

<b>REQUEST FOR RECORDS DISPOSITION AUTHORITY</b>		JOB NUMBER <i>71-065-07-3</i>	
To: NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD COLLEGE PARK, MD 20740-6001		Date received <i>10-13-2006</i>	
1 FROM (Agency or establishment) <b>DEPARTMENT OF JUSTICE</b>		NOTIFICATION TO AGENCY  In accordance with the provisions of 44 U S C 3303a, the disposition request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10	
2 MAJOR SUBDIVISION <b>FEDERAL BUREAU OF INVESTIGATION</b>			
3 MINOR SUBDIVISION <b>CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION</b>			
4. NAME OF PERSON WITH WHOM TO CONFER <b>Teresa C. Sharkey, CRM</b>	5 TELEPHONE NUMBER <b>202-324-1613</b>	DATE <i>9/10/07</i>	ARCHIVIST OF THE UNITED STATES <i>Allen W. ...</i>
6 AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached <u>  7  </u> page(s) are not needed now for the business for this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies,  <input checked="" type="checkbox"/> is not required <input type="checkbox"/> is attached; or <input type="checkbox"/> has been requested.			
DATE <i>10/10/06</i>	SIGNATURE OF AGENCY REPRESENTATIVE <i>William L. Hooton</i>		TITLE Assistant Director
7 ITEM NO	8 DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9 GRS OR SUPERSEDED JOB CITATION	10 ACTION TAKEN (NARA USE ONLY)
	<b>National Instant Criminal Background Check System (NICS)</b>  See attached pages for disposition instructions		
<i>As 9/17/07 copies sent to Agcy, NWD, NWMU, NR</i>			

## NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

### **Background**

The Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, requires Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish the NICS. The NICS enables any FFL to check for information on whether receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law.

The FBI developed the NICS through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies. The FBI's Criminal Justice Information Services (CJIS) Division oversees the NICS.

### **Process**

The ATF maintains a database of authorized firearms dealers in the United States and provides information from this database to the CJIS Division for use in verifying the identity of firearms dealers, thereby enabling their submission of background checks. During the development of the NICS, states were given the choice to utilize the FBI to initiate background checks or exercise their right to serve as a Point-of-Contact (POC) state for background checks. If a state did not agree to serve as a POC state, the FFL would contact the FBI to request a background check. Some states are considered partial-POC states. These states perform background checks for handgun transfers but not for long gun transfers. In these states, long gun checks are directed to the FBI. The FFLs in non-POC states initiate background checks by contacting a NICS Call Center or online via the Internet-based NICS Electronic Check (NICS E-Check). The NICS typically responds to queries within 30 seconds and provides FFLs with an answer as to whether the transfer of a firearm would violate federal or state law or require further research.

The NICS queries several databases to determine whether a prospective purchaser is prohibited from owning a firearm. The National Crime Information Center (NCIC) check determines if one of the NCIC data files contains information disqualifying the prospective buyer from obtaining a firearm. The Interstate Identification Index (III) check searches state and federal criminal history records contained in the Integrated Automated Fingerprint Identification System (IAFIS). The third database (the NICS Index) was created specifically for the NICS process and is populated with data obtained from federal agencies and state and local sources. A check of the NICS Index provides federally disqualifying information that would prevent the prospective buyer from purchasing a firearm. The NICS also checks the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE) database to determine the immigration status of non-United States citizens attempting to purchase firearms.

If no disqualifying information is found in NCIC, III, NICS Index, or the Immigration Alien Response (IAR) from the ICE, the FFL receives a "proceed" response. A "delayed" response results when a record requires more research to determine whether the prospective transferee is disqualified. When at least one matching record is found in the NCIC, the III, the NICS Index,

or the IAR that provides information that the receipt of a firearm by the prospective transferee would violate Federal or state law, the FFL receives a “deny” response. Denied transferees have the right to appeal the decision per 28 Code of Federal Regulations (C.F.R.), Part 25.10 and Subsection 103 (f) and (g) and Section 104 of the permanent provisions of the Brady Act.

## **Records**

**1. NICS AUDIT LOG:** The NICS audit log records all incoming and outgoing NICS transactions. The audit log is used to analyze system performance, assist users in resolving operational problems, support the appeals process, and facilitate system audits. Searches may be conducted on the NICS Audit Log by transaction date, by state, or by agency. The NICS Audit Log is monitored and reviewed on a regular basis to detect any possible misuse of the NICS data. The audit log records the following information:

(a) Inputs: FFLs provide identifying information concerning the prospective transferee including name, sex, race, date of birth, and state of residence as well as other optional information.

(1) Allowed transfers:

(a) DELETE all personally identifying information within 24 hours of notification to the FFL.

(b) DELETE the FFL number and state of residence within 90 days from the creation date.

(c) The NTN and creation date should be retained indefinitely.\*

(2) Denied transfers: DELETE/DESTROY 120 years after the subject’s date of birth or 120 years after the creation date of the transaction, whichever is sooner.

(3) Cancelled Requests: DELETE/DESTROY within 90 days from the creation date.

(b) Master File: The master file contains information about each transaction including: type of transaction (inquiry or response); line number; time; date of inquiry; header; message key; originating agency identifier (ORI); inquiry/response date, which includes the name and other identifying information about the prospective purchaser. Each transaction is assigned a unique NICS transaction number (NTN).

(1) Allowed transfers:

(a) DELETE all personally identifying information within 24 hours of notification to the FFL.

(b) DELETE the FFL number and state of residence within 90 days from the creation date.

(c) The NTN and creation date should be retained indefinitely.\*

- (2) Denied transfers: DELETE/DESTROY 120 years after the subject's date of birth or 120 years after the creation date of the transaction, whichever is sooner.
- (3) Cancelled Requests: DELETE/DESTROY within 90 days from the creation date.

(c) Outputs: Each query results in one of three determinations:

(1) Allowed transfers:

- (a) DELETE all personally identifying information within 24 hours of notification to the FFL.
- (b) DELETE the FFL number and state of residence within 90 days from the creation date.
- (c) The NTN and creation date should be retained indefinitely.\*

(2) Denied transfers: DELETE/DESTROY 120 years after the subject's date of birth or 120 years after the creation date of the transaction, whichever is sooner.

(3) Cancelled Requests: DELETE/DESTROY within 90 days from the creation date.

\*The Final Rule as noted in the Federal Register, 28 (CFR), Part 25, which was effective July 20, 2004, specifically states, "the FBI will continue to retain for not more than 90 days non-identifying data associated with transactions such as the FFL number, as well as the NTN and date (which are retained **indefinitely**), for all transactions in the NICS Audit Log." Since this language has been previously approved by the Department of Justice (DOJ) and is published in a regulation, it will be sufficient for this document.

(d) System Documentation: Records relating to the design, implementation, testing, and validation of NICS including data system specifications, file specifications, concept of operations (CONOPS), systems security plan, codebooks, record layouts, user guides, output specifications, and final reports. Also included are records created or used to perform configuration/change management processes, including performance, capacity, and system management.

Disposition: DELETE/DESTROY records one year after termination of the NICS.

~~2. **EXPLOSIVES PERMITS:** The Safe Explosives Act requires that any person who wishes to transport, ship, cause to be transported, or receive explosive materials in either interstate or intrastate commerce must first obtain a federal permit issued by the ATF.~~

~~Input: The ATF submits fingerprint cards for "Limited Permits" and "Responsible Persons" which are processed through the CJIS Division's Integrated Automated Fingerprint Identification System (IAFIS). A Fingerprint Summary Report is then generated by the IAFIS with the identifying descriptive data from the fingerprint card.~~

The NICS Section receives a hard copy of this report which is used to process the NICS explosives background check. For background checks for "Possessors", the ATF National Licensing Center will generate a NICS background check through the NICS E-Check.

Disposition: The Office of the Inspector General is currently conducting an audit of NICS Explosives Background Checks and has mandated that the NICS Section retain all records associated with explosives background checks until further notice.

**3. NICS INDEX:** The NICS Index was created specifically for the NICS background check process. The Index contains records obtained from local, state, and Federal agencies about persons prohibited from receiving firearms under Federal law. All record categories in the Index are disqualifying and prohibit the sale of a firearm.

(a) Input: Records and other information submitted by federal, state, and local agencies to create, update, or modify data in the NICS Index.

Disposition: DELETE/DESTROY after input and verification of data into master file.

(b) Data File: Information is maintained in the data file regarding the following categories of disqualified individuals:

- Persons convicted of/under indictment for a crime punishable by imprisonment for a term exceeding one year, whether or not sentence was imposed. This includes misdemeanor offenses with a potential term of imprisonment in excess of two years, whether or not the sentence was imposed;
- Persons who are fugitives from justice;
- Persons who are unlawful users and/or addicts of any controlled substance;
- Persons who have been adjudicated as a mental defective or involuntarily committed to a mental institution;
- Persons who are aliens and are illegally or unlawfully in the United States;
- Persons who have been dishonorably discharged from the U.S. Armed Forces;
- Persons who have renounced their U.S. citizenship;
- Persons who are the subject of a protection order issued after a hearing of which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such a partner;
- Persons convicted in any court of a misdemeanor crime of domestic violence.

Disposition: DELETE/DESTROY entry:

1. upon notice that the subject is no longer prohibited from possessing firearms;

2. when the expiration date of the record is reached;
3. upon notice of the subject's death; or
4. when the subject reaches 120 years of age or 120 years after date of entry into the NICS Index if no date of birth is provided.

~~(c) Outputs: Returned responses indicating that the queried individual is prohibited from possessing a firearm due to disqualifying information contained in the NICS Index.~~

(d) System Documentation: Records relating to the design, implementation, testing and validation of the NICS Index including data system specifications, file specifications, codebooks, record layouts, user guides, output specifications and final reports.

Disposition: DELETE/DESTROY records one year after termination of the NICS.

**4. FEDERAL FIREARMS LICENSEE (FFL) TABLE:** This table contains the FFL numbers issued to dealers who are legally authorized to transfer firearms in the United States. The table is used to verify the identity of sellers requesting background checks.

(a) Inputs: Periodic updates are received from the ATF.

Disposition: DELETE/DESTROY after input and verification of data into master file.

(b) Data File: This data file contains a master listing of the FFL numbers of all firearm dealers legally authorized to transfer firearms in the United States.

Disposition: DELETE/DESTROY entries when superseded, obsolete, or updated by revised data.

(c) Outputs: Ad hoc reports are generated on an as-needed basis.

Disposition: DELETE/DESTROY when no longer needed for reference purposes.

(d) System Documentation: Records relating to the design, implementation, testing and validation of the FFL Table including data system specifications, file specifications, codebooks, record layouts, user guides, output specifications and final reports.

Disposition: DELETE/DESTROY one year after termination of the NICS.

## **5. APPEALS RECORDS:**

(a) Appeals Case Files

Individuals who are denied the receipt of a firearm have the right to appeal the decision. Written requests are submitted to the NICS Section and data from these requests is input in the Appeals Management Database (see item b below). Appeals documentation is collected

and maintained in an appeals case file. Included in this file is correspondence between NICS staff and the appellant, research and investigative material, and final decisions.

- (a) Sustained denials: DELETE/DESTROY individual files ten years after final determination.
- (b) Overturned denials: DELETE/DESTROY individual files in accordance with the disposition instructions approved for allowed transfers. (See NICS Audit Log, item 1(c) (1))

(b) Appeals Management Database

The Appeals Management Database (AMD) supports the appeals process. It contains information such as the appellant's name, address, state of residence, state of purchase, and other detailed information. The AMD tracks all incoming and outgoing correspondence, generates reports to assist in monitoring and improving the appeals process, assists supervisors in managing appeals workloads, and determines rate of production and scheduling. The AMD also shows the total numbers of work received by week, month, calendar year, fiscal year, and program to date.

- 1. Input: Information about each appeal (name, address, NTN) is entered into the AMD.

Disposition: Destroy in accordance with the approved disposition authority for the NICS appeals case file, i.e. ten years after final determination.

- 2. Master File: The master file retains information related to each sustained denial.

Disposition:

- (c) Sustained denials: DELETE/DESTROY individual entries ten years after final determination.
- (d) Overturned denials: DELETE/DESTROY individual entries in accordance with the disposition instructions approved for allowed transfers.

- 1. Allowed transfers:

- (a) DELETE all personally identifying information within 24 hours of notification to the FFL.
- (b) DELETE the FFL number and state of residence within 90 days from the creation date.
- (c) The NTN and creation date should be retained indefinitely.\*

\*The Final Rule as noted in the Federal Register, 28 (CFR), Part 25, which was effective July 20, 2004, specifically states, "the FBI will continue to retain for not more than 90 days non-identifying data associated with transactions such as the FFL number, as well as the NTN and

date (which are retained **indefinitely**), for all transactions in the NICS Audit Log.” Since this language has been previously approved by the Department of Justice (DOJ) and is published in a regulation, it will be sufficient for this document.

3. Output: Ad hoc reports are generated on an as-needed basis.

Disposition: DELETE/DESTROY when no longer needed for reference purposes.

4. System Documentation: Records relating to the design, implementation, testing and validation of the AMD including data system specifications, file specifications, codebooks, record layouts, user guides, output specifications and final reports.

Disposition: DELETE/DESTROY records one year after termination of the NICS.

**6. VOLUNTARY APPEAL FILE (VAF):** The Voluntary Appeal File (VAF) enables the NICS Section to maintain information about purchasers that would help prevent future erroneous denials or extended delays of a firearms transfer. The VAF contains documentation submitted by the purchaser and any documentation discovered during research that assists the NICS Section in justifying the individual’s inclusion in the VAF.

Disposition: DELETE/DESTROY entry:

- a. upon notice that the subject is federally prohibited from possessing firearms;
- b. upon notice of the subject’s death;
- c. when the subject is 120 years of age or 120 years after date of entry into the VAF if no date of birth is provided; or
- d. when the subject requests removal of their information from the VAF.

## 7. RELATED RECORDS:

- (a) **NICS and NICS E-Check Applications:** The NICS E-Check function enables the FFLs to conduct an unassisted NICS background check for firearm transfers via the Internet. The FFLs electronically enter the prospective firearms transferee’s descriptive information for submission to the NICS and initiate the transaction search process. FFLs must complete a NICS enrollment form to utilize the NICS as well as an E-Check enrollment form to utilize the NICS E-Check.

Disposition: DELETE/DESTROY enrollment forms seven years, six months from the date the FFL’s E-Check certificate becomes inactive.

- (b) **Historical Files:** The NICS Section maintains background materials and other records documenting the implementation of the NICS. These records do not pertain to specific transactions, but rather document policies, procedures, and related business information. Examples of documents contained within the historical files are Brady Act Task Group

meeting minutes, Congressional inquiries, inquiries from the Department of the Interior, etc.

Disposition: DELETE/DESTROY when no longer needed for reference purposes.

- (c) **Backups:** Backup tapes are maintained for potential system restoration in the event of a system failure or other unintentional loss of data.

Disposition:

DELETE/DESTROY incremental backups when superseded by a full backup or when 90 days old, whichever is sooner.

DELETE/DESTROY full backups when a more current full backup has been successfully captured or when 90 days old, whichever is sooner.

- (d) **Electronic records:** Electronic copies of records that are created on electronic mail and word processing systems and used solely to generate a record keeping copy.

Disposition: DELETE/DESTROY within 60 days after production of the record keeping copy.

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