 9:00 a.m. to 2:00 a.m., Eastern Time, seven days a week.

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.

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).

§ 25.3

§ 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.

(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.

28 CFR Ch. I (7-1-02 Edition)

§ 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