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NICS Index Submission Requirements

NICS Index Compliance Summary Chart

	Records Reviewed	Unable to Locate	Invalid	Inaccurate
CADOJBOF	400	0	0	0
Compliance	IN	IN	IN	IN

Validation and Data Integrity of Records in the System: The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

- (1) Ensuring the accurate adding, canceling, or modifying of NICS Index records supplied by Federal agencies;
- (2) Automatically rejecting any attempted entry of records into the NICS Index that contains 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.

(Federal Regulation Title 25 CFR Chapter I, Part 25.5(a-b))

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Executive Summary

Overview

The FBI CJIS Division is mandated to audit every federal and state Point of Contact (POC) who contributes or has access to NICS every three years to ensure the integrity and reliability of FBI CJIS information systems. The audit is designed to assess policy compliance through a review of administrative policies and/or data quality procedures at the POC and local agencies within the jurisdiction of the POC. Although compliance with all policies is not assessed, adherence to all policies and procedures is required to be a NICS participant.

In summary, the FBI CJIS Division auditors reviewed 50 permits issued by the California Department of Justice Bureau of Firearms (CADOJBOF) and 400 NICS Index records entered by the CADOJBOF and determined the state was compliant with all issues and federally established guidelines.

Audit Recommendations

Based on the fourth cycle NICS audit conducted during September 2011, the FBI CJIS Division audit staff determined that California was compliant with all issues and federally established guidelines.

The following NICS Audit Policy Compliance Summary Chart provides a listing of policies assessed during the audit and indicates overall compliance by the CADOJBOF.

NICS Audit POC Policy Compliance Summary Chart

POC Regulations		
POC Agency	IN	
POC Determination Messages	IN	
Retention and Destruction	IN	
Managing an Appeal Process	IN	
Conducting an IAQ	IN	
Background Check	IN	
System Security	IN	
POC User Manual Requirements	IN	
Availability	IN	
Misuse		
Prohibited Activities	IN	
Accessing Records in the System	IN	
Misuse	IN	
Federal Denial Criteria		
(1) Felony Conviction	IN	
(2) Active Warrant	IN	
(3) Controlled Substance User	IN	
(4) Mental Defective	IN	
(5) Illegal/Unlawful Alien	IN	
(6) Dishonorable Discharge	IN	
(7) Citizen Renunciation	IN	
(8) Protective Order	IN	
(9) MCDV	IN	
(n) Felony Indictment	IN	
Alternate Permit Requirements		
Exception to the NICS Check	IN	
NICS Index Submission Requirements		
Unable to Locate	IN	
Invalid	IN	
Inaccurate	IN	
Miscellaneous		
Applicable State Firearm Law(s)	IN	
Restoration of Rights	IN	

Introduction

Background

The CJIS Audit Unit (CAU) was initiated on the recommendation of the APB to the FBI Director that a NICS audit program of each state and federal agency system that provided/contributed users nationwide access to the NICS be implemented. The audit program assesses the performance of the POC in providing the NICS and related services to the criminal justice community.

Scope

The objective of the NICS Audit is to review every federal and state POC who contributes or has access to NICS every three years to ensure the integrity and reliability of FBI information systems. The NICS Audit assesses the performance of the POC in administering NICS access and services through a review of administrative policies and/or data quality procedures at the POC and local agencies within the jurisdiction of the POC. Assessments are made based on policies set forth in the *Gun Control Act of 1968 as amended*; *Federal Regulation Titles 27 & 28*; *NICS User Manual*; APB Bylaws and meeting minutes; and any other applicable federal laws and regulations.

Methodology

On-site audits of POCs and/or local agencies consist of administrative interviews and/or data quality reviews. Administrative interviews are conducted with appropriate agency personnel and are designed to assess methods used by an agency for access to and maintenance of NICS records. Data quality reviews consist of an examination of case files and other supporting documentation in order to ensure the NICS is not misused and verify the accuracy and validity of the data provided to the NICS Index. A simple random sampling formula is used to calculate the number of NICS Index records to be reviewed during the audit. The formula provides a statistically valid and logistically feasible application for each POC.

About This Report

The report is divided into policy sections as outlined in the Table of Contents. Each section contains a summary chart which displays policy compliance results as well as overall compliance; Red text within a chart indicates a policy violation. Each policy is defined and referenced. Policy violations are detailed as necessary following the respective policy definition. The violations enumerated in the executive summary are numbered in sequence throughout the report. Violations determined to be compliant issues requiring corrective action are presented as bold text for emphasis and ease of reference. Violations which are not considered to be compliance issues as well as any other areas of concern which do not require action are presented as non-bolded text following the corresponding policy definition.

POC Regulations

POC Regulations Compliance Summary Chart

	NDN Messages	POC Determination Messages	POC Agency	Retention and Destruction	Managing an Appeal Process	Conducting an IAQ	Background Check	System Security	POC User Manual Requirements	Availability
CADOJBOF	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN
Compliance	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

POC Determination Messages: POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions:

- (1) Open transactions that are not resolved before the end of the operational day on which the check is requested;
- (2) Denied transactions;
- (3) Transactions reported to the NICS as open and later changed to proceed; and
- (4) Denied transactions that have been overturned....

For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message (deny or open) before the end of the operational day on which they were initiated will be assumed to have resulted in a proceed notification to the FFL. (*Federal Regulation Title 28 CFR Chapter 1, Part 25.6(h)*)

POC Agency: A Point of Contact Agency (POC) is a criminal justice agency which has overall responsibility for the administration and usage of the FBI NICS within a state. In designating an agency as a POC, the state must ensure that a certain service baseline is provided to the FFLs.

- (1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system;
- (2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and
- (3) Transmit the request for a background check via the NCIC interface to the NICS.
 - (e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in State and local law enforcement and other relevant record

systems and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.

(g) Based on the response(s) provided by the NICS, and other information available in the state or local record systems, a POC will 1-Confirm any matching records; 2-Notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. Proceed notifications made within three business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a Denied response. (*Federal Regulation Title 28 CFR Chapter 1, Part 25.6(d)*)

Retention and Destruction: The records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction. All cases relating to an allowed transaction, all identifying information submitted by or on behalf of the transferee will be destroyed within 24 hours after the FFL receives communication of the determination that the transfer may proceed. This includes all inquiry and response messages relating to the initiation and result of a check of the NICS that allows a transfer and all other records relating to the person or the transfer created as a result of the NICS check. All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent State law regarding firearms transactions; and all other records relating to the person or the transfer created as a result of the NICS check that are not part of a record system created and maintained pursuant to independent State law regarding firearms transactions. (*Federal Regulation Title 28 CFR Chapter 1, Part 25.9*)

Managing an Appeal Process:

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 request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request)

b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request.

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.

d) As an alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center. (*Federal Regulation Title 28 CFR Chapter 1, Part 25.10*)

Conducting an IAQ: The Attorney General instructed the FBI to deny gun transfers to those aliens who are prohibited from purchasing firearms. The Attorney General directed the FBI to work with the Bureau of Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States citizens who are prospective firearm purchasers. An Immigration

Alien Query (IAQ), utilizing purpose code F must be conducted to determine whether the alien is illegally or unlawfully in the United States or a non-immigrant alien and therefore prohibited from receiving a firearm. (*Attorney General Mandate dated February 13, 2002*)

Background Check: Sales or deliveries of firearms on and after November 30, 1998. (a) Before the completion of the transfer, the licensee has contacted NICS. (c) A NICS check may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer. (*Federal Regulation Title 27 CFR Chapter II, Part 478.102(a)*)

System Security:

(b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed are the minimum to be adopted by all POCs and data sources having access to the NICS.

(c) State or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users and shall observe all procedures set forth in the NCIC Security Policy when processing NICS background checks....

(2) Personnel must be screened thoroughly including non-criminal justice maintenance or technical personnel.

(d3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.

(g2) The NICS Representative will only provide a response of “Proceed”, “Delayed” or “Denied” and will not provide the details of any record information about the transferee to the FFL.

(*Federal Regulation Title 28 CFR Part 25§25.8(b, c, d)*)

POC, Partial-POC, Alternate Permit State Requirements : The following are the minimum requirements for a state to act as a POC for the NICS: (*NICS User Manual Policy Requirements, CJIS Systems User Agreement, signed by CSA head, page 3*)

1) The POCs must access the NICS as part of their background check process. The POCs are not required, but are encouraged, to search available state data sources as part of the background checks they perform.

2) The POCs shall ensure that all FFLs within their state are provided access to the NICS through a designated state POC or network of state or local agencies. It is recommended that a single state POC be established.

3) The POCs, with the assistance of the ATF and the FBI, shall notify the FFLs in its state regarding the procedures for contacting the POC and all other procedures related to firearm background checks.

4) The POCs will have automated access to the NICS via the NCIC telecommunications network.

5) The POCs will offer telephone access to the FFLs, at a minimum, between 10 am and 9 pm, Monday through Saturday, and during normal retail business hours within their state on Sundays.

6) The POCs shall have procedures in place that provide assurance that NICS background checks are initiated only by authorized personnel and only for purposes authorized under the Brady Act.

- 7) The POCs shall provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.
- 8) The POCs shall not deny the purchase of a firearm based on an arrest without a disposition. If such a practice is occurring, a state law must be in place authorizing the practice.
- 9) The POCs shall deny firearm sales based on criteria equal to or more stringent that imposed by the GCA of 1968 (18 U.S.C. §922), as amended.
- 10) The POCs shall ensure that they adhere to all applicable federal laws regarding the NICS.
- 11) The POCs shall adhere to federal guidelines which dictate the purging of proceed transaction data according to the current retention period. If this time limit is exceeded, there must be an independent state law regarding firearm transactions authorizing this practice.
- 12) The POCs shall ensure that a state-generated State Transaction Number (STN) for a NICS inquiry can be cross-referenced with the NTN generated by the NICS.
- 13) The POCs shall ensure that an IAQ is conducted through the ICE on all non-U.S. Citizen transactions.
- 14) If utilized within their state, the POCs shall ensure that all IFFS flags are being properly set for III records.
- 15) The POCs shall not deny a transaction based solely upon the existence of a protective order without consideration being given to the brady indicator.
- 16) The POCs in decentralized states shall ensure that information from the ATF and the FBI is disseminated to all agencies performing NICS background checks. The POCs should provide guidance and training regarding this information in order to ensure consistency throughout the state.
- 17) The POCs must ensure the transmittal of final transaction status' to the NICS in accordance with federal rule 28 C.F.R. 25.

Availability: The FFLs should be able to contact the POC to request a NICS check during their normal business hours. The FBI's hours of operation services all time zones from the east to west coasts plus Alaska, Hawaii, and several United States territories, seven days per week from 8 a.m. to 1 a.m. Eastern Standard Time (EST) with the exception of Christmas Day when no service is available.

The period from 1 a.m. to 8 a.m. EST is the scheduled downtime assigned to the NICS. This down time is used for back-up, re-indexing databases, system tests, and other nightly batch processes. The current scheduled downtime is subject to change. (*NICS User Manual*)

Misuse

Misuse Compliance Summary Chart

	Prohibited Activities	Accessing Records in the System	Misuse
CADOJBOF	IN	IN	IN
Compliance	IN	IN	IN

Prohibited Activities: 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 persons accessing the NICS.

(Federal Regulation Title 28 CFR Chapter 1, Part 25.11(b))

Accessing Records in the System: The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by FFLs contacting the FBI NICS Operations Center or a POC. *(Federal Regulation Title 28 CFR Chapter 1, Part 25.6(a))*

Misuse: Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922 (t) shall be limited to uses for the purpose of:

- (1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or
- (2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44) or National Firearms Act (26 U.S.C. Chapter 53).

(Federal Regulation Title 28 CFR Chapter 1, Part 25.6(j))

Federal Denial Criteria

Federal Denial Compliance Summary Chart

	(1) Felony Conviction	(2) Active Warrant	(3) Controlled Substance Addition	(4) Mental Defective	(5) Illegal/Unlawful Alien	(6) Dishonorable Discharge	(7) Citizen Renunciate	(8) Protection Order	(9) MCDV	(n) Felony Indictment
CADOJBOF	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN
Compliance	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person - (*The Gun Control Act of 1968. Title 18, United States Code, Chapter 44 § 922 (g)(1-9)&(n)*)

Title 18 U.S.C. 922 (g)(1): Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

Title 18 U.S.C. 922 (g)(2): Who is a fugitive from justice;

Title 18 U.S.C. 922 (g)(3): Who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

Title 18 U.S.C. 922 (g)(4): Who has been adjudicated as a mental defective or who has been committed to a mental institution;

Title 18 U.S.C. 922 (g)(5): Who, being an alien - (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26));

Title 18 U.S.C. 922 (g)(6): Who have been discharged from the Armed Forces under dishonorable conditions;

Title 18 U.S.C. 922 (g)(7): Who, having been a citizen of the United States, has renounced his citizenship;

Title 18 U.S.C. 922 (g)(8): Who is subject to a court order that – (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use of or attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

Title 18 U.S.C. 922 (g)(9): Who has been convicted in any court of a misdemeanor crime of domestic violence;

Title 18 U.S.C. 922 (n): Who is under indictment for a crime punishable by imprisonment for a term exceeding one year;

Alternative Permit Requirements

Alternative Permit Compliance Summary Chart

	Exception to the NICS Check	Renewal Process
CADOJBOF	IN	IN
Compliance	IN	IN

Exception to the NICS Check: The transferee has presented to the licensee a valid permit or license that –

- (1) Allows the transferee to possess, acquire, or carry a firearm;
- (2) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and
- (3) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State or local law: **Provided**, that on and after November 30, 1998, the information available to such official includes the NICS. (*Federal Regulation Title 27 CFR Chapter II, Part 478.102(d)*)



U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services Division
CJIS Audit Unit

National Instant Criminal Background Check System (NICS)

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CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS