

**§ 4.24 General disclosures required.**

\* \* \* \* \*

(v) \* \* \*

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

\* \* \* \* \*

3. Section 4.25 is amended by revising paragraph (c)(5) introductory text to read as follows:

**§ 4.25 Performance disclosures.**

(c) \* \* \*

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to § 4.25(c)(3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

\* \* \* \* \*

Dated: October 26, 1998.

By the Commission.

**Jean A. Webb,***Secretary of the Commission.*

[FR Doc. 98-29102 Filed 10-29-98; 8:45 am]

BILLING CODE 6351-01-P

**DEPARTMENT OF JUSTICE****28 CFR Part 25****[AG Order No. 2186-98]**

RIN 1105-AA51

**National Instant Criminal Background Check System Regulation**

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Justice (DOJ) is publishing a final rule implementing the National Instant Criminal Background Check System (NICS) pursuant to the Brady Handgun Violence Prevention Act ("Brady Act"), to provide notice of the establishment of the NICS, to establish policies and procedures for ensuring the privacy and security of this system, and to

implement a NICS appeals policy for persons denied acquisition of a firearm based on information in the NICS that they believe to be erroneous or incomplete.

**EFFECTIVE DATE:** November 30, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, telephone number (304) 625-2000.

**SUPPLEMENTARY INFORMATION:** This rule finalizes two notices of proposed rulemaking: the National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). The FBI accepted comments on the proposed rules from interested parties until September 16, 1998, and approximately 2,000 comments were received.

In publishing this final rule, the Department also is giving notice, pursuant to section 103(d) of the Brady Act, Public Law 103-159, 107 Stat. 1536, to Federal Firearm Licensees (FFLs) and the chief law enforcement officer of each state that the NICS is established as of October 31, 1998. With limited exceptions, FFLs are required by the Brady Act to begin contacting the system beginning on November 30, 1998, thirty days after the establishment of the system, before they may transfer a firearm to a non-licensee. FFLs shall contact the NICS by contacting either the FBI NICS Operations Center or a state point of contact (POC) for the NICS, as specified by the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Department of the Treasury. The ATF will notify each FFL of the method by which FFLs must contact the NICS in their state.

**Significant Comments or Changes***The NICS User Fee*

The largest number of comments pertained to the FBI's proposed user fee to be charged FFLs that contact the FBI NICS Operations Center directly for a NICS background check. All of those who commented on the proposed user fee opposed the fee. This issue was the subject of Congressional action since the time of the initial publication of the proposed NICS rule. The Omnibus Appropriations Act for fiscal year 1999 provided additional monies to the FBI to fund the operation of the NICS and prohibited the FBI from charging a fee for NICS checks. Accordingly, the FBI

will not be charging the user fee set forth in the proposed NICS user fee regulation. This does not preclude state or local agencies acting as POCs for the NICS from charging such fees as may be appropriate under state or local law.

*The NICS Audit Log*

A significant number of comments were received opposing the retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. Most of these comments expressed an opinion that such a log would constitute a national firearms registry, the establishment of which is prohibited by the Brady Act.

The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.

The NICS Audit Log will contain information relating to each NICS background check requested by FFLs and will allow the FBI to audit use of the system by FFLs and POCs. By auditing the system, the FBI can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect against the invasions of privacy that would result from such misuse. Audits can also determine whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system. The Audit Log will also allow the FBI to perform quality control checks on the

system's operation by reviewing the accuracy of the responses given by the NICS record examiners to gun dealers.

Under the proposed rule, personally identified information in the NICS Audit Log associated with allowed transfers would be destroyed after eighteen months. Because of the numerous comments objecting to this retention period as too long, the Department reexamined the time period needed to perform audits of the NICS. In light of the statutory requirement that records for allowed transfers be destroyed, and the countervailing statutory requirement to provide for system privacy and security, the Department determined that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months. Section 25.9(b) in the final rule was revised to reflect this and to provide that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. The Department further determined that the FBI shall work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS. By February 28, 1999, the Department will issue a notice of a proposed revision of the regulation setting forth a further reduced period of retention that will be observed by the system.

Various comments expressed concern that the Audit Log would allow POCs and law enforcement agencies access to records of approved transfers. This is not a well-founded concern because only the FBI will be able to access information in the transaction log. Section 25.9(b)(1) of the final rule was revised to provide explicitly that such information is available only to the FBI, and only for the purposes of conducting audits of the use and performance of the NICS or pursuing cases of misuse of the system.

There were also suggestions in the comments that more specific language be added to the final rule setting forth requirements for the FBI to ensure that transaction logs of the separate National Crime Information Center (NCIC) record system also be destroyed to the extent they reflect allowed firearm transfers. The NCIC information system is separate from the NICS. Nonetheless, the FBI has taken steps to preclude transaction logging of personally identified information in either NCIC or the Interstate Identification Index (III) that would pertain to allowed firearm transactions. Thus, the only logging of

this information by the FBI is in the NICS Audit Log. Similar steps will be taken to prevent such logging in the future FBI information systems NCIC 2000 and the Integrated Automated Fingerprint Identification System (IAFIS) as soon as practicable, but in no event more than one year after those systems come on-line in July 1999. For NICS disaster recovery, a tape of each weekly, full system backup will be maintained in an off-site location for up to six months. Full system backup tapes will also be stored locally to recycle the off-site storage. The FBI keeps no systematic paper copies of transactions.

Finally, comments were received from state and local law enforcement agencies that will serve as POCs seeking clarification that none of the information about NICS checks in state record systems that they maintain pursuant to state law will be subject to the record destruction requirement. The proposed rule provided: (1) that POC records of inquiry and response messages relating to the initiation and result of a NICS check that allows a transfer must be destroyed; and (2) that POC records of NICS checks that the POC processes that are part of a state record system created and maintained in accordance with state law are not subject to the Brady Act record destruction requirement. Sections 25.9(d)(1) and (2) of the final rule were revised to make it clear that the referenced state records of allowed transfers would not be subject to the Brady Act record destruction requirement if they are part of a record system created and maintained pursuant to independent state law regarding firearms transfers. The reason for this clarification is to avoid interfering with state regulation of firearms. If a state is performing a gun eligibility check under state law, and state law requires or allows the retention of the records of those checks, the state's retention of records of the concurrent performance of a NICS check would not add any more information about gun ownership than the state already retains under its own law.

#### *NICS Checks on Pawnshop Redemptions and Gunsmith Transactions*

A significant number of comments on this rule pertained to conducting background checks on firearms redeemed from pawnshops and firearms that were the subject of repair or modification by a gunsmith. Although the Brady Act requires the Attorney General to establish a national instant criminal background check system, it is the Secretary of Treasury through the

ATF who defines what constitutes a firearms transfer, how long a background check is valid, which firearm permits constitute a substitute or alternative to a background check, and the recordkeeping requirements for FFLs. The ATF has issued proposed regulations dealing with these issues. (63 FR 8379). Questions and comments about these matters should be directed to the ATF.

A number of comments from the pawnbrokers' industry addressed the circumstances that will develop when a person redeems a firearm from pawn but the firearm cannot be transferred back to the individual because of a disqualifying record found by the NICS check. The U.S. Department of Treasury Fiscal Year 1999 appropriations legislation includes a provision to allow pawnbrokers the option of requesting a NICS background check at the time a person offers the firearm for pawn. An additional check would still be necessary at the time of redemption. NICS will be made available to pawnbrokers for this purpose. No change in the rule is necessary to address this.

#### *Use of State Points of Contact*

Some comments questioned the legality of using state POCs to process NICS checks in light of the Supreme Court's decision in *Printz v. United States*, 117 S. Ct. 2365 (1997), which held that Congress could not compel the states to perform Brady checks. In response to these comments we note that the states that will act as POCs for the NICS are not being required to do so by Federal law or regulation, but will do so voluntarily pursuant to their own state authority. The final rule's definition of a POC acknowledges that a state or local agency serving that function will be doing so by express or implied authority pursuant to state statute or executive order.

Some commenters objected to the use of state or local law enforcement agencies as NICS POCs even if such agencies do so voluntarily. The FBI considers the use of POCs (serving as intermediaries between FFLs and the system) to be an appropriate means to implement the Brady Act. Fostering state and local participation in the NICS is entirely consistent with both our federal form of government and with practices under the Brady Act's interim provision. Moreover, state and local authorities are likely to have readier access to more detailed information than a single centralized processor, such as the FBI, thus resulting in fewer system misses of disqualified persons and enhancing system responsiveness

for non-disqualified persons. The final rule therefore retains the POC provisions of the proposed rule.

#### *Other Comments*

Other comments addressed matters that were established by the Brady Act and are not subject to change by regulation, or addressed matters over which the Attorney General has no authority under the Brady Act. Accordingly, no changes were made to this final rule for comments such as the following: long guns should be exempted from background checks; a government-issued photo identification should not be required for transferee identification; disqualifying information should be included on a person's drivers license to make a NICS check unnecessary; there should be no immunity from liability for persons or agencies providing information to the NICS; the Attorney General should not be permitted to obtain information relevant to NICS determinations from other federal agencies; and FFLs should be able to transfer a firearm sooner than the expiration of three business days in the absence of a NICS response.

Some comments also objected to the use of a NICS "Delayed" response, arguing that the Brady Act only provides for approval and denial responses. We note that the "Delayed" response is merely a way of communicating to the FFL that the system requires additional time to research and evaluate whether the prospective transferee is disqualified from receiving a firearm. The definition of the "Delayed" response in the final rule was revised to reflect this and the fact that a "Delayed" response indicates that it would be unlawful to transfer the firearm pending receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days, whichever occurs first. The law does not prohibit the system from making such a response.

Some comments objected to solicitation and retention of a prospective transferee's Social Security number (SSN). As noted in the proposed rule, a prospective transferee is free not to provide his or her SSN and will not be denied NICS processing for failure to do so. However, voluntarily providing his or her SSN can benefit a prospective transferee by helping NICS differentiate the prospective transferee from other persons with similar names who may have disqualifying records. Moreover, the SSNs of non-disqualified transferees will be destroyed with the rest of the transferees' identifying data at the end of 180 days. The final rule therefore

retains this provision of the proposed rule.

At least one comment asked about the system's handling of persons who have been granted relief from disabilities and the safeguards to ensure this relief is recognized by the NICS. Initially, the NICS will not contain records on persons granted relief from firearm disabilities by the ATF. A procedure will be implemented, however, so that the NICS Operations Center can verify the status of such individuals when they wish to obtain a firearm. The ATF has agreed to notify the FBI if and when it grants relief from disabilities in the future by providing the individuals' names and FBI identification numbers for inclusion in its records. This matter will also be the subject of discussion with state law enforcement agencies that include or should include information in their record systems about relief granted to persons under state statute.

A small number of comments suggested that the FBI establish its regular business hours beginning at 8:00 a.m. in the earlier time zones and/or requiring POCs to offer hours of 9:00 a.m. to 10:00 p.m. The final rule retains the FBI business hours of 9:00 a.m. to 2:00 a.m. It is understood that some places of business are open during hours during which the NICS Operations Center is unavailable. However, the FBI is servicing retail stores in seven different time zones and has attempted to define its business hours to cover the peak sales times in each zone. Additionally, in the near future, the FBI will make electronic access available to FFLs. This access will essentially allow FFLs to conduct background checks 24 hours a day except during minimal periods of system maintenance. Guidelines for POCs have been distributed suggesting minimum business hours of 10:00 a.m. to 9:00 p.m., although these hours are not mandatory.

A number of law enforcement officials noted that the proposed rule would not allow a law enforcement officer to check the NICS for the status of a person in possession of a firearm to help investigate whether the person is unlawfully in possession. The proposed rule also would not allow checks for general law enforcement purposes. The final rule remains unchanged in this regard largely due to privacy-related concerns expressed by the federal agencies supplying records to the NICS Index. Taking into account that the Brady Act expressly requires agencies to provide records to the NICS for Brady Act purposes, the agencies were concerned that use for other purposes would conflict with privacy statutes that

restrict the use of such information. The FBI notes that law enforcement has access to the vast majority of records available to the NICS through the National Crime Information Center (NCIC) or the Interstate Identification Index (III).

A number of state officials who will be acting as POCs in their states commented that they verify the identity of the FFLs by means other than the FFL number assigned by the ATF. They further commented that they may provide a state number rather than a NICS system transaction number to the FFLs for approved sales. They may not provide a number for a denied sale. Section 25.6(d), (g), and (i) were changed to accommodate the state systems.

Several comments expressed the desire for the FBI to have both telephone and electronic dial-up access fully available for background checks when the NICS becomes available November 30, 1998. The FBI also would like to have electronic access fully deployed as soon as possible since the electronic access improves service and reduces the number of people needed to operate the system. Since the Brady Act requires telephone access at a minimum, the NICS system developers have focused resources to make sure that the basic system would be operational on schedule. It now appears that electronic dial-up access will become available to FFLs sometime after November 30, 1998. Therefore, section 25.6(b) was changed accordingly. This section was changed further to make it clear that there may be periods within a 24-hour day when NICS would be unavailable due to scheduled or unscheduled downtime. As soon as the NICS is proven to have fully successful operating capability using telephone access, all available resources will be directed toward the additional electronic access. The development time for this capability should be relatively short because prototypes are already complete.

Some comments suggested that the FBI provide a toll-free telephone number to individuals who are denied the transfer of a firearm and wish to appeal this denial, and that the FBI establish in the final rule a time frame within which the FBI and POCs would have to respond to an appeal. The FBI will provide a toll-free number for this purpose. In most cases, however, a written appeal will be required to get the appeal process started. No time frame for answering appeals was included in this rule since the Brady Act specifically provides that the NICS will respond within five business days

to individuals requesting the reasons for being found ineligible to receive a firearm, and that the system immediately consider an individual's submission to correct, clarify, or supplement records in the NICS.

In response to comments about FFL access to the NICS, section 25.6(b) was modified to clarify that the FBI intends to provide FFLs a toll-free number for both telephone and electronic dial-up access.

#### *Technical Changes*

The term "password" used in the proposed rule has been changed to "code word" in the final rule. The term "password" has a specific meaning and implications when used in the context of computer security. The "code word" selected by the FFL when enrolling with the FBI to gain access to the NICS does not comply with all the security measures normally associated with a "password." Therefore, to avoid creating a false impression, the term "password" has been replaced by "code word."

In the final rule, words such as "purchase" and "purchaser" were changed to words such as "obtain" and "transferee" to clarify that NICS checks apply to transfers and are not limited to firearm sales.

The definition of the term "Proceed" was modified in the final rule to clarify that it means that 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 and that, notwithstanding a "Proceed" response from the NICS, an FFL may not lawfully transfer a firearm if he or she knows or has reasonable cause to believe that the prospective transferee is prohibited from receiving or possessing firearms, or is otherwise prohibited from transferring the firearm under applicable Federal or state law.

The proposed rule provided that a denial by the NICS of a firearm transfer would be based upon one or more matching records that provide reason to believe that receipt of a firearm by a prospective transferee would violate 18 U.S.C. 922 or state law. The final rule changes the terminology relating to NICS denials to "information demonstrating" rather than "reason to believe" in order to conform to the language of the regulation more closely to the language relating to denials in the Brady Act.

Section 25.6(a) in the final rule was modified to indicate that the ATF will advise FFLs whether they are required to contact the FBI or a POC to initiate a NICS check and how they are to do so. Section 25.6(j) was modified to

clarify the allowable non-Brady Act uses of the NICS Index to include responding to inquiries by criminal justice agencies in connection with licenses or permits to carry a concealed firearm or to import, manufacture, deal in, or purchase explosives, and inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44), or the National Firearms Act (26 U.S.C. Chapter 53). Section 25.8(b) was modified to indicate that the states will not be required to give the FBI a list of the Originating Agency Identifiers (ORIs) for POCs within the state. Section 25.8(i) was modified to correctly identify the documents where security requirements are outlined. Section 25.9(a) was modified to clarify that in cases of firearms disabilities that are not permanent, e.g., disqualifying restraining orders, the NICS will automatically purge the pertinent record when it is no longer disqualifying. Section 25.10(a) was modified to allow states to accept denial appeals in other than written form.

#### **Applicable Administrative Procedures and Executive Orders**

##### *Regulatory Flexibility Analysis*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. A Brady Act Task Group, composed of experienced state and local law enforcement officials, provided input on the design of the NICS. When developing the guidelines for the NICS, both the Task Group and the FBI took into account the fact that many FFLs are small businesses. A small firearm retailer is defined as having under \$5.0 million in annual gross receipts as defined by 13 CFR 121.201. Firearm retailers are included in the Standard Industrial Class (SIC) Code 5941. The FBI has further considered that this rule will apply to pawn redemptions, and that many pawnbrokers are small entities. The obligation of FFLs to contact the NICS before transferring a firearm, and the applicability of NICS checks to pawn redemptions, are imposed by the Brady Act and detailed in the proposed ATF regulations implementing the permanent provisions of the Brady Act (63 FR 8379). In designing the NICS, the FBI has sought to avoid burdens on small entities beyond those requirements needed to conduct the statutorily prescribed background checks effectively and to

ensure the privacy and security of the information in the NICS. The FBI is not aware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The FBI has sent a notice, including a letter describing NICS and a NICS brochure, to each FFL in the states and territories that are currently expected to be serviced directly by the FBI. The FBI has also met with FFLs at regional firearm seminars conducted by ATF to inform FFLs about NICS plans and to solicit comments needed to finalize these plans. These efforts were made by the FBI also to satisfy the "outreach" provisions of 5 U.S.C. 609.

##### *Executive Order 12866*

The Department of Justice has completed its examination of this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this final rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and thus it has been reviewed by the Office of Management and Budget (OMB).

##### *Executive Order 12612*

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

##### *Unfunded Mandates Reform Act of 1995*

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This final rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *Paperwork Reduction Act of 1995*

The collection of information contained in this final rule has been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Public comment was solicited in the notice of proposed rulemaking that preceded this final rule (63 FR 30430). In addition, three data collection activities deemed necessary for the implementation of the NICS were the subject of separate publications.

On May 31, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the NICS Firearm Dealers Survey. On June 1, 1998, the FBI published a **Federal Register** notice (63 FR 29755) announcing its intention to collect this information. On June 21, 1998, the OMB granted approval for the data collection effort, and issued OMB control number 1110-0025 for inclusion on the data collection instrument. This control number allows the FBI to collect survey data for 180 days from the date of issue. The FBI published a second notice in the **Federal Register** (63 FR 44925) on August 21, 1998, requesting OMB approval to collect this data for a period of up to three years.

On July 16, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the NICS Federal Firearms Licensee (FFL) Enrollment Form. On July 23, 1998, the FBI published a **Federal Register** notice (63 FR 39594) announcing its intention to collect this information. On August 3, 1998, OMB granted approval for the data collection effort, and issued OMB control number 1110-0026 for inclusion on the data collection instrument. This control number allows the FBI to collect enrollment information for 180 days from the date of issue. The FBI will publish a second notice in the **Federal Register** requesting OMB approval to collect this data for a period of up to three years.

On July 27, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the FFL Execution of Acknowledgment of Obligations and Responsibilities Under the NICS. On August 3, 1998, the FBI published a **Federal Register** notice (63 FR 41296) announcing its intention to collect this information. On August 3,

1998, the OMB granted approval for the data collection effort, and issued OMB control number 1110-0027 for inclusion on the data collection instrument. This control number allows the FBI to collect this information for 180 days from the date of issue. The FBI will publish a second notice in the **Federal Register** requesting OMB approval to collect this data for a period of up to three years.

#### **List of Subjects in 28 CFR Part 25**

Administrative practice and procedure, Business and industry, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by adding part 25 to read as follows:

#### **PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS**

##### **Subpart A—The National Instant Criminal Background Check System**

Sec.

- 25.1 Purpose and authority.
- 25.2 Definitions.
- 25.3 System information.
- 25.4 Record source categories.
- 25.5 Validation and data integrity of records in the system.
- 25.6 Accessing records in the system.
- 25.7 Querying records in the system.
- 25.8 System safeguards.
- 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.

##### **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 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 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 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 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.

#### § 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) In cases where a transfer is denied by a POC, the POC should provide a denial notification to the NICS. This denial notification will include the name of the person who was denied a firearm and the NTN. The information provided in the denial notification will be maintained in the NICS Audit Log described in § 25.9(b). This notification may be provided immediately by electronic message to the NICS (i.e., at the time the transfer is denied) or as soon thereafter as possible. If a denial notification is not provided by a POC, the NICS will assume that the transfer was allowed and will destroy its records regarding the transfer in accordance with the procedures detailed in § 25.9.

(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).

**§ 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 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 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) The Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed after not more than six months after the transfer is allowed. Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used 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.

(2) The 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 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 Audit Log pertaining to allowed transfers may only be used by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used as long as needed to pursue cases of identified misuse of the system. 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. The Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(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.

#### **§ 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 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 disqualifying 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.

**§ 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.

Dated: October 27, 1998.

**Janet Reno,**

*Attorney General.*

[FR Doc. 98-29109 Filed 10-29-98; 8:45 am]

BILLING CODE 4410-06-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### 42 CFR Part 68a

RIN 0925-AA09

#### National Institutes of Health Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

AGENCY: National Institutes of Health, HHS.

ACTION: Final rule.

**SUMMARY:** The National Institutes of Health (NIH) is issuing regulations to implement provisions of the Public Health Service Act authorizing the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The purpose of the program is the recruitment and retention of highly qualified health professionals, who are from disadvantaged backgrounds, to conduct clinical research as employees of the NIH by providing repayment of qualified educational loans.

**EFFECTIVE DATE:** This final rule is effective on November 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore, NIH Regulations Officer, Office of Management Assessment, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20852; telephone 301-496-4607 (not a toll-free number); Fax 301-402-0169; or E-mail (jm40z@nih.gov). For program

information contact: Marc S. Horowitz, telephone 301-402-5666 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The NIH Revitalization Act of 1993 (Pub. L. 103-43) was enacted June 10, 1993, adding section 487E of the Public Health Service (PHS) Act, 42 U.S.C. 288-5. Section 487E authorizes the Secretary to carry out a program of entering into contracts with appropriately qualified health professionals from disadvantaged backgrounds with substantial educational loan debt relative to income. Under such contracts, qualified health professionals agree to conduct clinical research as NIH employees for a minimum of two years, in consideration of the Federal Government agreeing to repay a maximum of \$20,000 annually of the principal and the interest of the educational loans of such health professionals. This program is known as the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The NIH is amending title 42 of the Code of Federal Regulations by adding a new part 68a to govern the administration of this loan repayment program.

The regulations specify the scope and purpose of the program, who is eligible to apply, how individuals apply to participate in the program, how participants are selected, and the terms and conditions of the program.

The NIH announced its plans to issue the regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, February 10, 1997 (62 FR 5953). The NPRM provided for a 60-day comment period. The NIH received no comments. Consequently, the final regulations are the same as those originally proposed in February 1997, except for an editorial change reflecting the NIH Medical Board's change of name to the "Medical Executive Committee."

The following is provided as public information.

#### Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. This final rule has been reviewed under

Executive Order 12866 by OIRA and has been deemed not significant.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. I certify that this final rule will not have any such impact.

#### Paperwork Reduction Act

This final rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The application forms used by the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds have been reviewed and approved by OMB under OMB No. 0925-0361 (expires September 30, 1998).

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered program affected by the proposed regulation is:

93.220—NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

#### List of Subjects in 42 CFR Part 68a

Health—clinical research, medical research; Loan programs—health.

Dated: September 18, 1998.

**Harold Varmus,**

*Director, National Institutes of Health.*

For the reasons presented in the preamble, title 42 of the Code of Federal Regulations is amended by adding a new part 68a to read as set forth below.

#### PART 68a—NATIONAL INSTITUTES OF HEALTH (NIH) CLINICAL RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS (CR-LRP)

Sec.

68a.1 What is the scope and purpose of the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR-LRP)?

68a.2 Definitions.

68a.3 Who is eligible to apply?

68a.4 Who is eligible to participate?

68a.5 Who is ineligible to participate?

68a.6 How do individuals apply to participate in the CR-LRP?

68a.7 How are applicants selected to participate in the CR-LRP?

68a.8 What does the CR-LRP provide to participants?

68a.9 What loans qualify for repayment?

68a.10 What does an individual have to do in return for loan repayments received under the CR-LRP?