

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed that 28 CFR 16.96 be amended by adding paragraphs (p) and (q) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation (FBI) Systems—limited access.

* * * * *

(p) The National Instant Criminal Background Check System (NICS), (JUSTICE/FBI-018), a Privacy Act system of records, is exempt:

(1) Pursuant to 5 U.S.C. 552a(j)(2), from subsections (c) (3) and (4); (d); (e) (1), (2), (3); (e)(4) (G) and (H); (e) (5) and (8); and (g); and

(2) Pursuant to 5 U.S.C. 552a(k) (2) and (3), from subsections (c) (3), (d), (e) (1), and (e)(4) (G) and (H).

(q) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would place the subject on notice that the subject is or has been the subject of investigation and result in a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that it is not applicable since an exemption is claimed from subsection (d).

(3)(i) From subsection (d) and (e)(4) (G) and (H) because these provisions concern an individual's access to records which concern the individual and such access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from subsection (d)(2) because, to require the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously retrograde its investigations attempting to resolve these issues.

(iii) Although the Attorney General is exempting this system from subsection

(d) and (e)(4) (G) and (H), an alternate method of access and correction has been provided in 28 CFR, part 25, subpart A.

(4) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information in these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system, it is impossible to review them for relevancy.

(5) From subsections (e) (2) and (3) because the purpose of the system is to verify information about an individual. It would not be realistic to rely on information provided by the individual. In addition, much of the information contained in or checked by this system from Federal, State, and local criminal history records.

(6) From subsection (e)(5) because it is impossible to predict when it will be necessary to use the information in the system, and, accordingly, it is not possible to determine in advance when the records will be timely. Since most of the records are from State and local or other Federal agency records, it would be impossible to review all of them to verify that they are accurate. In addition, no alternate procedure is being established in 28 CFR, part 25, subpart A, so the records can be amended if found to be incorrect.

(7) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques and confidential investigations.

(8) From subsection (g) to the extent that, pursuant to subsections (j)(2), (k)(2), and (k)(3), the system is exempted from the other subsections listed in paragraph (p) of this section.

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DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2158-98]

RIN 1105-AA51

National Instant Criminal Background Check System Regulations

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice is publishing a proposed rule for the National Instant Criminal Background Check System (NICS) to

establish policies and procedures for ensuring the privacy and security of this system and to implement a NICS appeals policy for persons who have been denied the purchase of a firearm because of information in the NICS they believe to be erroneous or incorrect. Specifically, this rule will detail policies for validating NICS data, storing, accessing, and querying records in the system, retaining and destroying NICS information, and correcting erroneous data in the system.

DATES: Written comments must be received on or before September 2, 1998.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Emmet A. Rathbun, NICS Project Manager, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147.

FOR FURTHER INFORMATION CONTACT: Mr. Emmet A. Rathbun, NICS Project Manager, telephone number (304) 625-2000.

SUPPLEMENTARY INFORMATION: On November 30, 1993, Pub. L. 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C Chapter 44). Title I of Pub. L. 103-159, the "Brady Handgun Violence Prevention Act" ("Brady Act"), requires the Attorney General to establish by November 30, 1998, "a national instant criminal background check system that any [firearms] licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law." To implement the NICS, the Brady Act authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any Federal Department or agency on persons for whom receipt of a firearm would be in violation of the law.

The Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, issued proposed regulations, 63 FR 8379 (Feb. 19, 1998), Notice Number 857, "Implementation of Pub. L. 53-159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act," which specify how Federal firearms licensees (FFLs) shall interact with the NICS. In general, the proposed ATF regulations: Specify the time when an FFL must contact the NICS; detail the criteria that

must be met in order for a firearm permit to operate as an exception to the requirement of a NICS background check, including the requirement that state officials issuing such permits conduct a NICS check on all applicants for permits issued on or after November 30, 1998; note the applicability of the requirement of a NICS background check to pawned firearm transactions; require the Director of ATF to contact the NICS before approving a firearm transfer under the National Firearms Act; amend the ATF firearms transaction record, Form 4473, to allow FFLs to solicit additional optional information about the purchaser for submission with a NICS background check request in order to help avoid cases of misidentification by the system; and require FFLs to record on Form 4473 all responses received from the NICS and to maintain a copy of each Form 4473 for which a NICS transaction number (a unique identification number assigned to each NICS check) has been received, regardless of whether the transfer of the firearm was completed.

Prohibited Persons

Section 922 of title 18 prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm that has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who:

- (1) Is under indictment for or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is a fugitive from justice;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or committed to a mental institution;
- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced U.S. citizenship;
- (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or
- (9) Has been convicted in any court of a misdemeanor crime of domestic violence.

The ATF published a final rule concerning "Definitions for the Categories of Persons Prohibited From Receiving Firearms" in the **Federal**

Register on June 27, 1997 (T.D. ATF-391, 62 FR 34634). These definitions became effective August 26, 1997, and shall apply to the operation and use of the NICS.

Department of Justice Action

The Federal Bureau of Investigation (FBI), as directed by the Attorney General, has coordinated the development efforts of the NICS since 1994. The FBI is negotiating formal Memoranda of Understanding (MOUs) between the FBI and Federal agencies that will supply data to the NICS. The MOUs outline procedures for supplying data to the NICS and define limits on the appropriate use of the data.

This proposed rule may directly impact the following groups: prospective firearms purchasers, Federal firearms licensees (FFLs), state and local law enforcement agencies, and certain Federal agencies.

Brady Act Task Group

Immediately after the Brady Act went into effect on February 28, 1994, the FBI established a Brady Act Task Group (BATG) composed of experienced state and local law enforcement officials. The FBI has worked closely with the BATG, whose purpose has been to assist in the development and finalization of requirements for implementing the NICS.

The System

In order to establish the NICS in a way that incorporates relevant information for the various categories of prohibited persons previously mentioned, the FBI has created a new database called the "NICS Index" with information concerning individuals who fall within categories 3 through 7 of the prohibited persons described above. A NICS background check will check this new database and also existing systems of records operated by the FBI, such as the National Crime Information Center (NCIC), and the Interstate Identification Index (III).

The NICS Index will contain (1) records provided by Federal agencies to the FBI on persons prohibited from receiving firearms under Federal law and (2) records provided voluntarily by some states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under Federal law. Information in the NICS Index will be provided to the FBI on magnetic tape media or through electronic access by Federal agencies and authorized state or local law enforcement agencies. Access to the NICS Index will generally be restricted to purposes related to NICS

background checks pursuant to the Brady Act; other access 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 permit or license to possess, acquire, conceal, or transfer a firearm 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).

In states where they agree to do so, state or local law enforcement agencies will serve as Points of Contact (POCs) for the NICS. As POCs, these agencies will receive inquiries by FFLs, initiate NICS background checks through electronic access to the NICS via the NCIC communications network, receive and review any matching records retrieved by the system, check state and local record systems (including criminal justice databases) for disqualifying records, determine whether any of the matching records provide reason to believe that the individual is disqualified from possessing a firearm, and provide responses back to the FFL. States may also exchange messages regarding long-gun purchases made outside of a purchaser's state of residence. The FBI will not charge FFLs a fee for NICS background checks processed by state POCs.

In states where there is no POC, FFLs will contact the NICS Operations Center, a unit run by the FBI, either by telephone or through electronic dial-up access, to request a NICS background check. In these non-POC states, the NICS Operations Center will perform the NICS background check, analyze any matching records, and provide a response back to the FFL. The FBI will charge FFLs in non-POC states a fee for NICS background checks processed by the NICS Operations Center.

Background Checks

A NICS background check will consist of a search using name, sex, race, date of birth, state of residence, and other identifying information provided by a purchaser for records in the NICS Index, NCIC, and III. In states where state or local law enforcement agencies act as POCs, the POCs may also check state or local record systems. For each background check, the NICS will consolidate matching records from the NICS Index, NCIC and III. In cases where the checks are performed by state or local POCs, an authorized state or local official will receive and evaluate matching records forwarded by the FBI and any available state records and will determine whether the prospective purchaser is the subject of the matching

records and whether the records provide reason to believe that the prospective purchaser is ineligible to receive a firearm under state or Federal law. In states where FFLs contact the FBI directly, an FBI analyst will make these determinations. In either case, only the decision whether or not the transfer may proceed (communicated in the form of a message stating "proceed," "delayed," or "denied"), and none of the underlying information, will be provided to the FFL.

Retention and Destruction of Records in the NICS

The FBI will retain indefinitely records in the NICS Index that prohibit persons from receiving or possessing a firearm unless such records are updated or canceled by the agency that supplied the records to the NICS Index. In cases where the firearms disability is temporary in nature, the NICS Index will automatically purge the record on the date of its expiration or when it is no longer disabling.

The FBI will maintain an automated Audit Log of all transactions that pass through the NICS. Transactions relating to firearm transfer approvals in the Audit Log will be maintained for eighteen months. After this time, information contained in the Audit Log related to the person or the transfer will be destroyed; only the NICS Transaction Number (NTN), a unique number assigned to each valid background check inquiry received by the NICS, and the date on which the NTN was assigned, will be retained. This temporary retention of information will assist the FBI and state and local officials in auditing and/or investigating unauthorized use of the NICS. The FBI will retain a log of all transactions relating to firearm transfer denials for 10 years, after which time the records will be transferred to a Federal Records Center for retention.

System Security

This regulation requires the state and local law enforcement agencies using the system to identify themselves before obtaining access to the NICS through the use of an Originating Agency Identifier (ORI) assigned by the FBI. The Control Terminal Agency (CTA) in each state, typically the state police or department of public safety, will be responsible for providing to the FBI a list of agencies authorized in the state to serve as a POC for the NICS and for ensuring that unauthorized agencies cannot access the system. In addition, the NICS will individually identify and authenticate FBI personnel who access the system. The NICS will also require the use of

FBI-assigned ORIs by authorized Federal agency employees who in the future may be provided message-based access to the NICS Index via the NCIC communications network for purposes of adding, updating, and canceling records.

To ensure the proper level of access for each transaction, an agency must include its ORI in each message it sends to the NICS. Agencies providing records to the NICS must include their ORI and a unique agency record identifier (ARI) in each record provided. The system will allow authorized Federal and state agencies to add data to the NICS Index and to update or cancel only the data that they have provided.

The NICS will authenticate electronic connections by all users to prevent unauthorized access to the system. The FBI will provide to NICS users "NICS Security Guidelines" which will detail their security roles and responsibilities.

Personnel Security

Federal agencies and state and local law enforcement agencies acting as POCs will be responsible for ensuring that their personnel who process and handle data for the NICS comply with the NICS Security Guidelines, the NCIC Security Policy of 1992, applicable Federal laws, such as the Privacy Act of 1974 and the Computer Security Act of 1987, and with their own policies and procedures for protecting information. In addition, if the NICS allows a Federal agency direct terminal access to the NICS for the purpose of adding, updating, or canceling records, the agency, at a minimum, must ensure that terminal operators follow the NCIC Security Policy.

Physical Security

Federal agencies and state and local law enforcement agencies that contribute information to the NICS Index will label any magnetic media used to transport NICS data. These labels will identify the agency supplying the data and the sensitivity of the data. The FBI will store NICS data only in areas that are physically safe from access by unauthorized persons or exposure to environmental hazards.

If an agency communicates electronically with the NICS via the NCIC communications network, the computer site and/or terminal area used by the agency must have adequate physical security to protect against unauthorized personnel gaining access to the computer equipment or to any of the stored data, as discussed in the NCIC Security Policy. Visitors in the area of the computer site and/or terminal must be accompanied by staff

personnel at all times, and access to the terminal area is restricted to the minimum number of authorized employees needed to complete the work.

Authority To Obtain Records From Federal Agencies

Section 103(e)(1) of the Brady Act states that "[n]otwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system."

Privacy Act Notice and Rule

Pursuant to the Privacy Act of 1974, a Privacy Act Notice describing the system of records and exempting its records from certain provisions of the Privacy Act is published elsewhere in today's **Federal Register**.

User Fee Charge

FFLs who contact the NICS Operations Center by telephone or by electronic means to initiate a background check will be assessed a fee. The user fee will be published separately in the **Federal Register**.

Appeal From a Denial and the Correction of Erroneous System Information

If, as a result of a NICS background check, an individual is unable to purchase a firearm, the individual may request the reason(s) for the denial from the agency that made the determination (either the FBI or the POC). The denying agency (either the FBI or the POC) shall respond with the reasons for the denial within five business days of receipt of the request. The individual may challenge the accuracy of the record by appealing to the state or local POC that denied the transfer, the agency that originated the record, or the FBI. If a record is found to be erroneous, the data in the NICS shall be corrected and the individual will be provided a written confirmation of the correction of erroneous data to present to the FFL. If more than 30 days have transpired since the initial check, the FFL will recheck the NICS without a fee before allowing the sale to continue. The Brady Act also provides that an individual may contest the accuracy or validity of a disqualifying record by bringing "an action against the State or political

subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be."

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 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. The obligation of FFLs to contact the NICS before transferring a firearm is imposed by the Brady Act and is detailed in the above-described proposed ATF regulations implementing the permanent provisions of the Brady Act. 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.

Executive Order 12866

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

Executive Order 12612

This 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 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 proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed 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 notice of proposed rulemaking has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Justice, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Comments are specifically requested concerning:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice and the FBI, including whether the information will have practical utility;
- (2) The accuracy of the estimated burden associated with the proposed collection of information (see below);
- (3) How the quality, utility, and clarity of the information to be collected may be enhanced; and
- (4) How the burden of complying with the proposed collection of information may be minimized, including through

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The collection of information in this proposed regulation is for the purpose of establishing the NICS, a national background check system that FFLs are required by the Brady Act to contact for information about whether the transfer of a firearm to a prospective purchaser would violate Federal or state law. A database called the NICS Index is being created which will contain information about individuals who fall into the non-criminal categories of persons who are disqualified from possessing a firearm under Federal law. Some states may voluntarily submit information to the FBI concerning certain individuals who fall into one or more of these categories, such as persons who have been adjudicated as mental defectives or who have been committed to mental institutions, for input into the NICS Index. This data may be submitted by such states on a magnetic tape medium, which the FBI will download into the NICS Index. The FBI will also allow such states to make individual record submissions via the NCIC communications network. It is estimated that, at the outset, five states will voluntarily contribute such data to the NICS Index. Additional states may contribute data in the future. It is estimated that it will require 24 hours for each contributing state to write the specifications and program for the magnetic tapes that will be submitted to the FBI. Thereafter, it is estimated that it will require one hour to place data on the tape each time it is submitted to the FBI. Tape submissions will be made approximately once per month; electronic submissions may be made at the state's convenience. Thus, it is estimated that, in the first year in which it makes data submissions to the NICS Index, a contributing state will spend up to 36 hours in making its submissions. In succeeding years, it is estimated that each submitting state will spend up to 12 hours per year in making submissions. The total public burden (in hours) associated with the collection from the estimated five initial respondents, therefore, is 180 hours in the first year and 60 hours each succeeding year.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Automatic data processing, Business and industry, Courts, Firearms, Information, Law enforcement officers, Reporting and recordkeeping requirements, and Telecommunications.

Accordingly, Title 28 of the Code of Federal Regulations is proposed to be amended by adding the following new part 25:

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 determination of 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. These regulations are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542, and include requirements to ensure the privacy and security of the system and appeals procedures for persons who have been denied the right to purchase 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.

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 a temporary denial of a firearm transfer requiring more research prior to a NICS “Proceed” or “Denied” response.

Denied means denial of a firearm transfer based on a NICS response indicating one or more matching records were found providing reason to believe that receipt of a firearm by a prospective purchaser 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 Bureau of Alcohol, Tobacco and Firearms 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 a 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 may 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 state or Federal 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 a.m. to 2 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 response provided by the NICS to the FFL.

ORI (Originating Agency Identifier) means a nine-character identifier assigned by the FBI to an agency which 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 system. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide reason to believe 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.

Proceed means a NICS response indicating no matching record was found to prohibit the transfer of 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 each 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 located 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, DC. 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 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) An automatic rejection of 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 FBI or a POC whether they are required to initiate NICS background checks with the NICS Operations Center or the 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 telephone only during its regular business hours. Electronic dial-up access to the NICS will be provided to a limited number of FFLs at the beginning of the system's operation. As the system develops its capacity to accept such access, a larger number of FFLs may be provided electronic dial-up access in the future. FFLs with electronic dial-up access will be able to contact the NICS 24 hours each day.

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

- (1) Verify the FFL Number and password;
- (2) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;
- (3) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and
- (4) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

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

(ii) *Delayed* response, if the NICS search finds a record that may indicate that the prospective purchaser 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 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 purchaser at 9 a.m. on Friday and

shortly thereafter receives a "Delayed" response from the NICS. Assuming 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.)

(iii) *Denied* response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides reason to believe that receipt of a firearm by the prospective purchaser 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 after review of any potentially disqualifying information.

(5) None of the responses provided to the FFL 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. The POC will notify FFLs in its state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system 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 FFL number;
- (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 each valid inquiry for a background check.

(f) When the NICS receives an inquiry from a POC, a search will be made of the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s), and the NICS 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 of the NICS response that the transfer may proceed, is delayed pending further record analysis, or is denied and include in this notification the NTN and, if applicable, an STN.

(h) In cases where a transfer is denied by a POC, the POC may 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) Recording the NTN. FFLs are required to record the NTN they receive in a NICS response on the appropriate ATF form for audit and inspection purposes, under 27 CFR 178.124 recordkeeping requirements. This requirement applies regardless of whether the NTN is provided to the FFL by the FBI NICS Operations Center or a POC and whether the transfer of the firearm is completed.

(j) Access to the NICS Index for purposes unrelated to 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 permit or license to possess, acquire, conceal, or transfer a firearm; 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).

§ 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 (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 secured facility. Access to the facility will be restricted to authorized FBI 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. Each state's Control Terminal Agency will provide to the NICS Operations Center a list of valid ORIs for those agencies that will serve as POCs for 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 password, 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 password 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 purchaser. 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. A follow-up "Proceed" or "Denied" response will be provided by the NICS Operations Center during its regular business hours and before the expiration of three business days (exclusive of the day on which the query is made) after the FFL query.

(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 system security requirements outlined in the NICS Security Guidelines.

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain indefinitely NICS Index records that indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law unless such records are canceled by the originating agency. In cases where a firearms disability is only temporary, as defined by 27 CFR part 178, the NICS will automatically purge the pertinent record on a specified date as determined by the referenced regulation. 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 purchaser and the NTN). After eighteen months, if the transfer is allowed, all information in the Audit Log related to the person or the transfer will be destroyed, other than the NTN assigned to the transfer and the date the number was assigned. 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 USC 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. 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; 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 in accordance with state law.

§ 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.

(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 shall 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, 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 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 less than thirty (30) days 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 (without being charged a fee) 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: May 28, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98-14795 Filed 6-1-98; 8:45 am]

BILLING CODE 4410-02-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69 and 80

[FRL-6107-7]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the Notice of Proposed Rulemaking (NPRM), which proposes to grant the State of Alaska an exemption from the requirements of EPA's low-sulfur diesel fuel program for motor vehicles. The NPRM was published in the **Federal Register** on April 28, 1998 (63 FR 23241). The purpose of this notice is to extend the comment period from May 28, 1998 to June 12, 1998, to allow commenters additional time to respond to the NPRM.

DATES: EPA will accept comments on the NPRM until June 12, 1998.

ADDRESSES: Comments should be submitted in duplicate to Mr. Richard Babst, Fuels and Energy Division (6406-J), 401 M Street SW., Washington, DC 20460. Copies of information relevant to this NPRM are available for inspection in public docket A-96-26 at the Air Docket of the EPA, first floor, Waterside Mall, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 260-7548,

between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday. A duplicate public docket has been established at EPA Alaska Operations Office-Anchorage, Federal Building, room 537, 222 W. Seventh Avenue, #19, Anchorage, AK 99513-7588, and is available from 8:00 a.m. to 5:00 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the NPRM, contact Mr. Richard Babst, Fuels and Energy Division (6406-J), 401 M Street SW., Washington, DC 20460, 202-564-9473.; fax 202-565-2085; electronic mail babst.richard@epa.gov.

Dated: June 1, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98-14850 Filed 6-3-98; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 672 and 673

RIN 3145-AA36

Antarctic Tourism

AGENCY: National Science Foundation (NSF).

ACTION: Proposed Rule.

SUMMARY: NSF proposes issuing regulations to implement the amendments to the Antarctic Conservation Act of 1978 contained in the Antarctic Science, Tourism, and Conservation Act of 1996. These regulations will require U.S. tour operators using non-U.S. flagged vessels for Antarctic expeditions to ensure that the vessel owner has an emergency response plan. The regulation also requires U.S. tour operators to notify their passengers and crew of their Antarctic Conservation Act obligations.

DATES: Comments must be received by August 3, 1998.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703-306-1060.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1996, the Antarctic Science Tourism and Conservation Act of 1996 (ASTCA) (Pub. L. 104-227)