



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

National Instant Criminal Background Check System (NICS) Audit Report

CALIFORNIA

MARCH 2014

Appendix A – Response to Audit Findings

Executive Summary

Overview

The FBI's Criminal Justice Information Services (CJIS) Division is mandated to triennially audit every federal and state Point of Contact (POC) who contributes or has access to the National Instant Criminal Background Check System (NICS) to ensure the integrity and reliability of FBI CJIS systems and data. 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 did not identify any areas requiring corrective action during their review of 30 NICS Denial Notifications, 100 Firearm Permits, and 350 NICS Index records submitted by the California Department of Justice, Bureau of Firearms Division, serving as a full point of contact state for the NICS. Since there were no audit findings, the California Department of Justice, Bureau of Firearms Division can consider this report as final and no response is required.

Audit Recommendations

Based on the fifth cycle NICS audit of California conducted during March 2014, the FBI CJIS Division audit staff did not identify any items requiring corrective action.

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

NICS Audit Policy Compliance Summary Chart

POC Regulations		Finding
POC Agency		In Compliance
POC Determination Messages		In Compliance
Retention and Destruction		In Compliance
Background Check		In Compliance
Managing An Appeal Process		In Compliance
Conducting an Immigration Alien Query		In Compliance
System Safeguards		In Compliance
POC, Partial-POC, or Alternate Permit Requirements		In Compliance
Use of NICS		
Use of NICS and III		In Compliance
Purpose Code Usage		In Compliance
Federal Denial Criteria		
Felony Conviction		In Compliance
Felony Indictment		In Compliance
Active Warrant		In Compliance
Controlled Substance User		In Compliance
Mental Defective		In Compliance
Illegal/Unlawful Alien		In Compliance
Dishonorable Discharge		In Compliance
Citizenship Renunciation		In Compliance
Protective Order		In Compliance
Misdemeanor Crime of Domestic Violence		In Compliance
Alternate Permit Requirements		
Alternate Permit NICS Check and Renewal Process		In Compliance
NICS Index Submission Requirements		
Integrity of NICS Index Records		In Compliance
Completeness of NICS Index Records		In Compliance

Introduction

Background

The NICS Audit Program was established upon the recommendation of the Advisory Policy Board (APB) to the FBI Director that an audit be implemented of state and federal agency system users that provide and/or contribute nationwide access to the NICS. 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 triennially review every federal and state POC who contributes or has access to NICS to ensure the integrity and reliability of FBI CJIS systems and data. 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 (GCA) of 1968, as amended; Titles 27 and 28, Code of Federal Regulations (C.F.R.); *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 include an administrative interview and/or data quality review, as applicable. 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 include an examination of case files and other supporting documentation to ensure the NICS is not misused and verify the accuracy and validity of the data provided to the NICS Index. Collectively, the administrative interview and data quality review help to ensure compliance with federal and state laws, and applicable regulations. A simple random sampling formula is used to calculate the number of NICS Index records to be reviewed during the audit.

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 beneath the summary chart. Policy violations are detailed as necessary following the respective policy definition. The violations listed in the executive summary are chronological throughout the report. Violations determined to be noncompliance issues requiring corrective actions are presented as bold text. Violations which are only considered an area of concern and do not require a response are presented as non-bolded text following the corresponding policy definition.

POC Requirements

POC Requirements Compliance Summary Chart

	# NICS Denial Notifications Reviewed	POC Agency	POC Determination Messages	Retention and Destruction	Background Check	Managing an Appeal Process	Conducting an Immigration Alien Query	System Safeguards	POC, Partial-POC, or Alternate Permit Requirements
California DOJ Firearms Division	30	IN	IN	IN	IN	IN	IN	IN	IN

IN = In Compliance, OUT = Out of Compliance, A/C = Area of Concern, N/I = Note of Interest, N/A = Not Assessed

POC Agency

A 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 the following baseline services are provided to Federal Firearms Licensees (FFLs):

- Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system.
- 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.
- Transmit the request for a background check via the National Crime Information Center (NCIC) interface to the NICS.
- 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.
- Based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will confirm any matching records and 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 NICS Transaction Number (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. (*Title 28, C.F.R., § 25.6 (d), (e), (g)*)

POC Determination Messages

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

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- Open transactions that are not resolved before the end of the operational day on which the check is requested.
 - Denied transactions.
 - Transactions reported to the NICS as open and later changed to proceed.
 - 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. (*Title 28, C.F.R., § 25.6 (h)*)

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 responses 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 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. (*Title 28, C.F.R., § 25.9*)

Sales or deliveries of firearms on and after November 30, 1998 - Background Check

Except as provided in paragraph (d) of the cited reference, a licensee shall not sell, deliver or transfer a firearm to any other person who is not licensed unless, before the completion of the transfer, the licensee has contacted NICS. 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. (*Title 27, C.F.R., § 478.102*)

Managing an Appeal Process

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.) 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. 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. 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. (*Title 28, C.F.R., § 25.10*)

Conducting an Immigration Alien Query (IAQ)

The Attorney General mandate dated February 13, 2002, directed the FBI to work with U.S Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States citizens who are prospective firearms purchasers. An IAQ must be conducted to determine whether the alien is illegally or unlawfully in the United States or a non-immigrant alien. (*NICS User Manual, Section 4.13*)

System Safeguards

Access to data stored in the NICS is restricted to duly authorized agencies. The following security measures must be adopted by all POCs and data sources having access to the NICS:

- Personnel of state or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users.
- Since personnel can have access to data stored in the NICS, they must be thoroughly screened. This screening will also apply to non-criminal justice maintenance or technical personnel.
- Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.
- 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. (*Title 28, C.F.R., § 25.8 (b), (c), (d), (g)*)

POC, Partial-POC, or Alternate Permit State Requirements

The following are the minimum requirements for a state to act as a POC for the NICS (*NICS User Manual, Section 2*):

- 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.
- 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.
- The POCs, with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives (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.
- The POCs will have automated access to the NICS via the NCIC telecommunications network.

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- 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.
 - The POCs shall provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.
 - 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.
 - The POCs shall deny firearm sales based on criteria equal to or more stringent than imposed by the GCA of 1968 (18 U.S.C. § 922), as amended.
 - The POCs shall ensure that they adhere to all applicable federal laws regarding the NICS.
 - The POCs shall adhere to federal guidelines which dictate the purging of proceed transaction data according to the current retention period as published in the C.F.R., currently 24 hours. If this time limit is exceeded, there must be an independent state law regarding firearm transactions authorizing this practice.
 - The POCs shall ensure that a state-generated STN for a NICS inquiry can be cross-referenced with the NTN generated by the NICS.
 - The POCs shall ensure that an IAQ is conducted through the ICE on all non-U.S. Citizen transactions.
 - If utilized within their state, the POCs shall ensure that all Identification for Firearms Sales flags are being properly set for Interstate Identification Index records.
 - The POCs shall not deny a transaction based solely upon the existence of a protective order without consideration being given to the Brady indicator.
 - 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.
 - The POCs must ensure the transmittal of final transaction status to the NICS in accordance with Federal Rule 28 C.F.R. 25.

Use of NICS Compliance Summary Chart

	Use of NICS and III	Purpose Code Usage
California DOJ Firearms Division	IN	IN

IN = In Compliance, OUT = Out of Compliance, A/C = Area of Concern, N/I = Note of Interest, N/A = Not Assessed

Use of NICS and III

Misuse or unauthorized access to NICS includes, but is not limited to, the following:

- State or local agencies, FFLs, or individuals purposefully furnishing incorrect information to the system to obtain a “Proceed” response, thereby allowing a firearm transfer.
- State or local agencies, FFLs, or individual’s purposefully using the system to perform a check for unauthorized purposes. Access to the NICS for purposes unrelated to background checks for firearms transfers pursuant to 18 U.S.C. 922 (t) shall be limited to uses for the purpose of the issuance of a firearm-related or explosives-related permit or license, and responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity.
- Any unauthorized persons accessing the NICS.

In addition, the Interstate Identification Index (III) shall be accessed only for an authorized purpose, and criminal history record information shall only be used for an authorized purpose consistent with the purpose for which III was accessed. (*Title 28, C.F.R., §§ 25.11(b), 25.6(j) and 20.33; CJIS Security Policy 5.1, Section 4.2*)

Purpose Code Usage

The Privacy Act of 1974 requires that the FBI's CJIS Division keep an accurate accounting of the purpose of each disclosure of a record and the recipient of that record. As such, agencies must use the appropriate purpose codes for NICS transactions, III inquiries, and IAQs. In addition, users are required to provide the reason for all transactions upon request by CJIS Systems managers, administrators, and representatives. (*Title 5, U.S.C., § 552a, (c)(1)(A); III/NFF Operational and Technical Manual, Chapter 2, Section 2.1*)

Federal Denial Criteria

Federal Denial Criteria Compliance Summary Chart

	Felony Conviction	Felony Indictment	Active Warrant	Controlled Substance User	Mental Defective	Illegal/Unlawful Alien	Dishonorable Discharge	Citizenship Renunciation	Protective Order	Misdemeanor Crime of Domestic Violence
California DOJ Firearms Division	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

IN = In Compliance, OUT = Out of Compliance, A/C = Area of Concern, N/I = Note of Interest, N/A = Not Assessed

Federal Denial Criteria

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... (*Title 18, U.S.C., § 922 (d)*)

Felony Conviction

...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)(1)*)

Felony Indictment

...is under indictment for a crime punishable by imprisonment for a term exceeding one year. (*Title 18, U.S.C., § 922 (n)*)

Active Warrant

...is a fugitive from justice. (*Title 18, U.S.C., § 922 (g)(2)*)

Controlled Substance User

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

Mental Defective

...has been adjudicated as a mental defective or who has been committed to a mental institution. (*Title 18, U.S.C., § 922 (g)(4)*)

Illegal or Unlawful Alien

...being an alien: (1) is illegally or unlawfully in the United States; or (2) except under certain circumstances, 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)(5)*)

Dishonorable Discharge

...has been discharged from the Armed Forces under dishonorable conditions. (*Title 18, U.S.C., § 922 (g)(6)*)

Citizenship Renunciation

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

Protective Order

...is subject to a court order that: (1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (2) 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 (3) 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, 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)(8)*)

Misdemeanor Crime of Domestic Violence

...has been convicted in any court of a misdemeanor crime of domestic violence (MCDV). The definition of a MCDV is a federal, state or local offense that meets all the following criteria:

- Is a misdemeanor under federal or state law or, in states which do not classify offenses as misdemeanors, is an offense which is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine (This is true whether or not the state statute specifically defines the offense as a “misdemeanor” or as a “misdemeanor crime of domestic violence”).
- Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon.
- Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting

with or has cohabited with the victim as a spouse, parent, or guardian (e.g., the equivalent of a “common law” marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home). (*Title 18, U.S.C., § 922 (g)(9) and Title 27, C.F.R., § 478.11*)

Alternate Permit Requirements

Alternate Permit Requirements Compliance Summary Chart

	# of NICS Permit Transactions Reviewed	Alternate Permit NICS Check and Renewal Process
California DOJ Firearms Division	100	IN

IN = In Compliance, OUT = Out of Compliance, A/C = Area of Concern, N/I = Note of Interest, N/A = Not Assessed

Alternate Permit NICS Check and Renewal Process

A licensee is not required to contact NICS to sell, deliver or transfer a firearm to any other person who is not licensed, before the completion of the transfer, if the transferee has presented to the licensee a valid permit or license that:

- Allows the transferee to possess, acquire, or carry a firearm.
- Was issued not more than 5 years earlier by the state in which the transfer is to take place.
- 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, and that the information available to such official includes the NICS. (*Title 18, U.S.C., § 922 (1)(3)(A)*)

NICS Index Submission Requirements

NICS Index Submission Requirements Compliance Summary Chart

	# NICS Index Records Reviewed	# Invalid - Documentation does not support entry	# Unable to Locate Supporting Documentation	# Unable to Access Supporting Documentation	# Inaccurate	# Incomplete	Integrity of NICS Index Records	Completeness of NICS Index Records
California DOJ Firearms Division	350	4	0	0	1	0	IN	IN

IN = In Compliance, OUT = Out of Compliance, A/C = Area of Concern, N/I = Note of Interest, N/A = Not Assessed, * = Unable to Assess

Integrity of NICS Index Records

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. Each data source must maintain documentation supporting the validity of entries into the NICS Index. (*Title 28, C.F.R., § 25.5 (b)*)

Completeness of NICS Index Records

The NICS Index is a name-based system and the entry of all available information increases the likelihood of a NICS Index match during subsequent queries. This assessment is for informational purposes only.

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