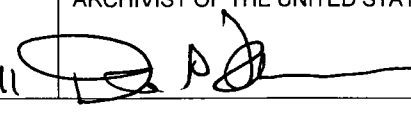
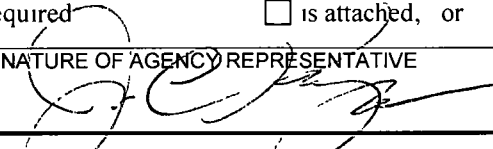


|  |  |   |   |
|--|--|---|---|
| <b>REQUEST FOR RECORDS DISPOSITION AUTHORITY</b>   |  | JOB NUMBER<br><b>N1-65-10-5</b>   |   |
| To NATIONAL ARCHIVES & RECORDS ADMINISTRATION<br>8601 ADELPHI ROAD COLLEGE PARK, MD 20740-6001   |  | Date received<br><b>11/18/09</b>  |   |
| 1 FROM (Agency or establishment)<br><b>DEPARTMENT OF JUSTICE</b>   |  | NOTIFICATION TO AGENCY<br><br>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request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10 |   |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<br><b>FEDERAL BUREAU OF INVESTIGATION</b>  |  |   |   |
| 3 MINOR SUBDIVISION<br><b>CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION</b>  |  |   |   |
| 4 NAME OF PERSON WITH WHOM TO CONFER   | 1 TELEPHONE NUMBER   | DATE  | ARCHIVIST OF THE UNITED STATES  |
|  |  | <b>11 Aug 11</b>  |  |
| <b>2 AGENCY CERTIFICATION</b><br>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 _____ 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<br><b>11/16/2009</b>  | SIGNATURE OF AGENCY REPRESENTATIVE<br> |   | TITLE<br>Chief, Records Automation Section<br>(for) Agency Records Officer          |
| 7 ITEM NO  | 8 DESCRIPTION OF ITEM AND PROPOSED DISPOSITION   | 9 GRS OR SUPERSEDED JOB CITATION  | 10 ACTION TAKEN (NARA USE ONLY)   |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><br><br>See attached pages for disposition instructions   |   |   |

## **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 NICS Section 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 requires further research.

The NICS queries three 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 sends a query to the Department of Homeland Security's U.S. 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 the NCIC, III, NICS Index, or the ICE Immigration Alien Response (IAR), the FFL receives a "proceed" response. A "delayed" response results

when a record requires more research to determine whether the prospective transferee is disqualified or not. 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, state, or 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:** Users provide identifying information concerning the prospective transferee including name, sex, race, date of birth, place of birth, and state of residence as well as other optional information.

(1) ~~Allowed transfers~~

*NI-65-07-3*

~~(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 will be retained indefinitely.<sup>1</sup>~~

(2) **Denied transfers:** DELETE/DESTROY 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner.

*Supersedes NI-65-07-3, 1(a)(2)*

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

*NI-65-07-3*

(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), and 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).

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<sup>1</sup> 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." This language has been previously approved by the Department of Justice (DOJ) and is published in the regulation.

(1) Allowed transfers

*NI-65-07-3*

- (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 will be retained indefinitely <sup>2</sup>

(2) Denied transfers DELETE/DESTROY 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner

*Supersedes NI-65-07-3, 1(b)(2)*

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

*NI-65-07-3*

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

(1) Allowed transfers

*NI-65-07-3*

- (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 will be retained indefinitely <sup>2</sup>

(2) Denied transfers DELETE/DESTROY 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner

*Supersedes NI-65-07-3, 1(c)(2)*

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

*NI-65-07-3*

(d) Appeal Records Database (ARD) The ARD supports the appeal process. It contains information such as the appellant's name, address, state of residence, state of purchase, and other detailed information. The ARD tracks all incoming and outgoing correspondence, generates reports to assist in monitoring and improving the appeal process, assists supervisors in managing appeal workloads, and determines rate of production and scheduling. The ARD has been migrated to the NICS environment and its records are part of the NICS Audit Log

~~ARD~~

(1) Input Descriptive information about each appeal (name, address, NTN) entered into the ARD

Disposition DELETE/DESTROY individual entries 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner

*supersedes NI-65-07-3(5)(b)(1)*

<sup>2</sup> 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." This language has been previously approved by the Department of Justice (DOJ) and is published in the regulation

(2) Master File The master file retains information related to each sustained denial

Disposition

(a) Sustained denials DELETE/DESTROY individual entries 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner

*Supersedes NI-65-07-3/5 (b)(2)(c)*

(b) Overturned denials

(1) DELETE all personally identifying information within 90 days from the date the status is changed to proceed on the NICS

*Supersedes NI-65-07-3/5 (b)(2) (d)(1)(a)*

(2) DELETE the FFL number and state of residence within 90 days from the date the status is changed to proceed on the NICS

(3) The NTN and creation date will be retained indefinitely

(c) Output Ad hoc reports are generated on an as-needed basis

*GRS 20, 16*

Disposition DELETE/DESTROY when no longer needed for reference purposes

(d) System Documentation Records relating to the design, implementation, testing and validation of the ARD 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

*GRS 20, 11*

(e) 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

(1) upon notice that the subject is federally prohibited from possessing firearms,

(2) upon notice of the subject's death,

(3) when the subject is 110 years of age or 110 years after date of entry into the VAF if no date of birth is provided, or

*Supersedes NI-65-07-3/6d*

(4) when the subject requests removal of their information from the VAF

*Supersedes NI-65-07-3 item 6d*

(f) System Documentation Records relating to the design, implementation, testing, and validation of the 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

GRS 20/11

**2. NON-BRADY ACT BACKGROUND CHECK TRANSACTIONS:** Background checks not mandated by the Brady Act, such as those in accordance with the U S Nuclear Regulatory Commission<sup>3</sup>, the Disposal of Firearms<sup>4</sup> initiative, and the Safe Explosives Act<sup>5</sup>, and firearm permits are included in this section

new

(a) Inputs Users provide identifying information concerning the prospective transferee including name, sex, race, date of birth, place 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 originator
- (b) DELETE the FFL number, valid Alternate Search Identifier, or other valid Access Number and state of residence within 90 days from the creation date
- (c) The NTN and creation date will be retained indefinitely

(2) Denied transfers DELETE/DESTROY 110 years after the subject's date of birth or 110 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, ORI, inquiry/response date, which includes the name and other identifying information about the prospective purchaser Each transaction is assigned a unique NTN

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<sup>3</sup> On August 8, 2005, President George W Bush signed the Energy Policy Act of 2005, authorizing security personnel of the U S Nuclear Regulatory Commission-regulated entities to transfer, receive, possess, transport, import, and use one or more handguns, rifles, shotgun, short-barreled shotgun, machine gun, semi-automatic assault weapon, ammunition for such guns or weapons, and large capacity ammunition feeding devices for official purposes and, as such, a NICS background check is mandated

<sup>4</sup> Disposal of Firearms is an initiative whereby criminal justice agencies may lawfully conduct NICS checks on persons to whom they wish to return firearms, (e g , firearms that have been stolen, confiscated, or used in suicides), there may be reasons other than those listed here

<sup>5</sup> The Safe Explosives Act, enacted as part of the Homeland Security Act on November 25, 2002, requires that any person who transports, ships, causes to be transported, or receives explosives materials in either interstate or intrastate commerce must obtain a federal permit or license issued by the ATF after undergoing a background check This provision of the Safe Explosives Act became effective May 24, 2003 The identifying information of the applicant is electronically forwarded by the ATF National Licensing Center to the NICS Section where a NICS background check is conducted

(1) Allowed transfers

- (a) DELETE all personally identifying information within 24 hours of notification to the originator
- (b) DELETE the FFL number, valid Alternate Search Identifier, or other valid Access Number and state of residence within 90 days from the creation date
- (c) The NTN and creation date will be retained indefinitely

(2) Denied transfers DELETE/DESTROY 110 years after the subject's date of birth or 110 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 originator
- (b) DELETE the FFL number, valid Alternate Search Identifier, or other valid Access Number and state of residence within 90 days from the creation date
- (c) The NTN and creation date will be retained indefinitely

(2) Denied transfers DELETE/DESTROY 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner

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

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

(a) Input Documents submitted by tribal, local, state, and federal agencies to create, update, supplement, or modify data in the NICS Index

Disposition DELETE/DESTROY when information is entered on behalf of a tribal, local, state, and federal agency *GRS 20/2*

Disposition When information is entered on behalf of the FBI as the holder of the information, retain the documentation until the individual is no longer federally prohibited

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

- Persons who have been convicted of 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
- Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year

Disposition DELETE/DESTROY entry

- 1 upon notice that the subject is no longer federally prohibited from possessing firearms,
- 2 when the expiration date of the record is reached, *ND 65-07-3*
- 3 upon notice of the subject's death, or
- 4 when the subject reaches 110 years of age or 110 years after date of entry into the NICS Index if no date of birth is provided *supersedes ND 65-07-3, 3*

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

(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 *CRS 20/11*

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

**4. FEDERAL FIREARMS LICENSEES (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 dealers requesting background checks

(a) Inputs Periodic updates are received from the ATF



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

*GRS 20/2*

- (b) Data File This data file contains a master listing of the FFL numbers of all firearm dealers legally authorized to access the NICS to perform firearm background checks

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

*NI-67-07-3*

- (c) 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

*GRS 20/11*

## 5. APPEAL RECORDS:

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 Appeal Records Database (see NICS AUDIT LOG, ITEM [d]). Appeals documentation is collected and maintained in a hard copy appeal case file and is also scanned and maintained electronically as an attachment to the appropriate NICS transaction number (see NICS AUDIT LOG, ITEM [d]). Included in the hard copy file is correspondence between the NICS Section and the appellant, research and investigative material, and final decisions.

- (1) Sustained denials DELETE/DESTROY individual files 110 years after the subject's date of birth or 110 years after the creation date of the transaction, whichever is sooner
- (2) Overturned denials DELETE/DESTROY individual files in accordance with the disposition instructions approved for allowed transfers (See NICS Audit Log, item 1[d] [2] [b] )

*Superseded NI-67-07-3, 5*

6. **VOLUNTARY APPEAL FILE (VAF) RECORDS:** The VAF enables the NICS Section to maintain information about purchasers that would help prevent future erroneous denials or extended delays of a firearms transfer. VAF applicants submit requests consisting of a completed VAF application and a fingerprint card to the NICS Section and the data from these requests is maintained electronically in the VAF (see NICS AUDIT LOG, ITEM [e]) and in a hard copy VAF case file. The VAF case file 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 110 years of age or 110 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

*Supersedes NI-65-07-3, 6*

7. **NICS E-CHECK** Title 28, Code of Federal Regulations (CFR), Part 25, Subpart A—NICS, allows for the development of other electronic means of contact, as alternatives in addition to the telephone, for FFLs to contact for information to be supplied within three business days on whether the receipt of a firearm by a prospective transferee would violate state or federal law. The NICS E-Check provides the FFLs with the capability to initiate an unassisted NICS background check for firearm transfers via the Internet. The NICS E-Check operates using standard Web-based technologies and the Internet for the FFLs to interface to the NICS E-Check. Specifically, Public Key Infrastructure (PKI) is used to provide authentication of users prior to granting access to the NICS E-Check services through the use of digital certificates.

- (a) **Daily Web logs** Each time an FFL accesses the NICS E-Check, the FFL's digital certificate information is recorded into a Web log indicating access was granted or denied. The Web log also maintains all actions performed during the FFL's session including the corresponding date and time. Web logs are maintained on the individual Web servers for seven days, and are copied to the E-Check Log Audit Server (ECLAS) where the logs are maintained for ten years.

Disposition

DELETE/DESTROY Web log from individual Web server seven days from the date the Web log is created on the Web server

*New*

DELETE/DESTROY Web log from the ECLAS ten years from the date the Web log is copied to the ECLAS

~~*Supersedes NI-65-07-3, 7A*~~

8. **RELATED RECORDS**

- (a) **NICS and NICS E-Check Applications** The NICS E-Check function enables the FFLs to conduct an unassisted NICS transaction for firearm background checks via the Internet. The FFLs electronically enter the individual's descriptive information into the NICS and initiate the transaction search process. The FFLs must complete and sign a NICS enrollment form to utilize the NICS as well as an additional NICS E-Check section of the enrollment form to utilize the NICS E-Check.

Disposition

DELETE/DESTROY hard copy and scanned NICS E-Check enrollment forms seven years, six months from the date the FFL's NICS E-Check certificate becomes inactive

*NI-65-07-3*

DELETE/DESTROY hard copy NICS enrollment forms after input and verification of FFL data into the NICS for enrollment purposes

*CRS 20/2*

DELETE/DESTROY scanned NICS enrollment forms seven years, six months from the date the FFL's license becomes inactive

- (b) **Historical Files** The NICS Section maintains background materials and other records documenting the implementation and development 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

*N1-61-07-3*

Disposition DELETE/DESTROY when no longer needed for reference purposes

- (c) **Backups** Backup tapes are maintained for potential system and data restoration in the event of a system failure or other unintentional loss of data. To ensure rapid recovery in the event of such a failure, the NICS System files and data files are backed up to tape media

Disposition DELETE/DESTROY NICS data file backups within 24 hours from the date the backup tape is created

Disposition DELETE/DESTROY NICS System backups seven days from the date the backup tape is created

*GRS 24*