

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 25

Docket No. FBI-158; AG Order No. 6100-2024

RIN 1110-AA36

Bipartisan Safer Communities Act of 2022 and Consolidated Appropriations Act of 2022 – Implementation Revisions for National Instant Criminal Background Check System (NICS)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Justice (“Department”) proposes to amend its regulations pertaining to the National Instant Criminal Background Check System (“NICS”) of the Federal Bureau of Investigation (“FBI”) to implement parts of the Consolidated Appropriations Act, 2022 (“CAA”) and the Bipartisan Safer Communities Act (“BSCA”). For purposes of this proposed rule, and as further described below, the CAA mandated that, in addition to traditional searches for applicable firearm prohibitions designated by Federal and State law, the FBI must now also search for applicable firearm prohibitions designated in local and Tribal law; and certain local law enforcement authorities must be notified when the FBI denies firearm transfers. BSCA mandated that no person may sell or dispose of a firearm or ammunition to a person knowing or having reasonable cause to believe that the prospective recipient is subject to a disqualifying event even if that event occurred as a juvenile; the FBI

must undertake enhanced background checks for NICS transactions involving persons under the age of 21 (“under-21 transactions”); and certain under-21 transactions are subject to additional delay for further investigation, and, upon notification of additional delay to a Federal Firearm Licensee (“FFL”), a corresponding prohibition on the transfer of any firearm to such person by the FFL until 10 business days have elapsed, unless NICS notifies the FFL that the firearm may be transferred or that the firearm transfer is denied. The Department seeks to amend its NICS regulations by proposing additional, relevant definitions and procedures to reflect and implement the statutory mandates described above.

DATES: Written comments must be postmarked, and electronic comments must be submitted, on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware the electronic Federal Docket Management System will not accept comments after 11:59 P.M., Eastern Time, on the last day of the comment period.

ADDRESS: You may submit comments, identified by RIN 1110-AA36 or Docket No. FBI-158, by either of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Charles Klebe, Assistant General Counsel, Federal Bureau of Investigation, Office of the General Counsel, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0110; ATTN: Docket No. FBI-158.

Instructions: All submissions received must include the agency name and RIN (1110-AA36) or docket number (FBI-158) for this notice of proposed rulemaking. In general, all properly completed comments received will be posted without change to the Federal eRulemaking portal,

<https://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jill A. Montgomery, NICS Business and Liaison Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, NICS Section. Telephone: (304) 625-0606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION

I. Public Participation

A. Comments Sought

The Department welcomes public comments from any interested person on any aspect of the changes proposed in this rule. In particular, and as discussed in more detail in the parts of this preamble that describe specific changes, the Department seeks comments from the public on the proposed amendments to NICS regulations regarding: (1) identifying firearms prohibitions imposed by local and Tribal governments; (2) providing denial notifications to local law enforcement; (3) conducting enhanced background checks of under-21 transactions; (4) collecting, using, and purging, where applicable, residential address information to comply with the statutory requirements of the CAA and BSCA; and (5) implementing a delay of up to 10 business days for under-21 transactions where NICS has notified the FFLs that additional research is required to determine if the prospective transferees have prohibiting juvenile records as described in 18 U.S.C. 922(d). The Department also seeks comments on a potential attestation process to facilitate interactions with State and local agencies, as described more fully

in Section II.D of this preamble. The Department will carefully consider all properly submitted public comments in drafting any final rules.

All comments must reference RIN 1110-AA36 or this document's docket number, FBI-158, and be legible. Please do not submit, under this proposed rule, any comments pertaining to a different rule that may be discussed in limited detail below. After those other proposed rules are published, public comments concerning those proposed rules should be submitted as directed within those rules.

Please note that all comments received are considered part of the public record and may be made available for public inspection online at <https://www.regulations.gov>. Information made available for public inspection may include personal identifying information (such as name, address, etc.) submitted by the commenter.

B. Confidentiality

In general, the Department will make all comments, whether submitted electronically or on paper, available for public viewing on the internet through the Federal eRulemaking Portal. If you do not want your name or other personal identification information posted on the internet as part of your comment, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the Department to redact. Personal identifying information identified and located as set forth above will be placed in the Department's public docket file but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS

INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the Department may choose not to post that comment (or to post only part of the comment) on <https://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

C. Submitting Comments

Submit comments in either of the following ways (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- Federal eRulemaking Portal: The Department recommends that you submit your comments via the Federal eRulemaking portal at <https://www.regulations.gov> and follow the instructions. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.
- Mail: Send written comments to the address listed in the **ADDRESSES** section of this document.

II. Background and Purpose

The Brady Handgun Violence Prevention Act of 1993 (“Brady Act”), Pub. L. 103-159, 107 Stat. 1536, required the Attorney General to establish a national system for FFLs, more specifically, federally licensed manufacturers, dealers, and importers of firearms under 18 U.S.C. 923, to request immediate information as to whether the transfer of a firearm to any given unlicensed person could proceed. To implement that requirement, the Department created NICS and delegated management of NICS to the FBI. *See* 28 CFR 25.3. NICS is managed by the NICS Section of the FBI’s Criminal Justice Information Services (“CJIS”) Division. The NICS

Section processed the first NICS background check on November 30, 1998. Background events that prohibited persons from being able, under the Brady Act, to receive a firearm were those specified in 18 U.S.C. 922(g) and (n)¹ and applicable State law(s).²

Since that first NICS background check in 1998, FFLs have initiated NICS background checks by contacting the FBI or a designated “point of contact” (“POC”).³ FFLs contacted the FBI by phone or electronically.⁴ FFLs in each State are advised if they are required to contact the FBI’s NICS Section or a POC to conduct a background check pursuant to 18 U.S.C. 922(t). *See* 28 CFR 25.6(a).

Prior to the implementation of BSCA, when an FFL contacted the FBI to initiate a NICS background check, NICS searched three electronic systems—the National Crime Information

¹ Examples of prohibitions under 18 U.S.C. 922(g) and (n) include, but are not limited to, having sustained a conviction for, or being under indictment or information for, a “crime punishable by imprisonment for a term exceeding one year” (including State offenses denominated as misdemeanors but punishable by more than 2 years of imprisonment, *see* 18 U.S.C. 921(a)(20)); being a fugitive from justice; being addicted to or being an unlawful user of a controlled substance; being adjudicated as a mental defective or being committed to a mental institution; being subject to certain protection orders; and having sustained a conviction for a misdemeanor crime of domestic violence.

² Applicable State law prohibitions are those imposed by the State where the prospective transfer is occurring and the State where the transferee resides (if the State of residence is different than the State of transfer). Additionally, other State laws may be relevant to determining if a Federal firearms prohibition (under 18 U.S.C. 922(d), (g), or (n), as applicable) applies to the prospective transferee. Suppose, for instance, a resident of South Dakota is attempting to receive a rifle or shotgun (“long gun”) from an FFL in Iowa. That prospective transferee, however, has a prior felony-level conviction from a State court in Washington. The State laws of South Dakota, Iowa, and Washington would all be considered during that transaction to assess that person’s ability to receive a firearm under State and Federal law.

³ A POC is “a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS.” 28 CFR 25.2. POCs are agencies with express or implied authority to perform POC duties pursuant to State law. *Id.*

⁴ The FBI’s NICS electronic check system, known as E-Check, began in 2002. FBI, *NICS E-Check*, <https://www.fbi.gov/video-repository/nics-e-check.mp4/view> (last visited Oct. 4, 2024).

Center (“NCIC”),⁵ the Interstate Identification Index (“III”),⁶ and the NICS Indices⁷—for the existence of a relevant record demonstrating that the individual is prohibited from receiving or possessing firearms under Federal or applicable State law(s). FFLs provided NICS the prospective transferee’s name, sex, race, complete date of birth, State of residence, height, weight, eye and hair color, place of birth, and, if provided, any unique identification number(s) such as a Social Security number or military number. *See* 28 CFR 25.7. It has typically taken NICS a matter of seconds to collect the prospective transferee’s identifying information and identify matching or potentially matching records in NCIC, III, or the NICS Indices.

If the search of those three systems resulted in no matching (i.e., disqualifying) record, a “Proceed” response was provided to the FFL. If the search of those three systems resulted in at least one record demonstrating that the individual was prohibited from receiving a firearm, a “Denied” response was provided to the FFL. For those transactions in which the NICS Section could not provide a definitive response of either “Proceed” or “Denied” because additional research of a possible Federal or State disqualification was required, the transaction was placed in a “Delayed” status. Upon issuance of a “Delayed” response, NICS would continue to research the possible prohibitions, even after the initial 3 business days had elapsed. If the NICS Section

⁵ NCIC is searched for records such as active warrants and protection orders. *See, e.g.,* FBI, *National Instant Criminal Background Check System Posts NICS Index Data* (Mar. 18, 2016), <https://www.fbi.gov/news/press-releases/national-instant-criminal-background-check-system-posts-nics-index-data> (“NICS Data”).

⁶ III is part of the FBI’s Next Generation Identification system and is used to search for available Federal, State, local, and Tribal criminal history records such as arrests, charges, or case dispositions. *See NICS Data, supra*; *see also* Privacy Act of 1974; System of Records, 84 FR 54182, 54184 (Oct. 9, 2019).

⁷ The NICS Index consists of entries from Federal, State, local, and Tribal agencies of persons who are prohibited from receiving or possessing firearms under Federal or State law. *See* 28 CFR 25.2. When referencing the NICS Index, the remainder of this rule will refer to the “NICS Indices” as it is more commonly known today among NICS users. The changes made by this rule include updates to the FBI’s regulations to use the term “NICS Indices” rather than “NICS Index.” The Department is also updating the regulations to use “NICS Section” instead of “NICS Operations Center.”

was unable to determine whether a delayed transaction should receive a “Proceed” or “Denied” response within 3 business days of the initiation of the NICS check, the FFL was not federally prohibited from transferring the firearm beginning on the day after the third business day, which was and still is referred to as the Brady transfer date. *See* 18 U.S.C. 922(t)(1).

In instances where a POC had been designated to process NICS background checks, upon being contacted by an FFL, the POC would “check state or local record systems [and] perform NICS inquiries.” 28 CFR 25.2. In addition to using the NICS Transaction Number (“NTN”) that NICS assigns to submitted transactions, POCs may also assign their own unique “State–Assigned Transaction Number” (“STN”) to a valid background check inquiry. *Id.* When NICS received an inquiry from a POC for a NICS background check, it searched NCIC, III, and the NICS Indices for any matching records and provided an electronic response to the POC. *See* 28 CFR 25.6(f).⁸ When contacted by a POC, NICS provided one of four types of responses to the POC: (1) “No record” response if NICS determined that no matching records existed in the databases searched; (2) “partial” response if NICS had not completed the search of all of its records (this response provided the POC with the information found in any database in which the search was completed and sent a follow-up response when NICS completed the search in all databases); (3) “single matching record” response when one matching record was found; and (4) “multiple matching record” response if more than one matching record was found. *See id.* It has been and remains the responsibility of the POCs to review the responses that are provided by

⁸ State laws may require or allow POCs to collect further identifying information from a prospective transferee.

NICS, conduct any further research, render a final determination, and provide FFLs with the results. *See* 28 CFR 25.6(g).⁹

The CAA, Pub. L. 117-103, 136 Stat. 49 (2022), and BSCA, Pub. L. 117-159, 136 Stat. 1313 (2022), mandated certain changes to the NICS process. In particular, as described below, the CAA and BSCA added new disqualifying events for consideration during NICS transactions. The CAA and BSCA added local and Tribal prohibitions to the Federal and State prohibitions already listed under 18 U.S.C. 922(t). The CAA includes the NICS Denial Notification Act of 2022 (“NDNA”), 136 Stat. at 919, which requires the FBI to send denial notification reports (“denial notifications”) to local law enforcement authorities following the FBI’s denial of a NICS transaction involving a prospective transfer of a firearm. BSCA sets forth new requirements for under-21 transactions, including enhanced contacts to State and local entities and, if needed, additional delay to further investigate possibly disqualifying juvenile records. 136 Stat. at 1322–24. As described below, the Department proposes to amend the regulations outlining the NICS process to conform with these requirements of the CAA and BSCA. The Department is publishing this notice of proposed rulemaking to propose amendments to 28 CFR 25.1, 25.2, 25.6, 25.7, 25.8, 25.9, 25.10, and 25.11 to implement parts of the CAA and BSCA as codified at 18 U.S.C. 922(d) and (t), 18 U.S.C. 925B, 18 U.S.C. 925C, and 34 U.S.C. 40901(l).

A. Updated Prohibitions

As amended by the CAA and BSCA, 18 U.S.C. 922(t) now precludes approval of a firearm transfer to a nonlicensee if the transfer or receipt of a firearm would violate local or

⁹ Further discussion of POCs can be found below within the discussion of denial notifications in Section II.B of this preamble and the discussion of under-21 transactions in Section II.C of this preamble.

Tribal law. 136 Stat. at 921–22; 136 Stat. at 1323. The FBI now is required to review NICS results for any applicable firearm prohibitions imposed by local or Tribal authorities, in addition to reviewing NICS results for any events that meet firearm prohibitions imposed by Federal law under 18 U.S.C. 922(d), (g), or (n), or applicable State law(s). *See* 18 U.S.C. 922(t)(1)(B)(ii), (t)(1)(C)(iii). Where a local or Tribal firearm prohibition may be applicable to the prospective transferee, the FBI must consider that prohibition in the same manner as Federal and State prohibitions that may be applicable based upon the prospective transferee’s background-check results. To reduce the risk of under-enforcement of local and Tribal prohibitions, this rule seeks public comments to identify which local and Tribal governments may, or may not, have enacted their own firearm prohibitions that are not already reflected in applicable State or Federal laws. What background record or event would prohibit a person from possessing firearms in the future? To whom do those local or Tribal prohibitions apply?

The Department proposes amending 28 CFR 25.1, 25.2, 25.6, and 25.9 to reflect the fact that 18 U.S.C. 922(t) now includes firearm prohibitions imposed by local and Tribal law. The Department also proposes amendments to 28 CFR 25.7(a) and 25.8(f) to require an FFL, after initially providing NICS a prospective transferee’s State of residence and State of purchase, to subsequently provide the address and city limits information listed by a prospective transferee on the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) Form 4473 (“Form 4473”), Firearms Transaction Record, when the FBI determines based on the State of residence and State of purchase that a local or Tribal firearms prohibition may apply. In such situations, and in the circumstances described further below, FFLs will be required to provide the FBI with the additional address information before the FBI provides the FFL with a transaction’s status and an NTN. Providing further residence information in such instances may prevent NICS from

unnecessarily delaying a transaction if the residence information excludes the possibility of local or Tribal laws applying to that transfer or receipt of firearms. For example, for a prospective transferee with a criminal history who resides in a State that also has potentially applicable local or Tribal firearm prohibitions, the individual's full residential address, as reported on the revised Form 4473,¹⁰ can help quickly determine if the prospective transferee is subject to the local or Tribal firearm prohibitions.

The full street address is needed to determine whether a local or Tribal prohibition should be considered in making the determination. Because there are multiple jurisdictional boundaries that may fall within a ZIP Code, county, or city, more granular information for the address may be needed to make an accurate determination. For example, different parts of one street could be subject to different local jurisdictions. The FBI anticipates utilizing the same city, State, county, and ZIP Code mapping as described in Section II.B of this preamble to determine if a local or Tribal prohibition is applicable.

Under 18 U.S.C. 922(d), it is unlawful for any person to sell or otherwise dispose of a firearm or ammunition knowing, or having reasonable cause to believe, that the prospective transferee is subject to any of the described disqualifying events in that subsection.¹¹ As amended by section 12001(a) of BSCA, 18 U.S.C. 922(d) now prohibits such sales or dispositions to a person the transferor knows or has reasonable cause to believe is subject to one of the described disqualifying events, "including as a juvenile." 136 Stat. at 1322.¹² This

¹⁰ A full residential address, as reflected on the revised Form 4473, includes the number and full street address; city, State, and ZIP Code; county, parish, or borough of residence; and whether the subject resides within the city (to include town or other municipal boundary) limits.

¹¹ Historically, 18 U.S.C. 922(d) has encompassed the same prohibitions as referenced in 18 U.S.C. 922(g) and (n).

¹² In addition to the other amendments relevant to NICS, title II, section 12004 of BSCA added two new prohibitions related to preventing illegal firearms trafficking. See 18 U.S.C. 922(d)(10) and (d)(11).

proposed rule would incorporate conforming changes into NICS regulations to reflect these statutory amendments expanding the Brady Act prohibitions as now described in 18 U.S.C. 922(t).

The Department notes that, through various amendments to NICS regulations over the years, current NICS regulations contain inconsistent references to the Brady Act prohibitions, particularly the Federal prohibitions. The Department proposes amending NICS regulations found at 28 CFR 25.1, 25.2, 25.6, and 25.9 to ensure consistency with respect to how firearms prohibitions are described. To the extent necessary, the Department intends to reconcile these various references to Brady Act prohibitions in the Department's NICS regulations through this proposed rule as well as through RIN 1110-AA35 and through other technical updates to the Department's NICS regulations in a future rulemaking, RIN 1110-AA37.

B. Local Law Enforcement Notification

The NDNA, which was enacted as part of the CAA, requires that the Attorney General send a denial notification to a "local law enforcement authority" upon denial of a NICS transaction involving the prospective transfer of a firearm by an FFL. *See* CAA, Pub. L. 117-103, div. W, title XI, sec. 1101, 136 Stat. 49, 919–20. Since the NDNA's effective date, October 1, 2022, the FBI has been submitting denial notifications.

When the FBI denies a NICS transaction, as described in 18 U.S.C. 925B(a) related to the prospective transfer of a firearm, it sends a denial notification to the "local law enforcement authority" of the State or Tribe within whose jurisdiction the person sought the firearm transfer and, if different, to the "local law enforcement authority" of the State or Tribe within whose

jurisdiction the person resides.¹³ This ensures that local law enforcement authorities in both jurisdictions are made aware of the denial.¹⁴ As proposed by this rule in 28 CFR 25.2, “‘local law enforcement authority’ means a bureau, office, department, or other authority of a State or local government or Tribe that has jurisdiction to investigate a violation or potential violation of, or enforce, a State, local, or Tribal law.” *See also* 18 U.S.C. 921(a)(36). The Department’s proposed amendments to 28 CFR 25.2, 25.7(a), and 25.8(f) reflect the FBI’s current process for collection of information for carrying out the NDNA’s requirements and, if finalized, would generally not alter the current denial notification process as described herein.

To reflect how the Department has implemented the NDNA, the Department proposes to amend 28 CFR 25.7(a) and 25.8(f) to require FFLs to provide additional residence address information for prospective transferees whose prospective firearm transfers will be “Delayed” or “Denied.” Again, after an FFL has initiated the transaction, NICS determines within seconds if NCIC, III, or the NICS Indices include records that require the transaction to be “Delayed” for further research or “Denied.” After NICS has identified that a transaction will be “Delayed” or “Denied,” the FFL must provide NICS with the subject’s full residential address before the FFL will be provided with the NTN and status. This information will be requested over the phone or collected electronically, depending on how the FFL initiated the transaction. Once the system has received the subject’s full residence address, the FBI will then, over the phone or electronically, provide the FFL with that transaction’s NTN and initial status.

¹³ Federal law allows an FFL to transfer a long gun to a resident of another State so long as, among other considerations, the sale, delivery, and receipt otherwise satisfy the State laws and published ordinances of both jurisdictions. *See* 18 U.S.C. 922(b).

¹⁴ For example, if a resident of Fort Wayne, Indiana, attempts to receive a firearm from an FFL in Indianapolis, Indiana, and the transaction is “Denied,” then the FBI would send a denial notification to the local law enforcement authorities in Fort Wayne (where the denied transferee resides) and Indianapolis (where the firearm was sought).

A “Delayed” transaction can change quickly to a “Denied” transaction. Consequently, by also collecting full address information before a “Delayed” status is provided to an FFL, the FBI will have that address information readily available should that transaction result in a denial. Collecting address information in such a manner avoids scenarios where the FFL is unavailable to receive a second contact from the FBI, which avoids delaying the address collection and denial notification. Thus, the amendments proposed in this rule and the process currently implemented by the FBI allow NICS to provide more timely denial notifications to local law enforcement authorities where the individual attempts to obtain the firearm and, if different, where the person resides. As discussed elsewhere in this rule, POCs will see similar results when they begin implementing the NDNA provisions (to the extent their State laws do not already require implementation of all or some aspects of the NDNA).

Local law enforcement authorities are not required by the NDNA to take any action upon receiving the denial notification.¹⁵ However, to avoid potential conflict with ongoing Federal investigations, the denial notification effectively encourages local law enforcement authorities to coordinate with their local ATF office prior to taking any anticipated action. The city in which the local ATF office is located and the office’s contact information are provided in the denial notification. The denial notification is transmitted through NCIC and contains the NDNA–required information that NICS “Denied” the firearm transaction; the Federal, State, local, or Tribal prohibition that was the basis for the denial; the prospective transferee’s identifying information (i.e., the transferee’s name, sex, height, date of birth, place of birth, and residence address); the date and time the transaction was denied; and the location and contact information

¹⁵ In fact, some local law enforcement authorities will not have a State, local, or Tribal violation of law to enforce if, for example, the denial was due to a Federal violation.

for the FFL where the denied transfer occurred.¹⁶ *See* 18 U.S.C. 925B(a)(1). The denial notification also contains a general reminder explaining why the denial notification is being provided and contact information for any other law enforcement entities to which NICS sent the denial notification.

The NDNA provides that, where practicable, a denial notification will be provided to State, local, or Tribal prosecutors in the jurisdiction where the firearm transfer was sought to assist with enforcing State, local, or Tribal laws (when applicable). *See* 18 U.S.C. 925B(a)(2). Should a “Denied” transaction be later overturned, the NDNA requires that any law enforcement authority and prosecutor previously provided with a denial notification for that transaction be provided an updated notification of the overturned denial. *See* 18 U.S.C. 925B(c). Such updated notifications are also provided via NCIC to all agencies that received a denial notification for that transaction.

Currently, FFLs obtain the prospective transferee’s residence address on the Form 4473. *See* 27 CFR 478.124. This residence information is collected in box 10 of the Form 4473 and includes number and street address, city, whether the residence is within city limits, State, ZIP Code, and county or parish or borough. Under 28 CFR 25.7, the only address information that must be provided for the initial NICS check is the prospective transferee’s State of residence; the regulations have not required FFLs to submit further information to NICS about a prospective transferee’s residence address even though the FFL must collect such information on the Form 4473.¹⁷

¹⁶ Additional information on this topic and a copy of a draft notification can be found at FBI, *NICS Denial Notifications for Law Enforcement*, <https://le.fbi.gov/informational-tools/nics-denial-notifications-for-law-enforcement> (last visited June 18, 2024).

¹⁷ In addition to the prospective transferee’s State of residence, an FFL must submit the prospective transferee’s name, sex, race, and complete date of birth to initiate a NICS check. *See* 28 CFR 25.7.

The full street address of a prospective transferee is needed to determine which local jurisdiction(s) would be appropriate for notification of a denial determination. There are multiple agencies that may fall within a ZIP Code, county, or city. To notify the correct agency, specific information for the address is needed. For example, one street within a city could be within the jurisdiction of one police department while the adjacent street could be under a different police department's jurisdiction. When an FFL initially submits a prospective firearm transfer to the FBI and the initial NICS check of NCIC, III, and the NICS Indices finds information indicating the transaction will be "Delayed" or "Denied," the FBI, during that same, initial contact with NICS, requests (by phone or electronically¹⁸) the full residence address of the prospective transferee while the FFL waits for NICS to provide them with the initial status and the NTN. Once NICS has been provided with the full residence address, the FFL is provided with the NTN and the transaction's status.

Through each State, local, and Tribal law enforcement agency's Originating Agency Identifier ("ORI"), the FBI has mapped those law enforcement agencies to the city, State, county, and ZIP Code(s) for which they have jurisdiction to enforce laws.¹⁹ Each State (including Territories and the District of Columbia) has validated the mapping accuracy via an NCIC unsolicited message. NCIC unsolicited messages are automated communications that normally inform law enforcement and other criminal justice agencies about activity on an NCIC record, such as important details about a specific subject or property item or system status information. NICS now also uses this communication line to send denial notifications to applicable local law

¹⁸ For some transactions using NICS E-Check to submit information to NICS, NICS is able to systematically capture the residence without aid of the FFL.

¹⁹ An ORI is "a nine-character identifier assigned by the FBI to an agency that has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System." 28 CFR 25.2.

enforcement authorities. For transactions that are “Denied,” NICS systematically compares the full address information of the FFL and the prospective transferee with the address information of the mapped law enforcement agencies. NICS then submits, via NCIC unsolicited messages, the denial notifications to the State, local, and Tribal law enforcement agencies that fall within the jurisdiction of the FFL’s address where the transfer was sought and, if different, the State, local, and Tribal law enforcement agencies with jurisdiction over the denied transferee’s residence address.

ATF also revised the Form 4473 to request full residence information for prospective transferees. In addition to assisting with the implementation of the CAA and BSCA provisions describing use of local and Tribal firearm prohibitions, the revised Form 4473 ensures the information is available to FFLs when the FBI seeks such information to support the continued implementation of the NDNA. The denial notifications provide timely assistance to State, local, and Tribal governments that wish to enforce existing laws in their jurisdictions against individuals attempting to illegally purchase, possess, or receive firearms (whether through fraudulent background checks or otherwise).

In the 19 States²⁰ in which partial or full POCs conduct NICS checks, POCs serve as intermediaries between FFLs and the Federal databases checked by NICS, with POCs acting on behalf of the FBI to perform the NICS transactions from those jurisdictions. *See* 28 CFR 25.2 and 25.6. Partial POCs elect to process background checks for handguns, long guns, or both, and the FBI processes all other checks for FFLs in the State. Currently, all four partial POCs process

²⁰ *See* FBI, *NICS Participation Map*, <https://www.fbi.gov/file-repository/nics-participation-map.pdf/view> (last visited Oct. 4, 2024).

their own NICS checks for handguns.²¹ The FBI has verified, based on discussions with POCs, that 14 of the 19 POCs that responded in time for this rule already have some type of denial notification process established within their State. The FBI does not render denial decisions for POCs. *See* 28 CFR 25.6(g). Therefore, this rule proposes revisions to 28 CFR 25.2 and 25.6 to reflect that POCs must, at a minimum, report denial notifications in accordance with the NDNA when the POC denies a prospective firearm transfer.²² If these revisions are finalized, POCs will also be required to provide the NICS Section with applicable statistics necessary for the FBI to comply with the provisions of 18 U.S.C. 925C.

C. Enhanced Background Checks for Individuals Under 21 Years of Age

As described earlier in this rule, prior to BSCA's enactment of new enhanced background checks during under-21 transactions, when an FFL initiated a NICS transaction—regardless of the prospective transferee's age—NICS searched three primary systems to determine if the person was disqualified from possessing or receiving firearms.²³ If the traditional search resulted in no disqualifying or potentially disqualifying records, NICS provided a "Proceed" status to the FFL. If a juvenile or adult record was located that disqualified the person under Federal or State law, NICS provided a "Denied" status to the FFL. If a possibly disqualifying record (whether having occurred as a juvenile or adult) resulted from the initial search, NICS provided a

²¹ *See id.*

²² The Department notes that the statutory obligation to issue denial notifications does not include the issuance of denial notifications to the same entity that denied the transaction. *See* 18 U.S.C. 925B(d) (denial notification to State authorities not required if the same State authorities made the original denial determination with respect to the transfer of the firearm). For example, if a resident of Fort Wayne, Indiana, attempts to receive a firearm from an FFL in Illinois, and the transaction is denied by the Illinois POC (the Illinois State Police), then the Illinois POC would issue denial notifications to the "local law enforcement authorities" in Indiana (where the denied transferee resides) but would not need to issue a denial notification to the Illinois State Police.

²³ Currently, BSCA's provisions related to under-21 transactions are to sunset September 30, 2032. 136 Stat. at 1324.

“Delayed” status and advised the FFL that, if the FFL did not receive a “Proceed” or “Denied” response from NICS on or before the end of the third business day after initiation of the check, the FFL was not federally prohibited from transferring the firearm on the day after the third business day.²⁴ *Cf.* 18 U.S.C. 922(b), (d).²⁵

In addition to the searches of NCIC, III, and the NICS Indices, BSCA now requires enhanced NICS background checks for prospective transferees under 21 years of age. *See* 34 U.S.C. 40901(l).²⁶ With respect to these enhanced background checks conducted for under-21 transactions, Congress imposed two overarching requirements on NICS. First, in addition to the traditional NICS check of relevant FBI systems, NICS is required to make three enhanced requests to specified types of State and local entities to determine whether the prospective transferee has a “possibly disqualifying juvenile record” under 18 U.S.C. 922(d). The enhanced requests to State and local entities where the prospective transferee resides are to be made to (1) the State criminal history repository or juvenile justice information system, as appropriate; (2)

²⁴ Currently, “Delayed” and “Open” are defined as follows: “Delayed means the response given to the FFL indicating that the transaction is in an ‘Open’ status and that more research is required prior to a NICS ‘Proceed’ or ‘Denied’ response. A ‘Delayed’ response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up ‘Proceed’ response from the NICS or the expiration of three business days, whichever occurs first.” 28 CFR 25.2 “Open means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of ‘open’ responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An ‘open’ response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.” *Id.*

²⁵ The Department notes that, after receiving a “Proceed” or “Open” response from NICS, Federal law would not prohibit the FFL from transferring the firearm. Receipt of such a response, however, “[d]oes not relieve” the FFL from complying with other provisions of law, such as 18 U.S.C. 922(d), that may be applicable to that transfer. 28 CFR 25.2 (defining “Proceed”). A similar caveat for the definition of “Open” has been proposed as part of this rule. When, throughout this rule, the Department observes that, in certain situations, receipt of a response from NICS indicates that Federal law would not prohibit an FFL from transferring a firearm, it should be understood that the FFL must still comply with other laws, such as 18 U.S.C. 922(d).

²⁶ Under Federal law, persons who are at least 18 years of age are of lawful age to purchase long guns; however, some States set a higher minimum age to purchase long guns. *See* 18 U.S.C. 922(b).

the State custodian of mental health adjudication records; and (3) the local law enforcement agency. *See* 34 U.S.C. 40901(1)(1).

In October of 2022, the FBI began a phased, manual implementation of the enhanced background checks BSCA requires for under-21 transactions coming from the State of Maine. For the remaining States²⁷ for which the FBI processes NICS checks for prospective firearm transfers, since January 4, 2023, NICS has been automatically submitting all three enhanced requests via email. To begin implementing BSCA's requirements of contacting the criminal history repository or juvenile justice information system and the appropriate State custodian of mental health records in the State in which the person resides for possibly disqualifying juvenile records pursuant to 18 U.S.C. 922(d), the NICS Section met with representatives from all States and Territories to establish contacts for those requests; this was because the NICS Section did not have such contacts required by BSCA at the time of enactment.

Some States informed the NICS Section they do not have a centralized contact for some of the juvenile records BSCA requires NICS to request. Those States directed the NICS Section to contact courts that handle juvenile criminal history or mental health information. The FBI has shared all identified contacts (centralized or otherwise) with POCs so that POCs can utilize the same contacts as the NICS Section for enhanced background checks. Both the NICS Section and POCs utilize their own existing contact methods for contacting local law enforcement agencies during under-21 transactions. The amendments proposed by this rule, unless noted otherwise,

²⁷ "State" is federally defined to include the District of Columbia, the Commonwealth of Puerto Rico, and most possessions ("Territories") of the United States. *See* 18 U.S.C. 921(a)(2). United States Territories that submit background checks to NICS include Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands. *See* FBI, *NICS Participation Map*, <https://www.fbi.gov/file-repository/nics-participation-map-020124/view> (last visited Oct. 4, 2024).

will not alter how the enhanced background checks related to under-21 transactions are being conducted.

Second, if NICS determines that cause exists to further investigate whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d), BSCA provides for an additional period of time for NICS to process that under-21 transaction before the FFL may transfer the firearm. *See* 18 U.S.C. 922(t)(1)(C); 34 U.S.C. 40901(l)(2). BSCA requires NICS to notify the FFL “as soon as possible, but in no case more than 3 business days” after the initiation of the check if such cause exists. 34 U.S.C. 40901(l)(2).

If NICS determines such cause exists, NICS notifies the FFL of that determination, and it is then unlawful for the FFL to transfer a firearm to the prospective transferee without receiving a follow-up “Proceed” response or waiting for the expiration of 10 business days from initial contact with NICS, whichever occurs first. *See id.* Accordingly, the Brady transfer date for an under-21 transaction where NICS has determined that cause exists for further investigation is the day after the tenth business day from the date the FFL contacted NICS. As NICS has begun submitting enhanced background checks for under-21 transactions, FFLs have also been notified by the FBI when cause for further investigation has been established and, consequently, that the Brady transfer date has changed to the day after the tenth business day.²⁸

To reflect BSCA’s requirements during under-21 transactions, technical enhancements have been made to NICS to have NICS use the subject’s complete date of birth to immediately calculate whether the prospective transferee is under 21 years of age on the day the transaction was submitted to NICS. Systematically, this age calculation is occurring at the same time NICS

²⁸ The FFL is updated in the same manner as when the FFL initially contacted NICS, either electronically or by telephone.

is searching NCIC, III, and the NICS Indices. Once NICS determines the subject is under 21 years of age, NICS will request the transferee's full residence address, and, generally, will notify the FFL that the transaction will be placed into a "Delayed" status. NICS collects the full residence address of subjects who are under 21 years of age in the same manner as NICS collects a full residence address for purposes of the NDNA. For an under-21 transaction, the FBI uses the full residence address of the subject to determine which "local law enforcement agency [has] jurisdiction where the person [under 21 years of age] resides" and, therefore, must be contacted by NICS. 34 U.S.C. 40901(1)(1)(C). The prospective transferee's State of residence is used to identify which State-level agencies the FBI also needs to contact during enhanced background checks.

After collecting the full residence address of the subject, NICS systematically sends the enhanced background check requests to the agencies corresponding to the subject's full residence address.²⁹ Generally, the FBI sends these enhanced requests by email communications to the designated agencies. Some States that are not centralized have designated that certain courts should be contacted for the requested juvenile records. The FBI also conducts some enhanced outreach to State agencies by manually accessing State databases that were established during the FBI's outreach to States, the District of Columbia, and Territories.

Unless the under-21 transaction can be denied sooner based on available information, NICS now has up to 3 business days to determine if BSCA's enhanced background checks, or any responses from the initial searches of NCIC or III, provide cause for further delay of the under-21 transaction due to a potentially prohibiting juvenile record. During this time, NICS is

²⁹ During an under-21 transaction, a Tribal law enforcement authority may also receive a request for potentially prohibiting juvenile records if the Tribe shares the same ZIP Code as the prospective transferee.

also investigating those same sources for any adult records that are prohibiting or potentially prohibiting. Some under-21 transactions will be denied in a matter of seconds due to, for example, the NICS Indices responding with a prohibiting record that matches the subject's biographic information. Even if the under-21 transaction is immediately "Denied," the Department reads BSCA to still require NICS to submit the enhanced background checks.

BSCA's enhanced background check requirements result in under-21 transactions being significantly more complex than NICS background checks conducted before BSCA. Unlike the pre-BSCA background check process (described above in the beginning of Section II of this preamble), BSCA mandates enhanced background checks that include requiring NICS to also contact, in 56 different jurisdictions, the State and local agencies identified under 34 U.S.C. 40901(1)(1). The results of those queries will then depend on the ability and capabilities of those State and local agencies.

Based on the FBI's experience in conducting BSCA's enhanced background checks, the FBI estimates the majority of State and local agencies that are contacted and that respond during the enhanced background checks of under-21 transactions do so within 3 business days. The Department does not consider an agency to have provided "cause for further investigation" within the first 3 business days if the agency contacted provides a substantive response that it has no potentially prohibiting juvenile record(s); if the agency responds to each enhanced background check request submitted to that agency that State law prohibits providing the type of juvenile records sought; or if the agency responds to each enhanced background check request submitted to that agency that the juvenile records sought are already provided to the relevant Federal system (NCIC, III, or the NICS Indices).

If an agency informs the Department within 3 business days of the check being initiated that the agency requires more time to investigate whether a prospective transferee has potentially prohibiting juvenile records, or the agency has not responded at all within 3 business days, the Department interprets these circumstances as “cause for further investigation,” and the agency will be afforded up to 7 additional business days to respond to the request. *See* 34 U.S.C. 40901(1)(2). The Department believes Congress’s imposition of additional checks for disqualifying State and local juvenile records during under-21 transactions would be frustrated by practical administrative delays inherent in conducting these enhanced checks if a State or local agency’s failure to respond within the 3-business-day period could not be understood to constitute “cause for further investigation.” While this interpretation could result in a relatively short additional delay (up to 7 additional business days at most) before Federal law would allow the FFL to complete the firearm transfer for the prospective transferee, the alternative interpretation might result in subjecting the public to a risk that BSCA was intended to address.

As soon as all required checks are cleared of any possible disqualifications, the FBI will place the under-21 transaction in a “Proceed” status. *See* 34 U.S.C. 40901(1)(3). BSCA did not institute a mandatory 3- or 10-day waiting period for all under-21 transactions. Instead, BSCA requires that NICS conduct the enhanced outreach described above, and it provides NICS up to 3 business days to determine if cause exists to further investigate whether the prospective under-21 transferee has a disqualifying juvenile record under 18 U.S.C. 922(d).

Another technical enhancement made for under-21 transactions is that NICS automatically calculates and populates, to the NICS Audit Log,³⁰ the 10-business-day transfer

³⁰ For NICS purposes, “[a]udit 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.” 28 CFR 25.2.

date in case that date becomes applicable. If that date is applied to the transaction, NICS provides the FFL with the 10-business-day transfer date during a follow-up communication. The FBI has also added to the NICS Audit Log fields for each under-21 transaction noting which State and local agencies were contacted during the enhanced background checks for a transaction and a general notation of whether and how those agencies responded (e.g., no records, records, or cannot respond by law). NICS must contact these State and local agencies according to BSCA, but the FBI understands that currently not all States have one or both State-level systems described above and, further, some States' laws prohibit the sharing of juvenile justice records or mental health records.³¹ Notwithstanding such limitations, the FBI has continued to submit the enhanced background check requests to relevant State and local agencies during every under-21 transaction since January 3, 2023.

The Department proposes the following amendments to conform NICS regulations with the above-described provisions of BSCA for under-21 transactions. First, the Department proposes amending 28 CFR 25.7(a) and 25.8(f) to require submission of the full residential address³² for NICS checks of prospective transferees who are less than 21 years old, in addition to the information already required to be submitted as described above. Second, the Department proposes amending 28 CFR 25.6(c) to reflect that, upon initiation of an under-21 transaction from an FFL, the FBI will immediately conduct a NICS check of NCIC, III, and the NICS Indices and make the enhanced outreach to the following agencies where the person resides: (1)

³¹ FBI subject matter experts estimate that, currently, more than half of all States, including the District of Columbia and the Territories, have laws in place that prohibit the sharing of juvenile justice records, juvenile mental health records, or both. Many agencies in those States do not currently respond to each NICS request with substantive records or a notification that the records sought are protected from dissemination by State law.

³² As noted earlier, *see supra* note 10, a full residential address, as reflected on the amended Form 4473, includes the number and full street address; city, State, and ZIP Code; county, parish, or borough of residence; and whether the subject resides within the city (to include town or other municipal boundary) limits.

the State criminal history repository or juvenile justice information system, as appropriate; (2) the State custodian of mental health adjudication records; and (3) the local law enforcement agency. The FBI has identified all necessary agencies to contact during this enhanced outreach to determine if cause exists for additional delay of the transaction to further investigate whether the person has a disqualifying juvenile record under 18 U.S.C. 922(d). The amendments proposed by the Department in this rule would not modify how the FBI is conducting the enhanced background checks of under-21 transactions.

Next, the Department proposes a new transaction status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” which is not a part of the current under-21 transaction process. A definition for this new status is proposed under 28 CFR 25.2. Also, the FBI proposes revisions to 28 CFR 25.6(c)(iv), 28 CFR 25.8(g)(2), 28 CFR 25.9(b), and 28 CFR 25.11(b)(1) to reflect the status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” The Department proposes that an FFL be provided the status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” generally in circumstances where NICS has either not received one or more responses to the enhanced background checks or the relevant State is barred from sharing juvenile information by a governing State law. This status would be provided under the following circumstances:

- *Barred from Responding.* If at least one agency affirmatively responds that it is barred by State law from sharing relevant information with NICS, any other agencies have responded, and the available information does not demonstrate a (potentially) prohibiting record exists for the subject.

- *Non-Response.* At the end of the tenth business day if at least one of the agencies contacted during the enhanced background checks for that under-21 transaction has not responded and available information does not demonstrate a (potentially) prohibiting record exists for the subject.

A “Proceed” status to an FFL signifies that all systems have been checked, requests for records have received responses, and available information reveals no (potentially) prohibiting record exists.³³ Accordingly, where State or local agencies either do not or cannot share information on a prospective transferee, providing an FFL with the status of “Proceed” would be inaccurate. Similarly, an “Open” response signifies to an FFL that NICS is still researching a potential firearm prohibition. *See* 28 CFR 25.2. Accordingly, it would also be inaccurate for an “Open” response to be provided in any of the above circumstances because NICS would not be conducting further research at that point. The Department believes providing this new status of “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” to FFLs in these circumstances would more accurately inform the FFL of the fact that the State or local agencies at issue either did not or could not respond to the enhanced requests for juvenile records. However, unless NICS has provided an FFL with a status of “Denied,” the FFL retains the ultimate discretion to transfer a firearm, or not, to the subject.

Do commenters believe the new status would have unforeseen impacts? What further information would the public find useful or necessary before approving or rejecting the new, proposed status? Should a different status be proposed, and if so, why?

A prospective transferee who is under 21 years of age could have a possibly disqualifying

³³ As part of this rulemaking, the FBI is proposing an amendment to the definition of “Proceed” to clarify that the response indicates that all relevant systems have in fact been checked and all requests for records have in fact received responses.

juvenile record under 18 U.S.C. 922(d) or a possibly disqualifying record (incurred as an adult or juvenile) under 18 U.S.C. 922(g) or (n), or State, local, or Tribal law.³⁴

The following examples clarify the types of records that NICS may receive during an under-21 transaction and how the Department proposes to have NICS process the different scenarios.

Scenario 1: No adult or juvenile disqualifying records are found in NCIC, III, or the NICS Indices, and the under-21 enhanced background checks rule out cause for additional delay before the end of the third business day. The transaction is placed in a “Proceed” status.

Scenario 2: Only a possibly disqualifying adult record is located, but cause for additional delay, related to a possibly disqualifying juvenile record, is ruled out before the end of the third business day. Although cause for additional delay of the transaction was ruled out, the transaction will remain “Delayed” (in an “Open” status) due to the possibly disqualifying adult record being found. The FFL may transfer the firearm after the third business day if the FFL has not first received a “Denied” status update. NICS will continue to research to establish or rule out the possible adult prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

³⁴ For instance, suppose a person who is now 20 years old attempts to receive a firearm from an FFL. The NICS check reveals that, at 17 years old, this person was adjudicated as a “juvenile delinquent” under State law for an offense that would have been a felony had the person been an adult. Within the next day, all three agencies contacted under the enhanced contacts for the under-21 transaction respond and provide no other potential juvenile prohibitions. Further suppose that, under the law of the State where the adjudication occurred, that adjudication is not considered a “conviction.” As a result, Federal law cannot consider that adjudication for purposes of 18 U.S.C. 922(d) or (g). *See* 18 U.S.C. 921(a)(20). Further, because that juvenile disposition would not fall within the reach of 18 U.S.C. 922(d), it would not qualify for consideration under 34 U.S.C. 40901(l) for application of further delay of an under-21 transaction. However, suppose the law of the State where the adjudication occurred imposes a 10-year firearm prohibition for persons adjudicated as a juvenile delinquent for an offense that would have been a felony. The adjudication would not qualify for purposes of 18 U.S.C. 922(d), but it would prohibit that person from receiving or being transferred a firearm in accordance with 18 U.S.C. 922(t).

Scenario 3: No possibly disqualifying adult record is located, but cause for additional delay is established based on a possibly disqualifying juvenile record. NICS will notify the FFL of the additional delay being applied up through the tenth business day (if necessary) to further research whether there is a disqualifying juvenile record. If cause for the additional delay of the transaction is ruled out, the transaction will be updated to “Proceed” status. If cause for additional delay cannot be ruled out by the end of the tenth business day, the transaction will remain “Delayed” (in an “Open” status), and under Federal law, the FFL may transfer the firearm after the tenth business day if the FFL has not first received a “Denied” status update. NICS will continue research to establish or rule out the relevant possible juvenile prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

Scenario 4: A possibly disqualifying adult record is found and cause for additional delay is established based on a possibly disqualifying juvenile record on or before the third business day. Because cause for additional delay has been found to exist, the FFL is notified of additional delay being applied, up through the tenth business day (if necessary), to further research whether there is a disqualifying juvenile record. In accordance with Federal law, the FFL may transfer the firearm after the tenth business day if the FFL has not first received a “Denied” status update. NICS will continue researching any possible prohibition until the transaction is proceeded, denied, or purged in compliance with 28 CFR 25.9.

Scenario 5: No potentially prohibiting adult or juvenile records return from NCIC, III, or the NICS Indices, but, after 10 business days have elapsed, one of the agencies contacted during the enhanced background check still has not responded in substance or by telling NICS that the laws of the jurisdiction prohibit the agency from disclosing the juvenile records sought. The Department proposes that the transaction’s status be updated to “No Known Prohibitors: At least

one state or local agency has not responded or cannot respond.” Federal law would then allow the FFL to transfer the firearm.

Scenario 6: After the transaction has been “Delayed,” and prior to the firearm being transferred, a firearm disqualification (as described in 18 U.S.C. 922(t)) is established. The transaction is placed into a “Denied” status and the FFL is notified of the status. The FFL is prohibited from transferring the firearm to the prospective transferee.

In any under-21 transaction, as soon as all possible disqualifications are ruled out, the transaction will be placed into “Proceed” status. If a transaction has been placed into “Proceed” status, or when Federal law otherwise allows the firearm to be transferred, the FFL is permitted to transfer the firearm to the prospective transferee if the person returns to the FFL to receive the firearm within 30 days from when the FFL first contacted NICS. *See* 27 CFR 478.102(c).

POCs are currently required to complete any research for possible prohibiting records outside of system responses from NCIC, III, and the NICS Indices. This proposed rule would amend the definition of “POC (Point of Contact)” in 28 CFR 25.2 to reflect that, similarly, POCs that receive and process under-21 transactions³⁵ will also be required to conduct the enhanced background checks for under-21 transactions now required under 34 U.S.C. 40901. To the extent POCs process under-21 transactions, those POCs have begun conducting the enhanced background checks. To account for BSCA’s requirement to conduct the enhanced background checks, if finalized, and in contrast to current practice under 28 CFR 25.6(h), NICS will not presume that a POC proceeded a “newly created” under-21 transaction if the applicable POC has not provided NICS with a “Delayed” or “Denied” determination message by “the end of the

³⁵ Again, persons under 21 are federally prohibited from receiving a handgun through an FFL, and the NICS Section currently processes only long gun transactions for all partial POCs.

operational day on which the transaction was initiated.” The FBI proposes that 28 CFR 25.6(h) be amended to reflect that change. As indicated previously, the FBI has shared any identified contacts, centralized or otherwise, with POCs so that POCs have the same contacts as the NICS Section. Both the NICS Section and POCs will utilize their own existing contact methods for contacting local law enforcement agencies during under-21 transactions.

D. Attestation Process for Enhanced Background Checks

The Department seeks public comments about a potential attestation process that is not a part of the current under-21 transaction process. The Department envisions that this attestation process would allow State agencies to voluntarily provide the FBI with an attestation that State law prohibits sharing juvenile mental health or juvenile justice records (or both). The attestation could be completed by a government official in the jurisdiction (State, District of Columbia, or Territory). For example, the head of the chief law enforcement agency for the jurisdiction, or that person’s designee, whether that be the jurisdiction’s Attorney General or the head of another agency, could submit this attestation. In addition to noting that State law prohibits the sharing of juvenile mental health or juvenile records (or both), such an attestation could include additional information regarding the law in the jurisdiction, including, for example, whether the State’s laws also prohibit local law enforcement agencies from sharing juvenile records.

This potential attestation process also could be applicable to State agencies that have informed NICS that they already send the requested juvenile mental health or juvenile justice records to NCIC, III, or the NICS Indices, as applicable. An option would be to make the attestation renewable at some defined interval (for example every 6 months or annually), unless rescinded due to a change in State law. If an attestation process were implemented, the submission of an attestation would be discretionary; States could choose, for example, to decline

to submit an attestation and to instruct their agencies to continue responding individually to NICS inquiries even if State law generally prohibits the sharing of relevant records. Also, reliance on an attestation would similarly be voluntary. Thus, even in States that have executed attestations, agencies could still reply to individual requests that they receive from the FBI or POCs. Finally, an agency would remain free to reply to individual requests in circumstances in which a State prohibition on disclosing the records has been lifted or when the agency has potentially responsive adult records for a subject. This potential attestation process may therefore afford the Department, the States, and local jurisdictions more flexibility in deciding how to process under-21 transactions.

Under this potential attestation process, the FBI and POCs would continue to submit the requests for juvenile records as described in the enhanced background check provisions of 34 U.S.C. 40901(1)(1). With respect to a request involving a State jurisdiction that has submitted an attestation that conveys that the State agency is prohibited by State law from sharing the pertinent records, if the agency does not individually respond by the end of the third business day, then the attestation would prevent enhanced delay from being applied due to that agency's non-response. The FBI in such circumstances would provide the status "No Known Prohibitors: At least one state or local agency has not responded or cannot respond." In addition, where the State has already verified by attestation that the requested juvenile records are already shared, as applicable, with NCIC, III, or the NICS Indices, the NICS Section would "Proceed" that transaction no later than the expiration of the third business day if no other potential prohibition exists needing further research, any other enhanced background check requests have responses or are covered by an attestation similarly indicating that the relevant records are already shared, and the State has not individually responded to that enhanced background check request.

For example, this potential attestation process could be used in the following scenario: NICS receives an under-21 transaction from an FFL in a State that is unable to share juvenile justice records or juvenile mental health records pursuant to existing State law. No other (potentially) prohibiting records are returned from NCIC, III, or the NICS Indices. NICS collects the subject's full residence address to complete the enhanced background checks. Using the full residence address, NICS immediately sends the enhanced background check requests as required by BSCA. These requests are sent to the State's established contacts for juvenile justice and mental health records, as well as to the relevant local law enforcement agency. The State has provided an attestation conveying that State law prohibits sharing both types of requested juvenile records. At the end of the third business day, all responses to which the attestation applies will be considered received and the transaction status will be updated to "No Known Prohibitors: At least one state or local agency has not responded or cannot respond," provided there are no further prohibiting or potentially prohibiting records returned during the enhanced background checks. Federal law would then allow the FFL to transfer the firearm. If, under the same facts but, before the end of the third business day, the State and local agencies provide individual responses that the attestation no longer applies (because, for example, State law has changed to allow sharing of the relevant records) but that the agencies have found no potentially disqualifying records to share with NICS, the transaction will be updated to "Proceed" status. Federal law would then allow the FFL to transfer the firearm.

If an attestation process is adopted, the FBI anticipates that the FBI would continue working with State entities to encourage discrete responses for each individual transaction where possible, even if a response notes that State law prohibits the agency from providing the juvenile records sought and would likewise prohibit the agency from providing similar records for other

transactions. However, the attestation process may benefit the Department, prospective transferees, and the agencies contacted during enhanced background checks of under-21 transactions, as it could reduce, if not end, problematic results that Congress likely did not intend during the enhanced background check process.

During the FBI's current implementation of enhanced background checks for under-21 transactions, it has found that agencies have grown frustrated with NICS's continued requests for juvenile records that cannot be shared. Consequently, some agencies have stopped responding at all to NICS, even if they had just been responding that they were prohibited from providing any records. The Department does not believe Congress intended to require State and local partners to carry out a potentially inconvenient process of repetitively providing responses to requests for juvenile records even in circumstances where the State and local partners know (and have already advised the FBI) that State law prohibits the sharing of the records. Currently, the Department is aware of 22 States and Territories that have laws that prohibit the sharing of both juvenile mental health and juvenile criminal history records,³⁶ 6 States that have laws prohibiting the sharing of juvenile mental health records,³⁷ and 8 States (and the District of Columbia) that have laws prohibiting the sharing of juvenile criminal history records.³⁸ Four States have

³⁶ Based on the FBI's experience in conducting background checks for under-21 transactions, States and Territories with laws that prohibit sharing of both juvenile mental health and juvenile criminal history records are Arkansas, Alaska, Arizona, Colorado, Georgia, Hawaii, Indiana, Iowa, Louisiana, Montana, Nebraska, New Hampshire, North Dakota, Northern Mariana Islands, Puerto Rico, Rhode Island, South Dakota, Tennessee, the U.S. Virgin Islands, West Virginia, Wisconsin, and Wyoming.

³⁷ Based on the FBI's experience in conducting background checks for under-21 transactions, the States with laws that currently prohibit sharing of juvenile mental health records are Connecticut, Florida, Idaho, Massachusetts, New Mexico, and Oklahoma.

³⁸ Based on the FBI's experience in conducting background checks for under-21 transactions, the States with laws that currently prohibit sharing of juvenile criminal history records are Mississippi, Missouri, New York, North Carolina, Oregon, Pennsylvania, South Carolina, and Virginia. The District of Columbia also prohibits such sharing.

changed their laws to allow for sharing juvenile criminal history records, and one State has changed its laws to allow for sharing juvenile mental health records since the passage of BSCA.³⁹

Accordingly, the Department seeks comments as to whether a potential attestation process could foster strong relationships with State and local agencies while benefiting the Department and subjects of under-21 transactions by more promptly resolving many under-21 transactions. The Department also seeks public comments as to any potential benefits or costs of an attestation process. What further information would the public find useful or necessary before the attestation process proceeds? If an attestation process is adopted, who do commenters believe should provide the attestation for the agencies? Are commenters aware of any State with laws that would allow local law enforcement agencies in that State to share juvenile justice or juvenile mental health records where State-level agencies would be limited or prohibited from sharing the same juvenile records? Are commenters aware of any local government passing a law or laws that limit or prohibit sharing juvenile records in circumstances where the laws of the State in which the local government is located do not similarly limit or prohibit such sharing? How frequently should attestations be renewed? Would attesting agencies prefer to craft their own attestations or use a template supplied by the FBI?

E. Severability

The CAA and BSCA address critical but distinct components of the NICS background-check process. The Department believes that its proposals to implement these statutes are well-supported in law, reflect sound policy, and, once finalized, should be upheld against any legal

³⁹ Through correspondence with State agencies, the FBI learned that Connecticut, Kentucky, Nevada, and Vermont have changed their State laws to allow for sharing juvenile criminal history records. Texas has changed its State law to allow for sharing juvenile mental health records.

challenge. However, if any portion of the proposed rule, once finalized, is declared invalid, the Department intends that the proposals contained herein, once finalized, be viewed as independent, necessary, and severable from each other to the maximum extent possible. Further, the Department intends that the provisions contained herein and in any resulting final rule be viewed as independent, necessary, and severable from the current NICS regulations under 28 CFR part 25. Accordingly, the Department proposes adding a severability provision in 28 CFR 25.1.

As further described above, the CAA enacted the NDNA and added consideration of relevant firearm prohibitions imposed by local and Tribal governments during NICS checks under 18 U.S.C. 922(t). Further, as relevant to this rule, BSCA mandated enhanced background checks during each under-21 transaction and allowed for an extended delay (potentially up through the tenth business day) of some under-21 transactions before an FFL may lawfully transfer the firearm(s) under Federal law. Each of those statutory mandates is independently significant to the functioning of the NICS background-check process and thus independently requires updates to the Department's NICS regulations. While certain features of the FBI's implementation efforts overlap between proposals, these amendments remain severable proposals necessary to accomplish each of the statutory mandates. For example, residential address collection is necessary both to effectuate denial notifications in satisfaction of the NDNA and, separately, to conduct the enhanced State and local outreach required in connection with under-21 transactions pursuant to BSCA. If a court were to invalidate one or more of the provisions of the final rule resulting from the FBI's proposals pertaining to (1) local and Tribal prohibitions, (2) under-21 transactions, or (3) denial notifications, the Department intends that

the remaining provisions of the final rule be severed from the invalidated provision(s) and that all remaining provisions stand.

To obviate any doubt as to the Department's intent, even if some provision(s), once finalized, were deemed invalid (which, again, the FBI does not believe is supported), the Department would still have proposed each of the other provisions in this rule. *Cf. American Fuel & Petrochemical Manufacturers v. E.P.A.*, 3 F.4th 373, 384 (D.C. Cir. 2021) (EPA expressly stating the severability of sections of its rule in issue eliminated the potential for substantial doubt of the agency's intent). Each proposed amendment in this rule stands on its own with no reliance on another proposed amendment. Each proposed amendment is necessary, for example, to notify the public, update relevant NICS regulations, or to implement the provisions of the CAA or BSCA.

F. Separate Rulemakings

BSCA also contained two provisions pertaining to FFLs for which the Department is conducting separate rulemakings, as discussed below.

In RIN 1110-AA34, the Department has published an interim final rule to address the new provision allowing FFLs to receive information from the FBI's NCIC system relating to stolen firearms (specifically, for the purpose of determining whether a firearm offered to the FFL has been reported stolen). *See* Bipartisan Safer Communities Act—Access to Records of Stolen Firearms in the National Crime Information Center, 89 FR 54344 (July 1, 2024). The amendments made by RIN 1110-AA34 do not impact NICS regulations; please consult RIN 1110-AA34 for further information about the regulatory amendments made therein. The Department requests that any public comments concerning FFLs receiving stolen gun information from NCIC be provided within and as directed by RIN 1110-AA34.

Additionally, in RIN 1110-AA35, the Department is planning to issue a proposed rule amending the NICS regulations in compliance with a congressional mandate to promulgate regulations that will help limit firearms trafficking by allowing FFLs to voluntarily conduct NICS background checks with respect to current or prospective employees of the FFL if the person does, or will, transfer or otherwise handle firearms or ammunition for the FFL and has provided written consent for the NICS check. The Department proposes to describe those FFL employee checks as “firearm handler background checks” (also referred to as “FHCs”).

The Department anticipates that RIN 1110-AA35 will be published as a proposed rule prior to finalizing the present rulemaking. Several regulations in 28 CFR part 25 contain provisions for which this notice of proposed rulemaking proposes amendments and which may also be the subject of proposed amendments in the forthcoming proposed rule in RIN 1110-AA35. The Department will coordinate the final rules resulting from these rulemakings to ensure clarity and consistency.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, Executive Order 13563, and Executive Order 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (“OMB”) has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866, as amended by Executive Order 14094, and accordingly, this proposed rule has been reviewed by OMB.

1. Need for Federal Regulatory Action

The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA, Pub. L. 117-103, and BSCA, Pub. L. 117-159.

2. Population

Although manufacturers and importers may also initiate NICS checks when transferring firearms to non-licensees, dealers and pawnbrokers initiate most of the background checks on non-licensees. As of December of 2021, there were an estimated 50,588 FFLs that the FBI served across 31 States and 5 Territories that will be impacted by this rule.⁴⁰ There are also an estimated 10 or fewer computer software vendors that may be affected by this proposed rule. As further set out below, the FBI estimates, based on FBI subject matter experts’ further internal analysis of 2021 annual transaction numbers,⁴¹ this proposed rule will impact approximately 2 million NICS transactions per calendar year.⁴²

3. Benefits

⁴⁰ See FBI, National Instant Criminal Background Check System Operational Report 2020–2021 7 (Apr. 2022), <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view> (“Operational Report”).

⁴¹ See Operational Report at 13.

⁴² This number is based upon the transactions about which full addresses are collected from FFLs for denial notifications (approximately 1.428 million transactions) and under-21 transactions (approximately 340,000 transactions), for a total of approximately 1.7 million transactions. That total would be increased by the number of transactions that are impacted by local or Tribal firearm prohibitions, but that number of transactions cannot be estimated at this time. As described below, some FFLs will also be impacted by needing to update additional delays of some under-21 transactions; however, those under-21 transactions have already been included due to the need to collect address information.

This proposed rule benefits the public, public safety, and interested populations in several ways. First, this proposed rule benefits the public and interested populations by further clarifying how NICS procedures and regulations comply with the relevant mandates imposed by the CAA and BSCA. As discussed above and below, public safety will benefit from this proposed rule in several ways. Rather than only a single State-level entity receiving a denial notification, State and local law enforcement in multiple jurisdictions will, under the proposed rule, each receive a timely notification containing (1) the name of a prohibited person who has been denied the receipt of a firearm during a NICS transaction, (2) information on where that prohibited person claims to reside, and (3) information about the FFL where that transaction took place. Authorities in the jurisdiction in which the attempted transaction occurred will be able to take more timely action(s) when prohibited persons attempt to obtain firearms through FFLs in their jurisdiction. If the attempt is made outside of the prohibited person's jurisdiction of residence, the State and local law enforcement in the jurisdiction of residence will also have timely awareness and be able to take any actions necessary. This information will allow for potential retrievals of firearms, apprehensions of prohibited persons, interviews of witnesses, and collection of other potentially relevant evidence.

There are also public safety benefits in applying the NDNA to delayed transactions. When a NICS transaction is denied after the third business day, such circumstances are known as "delayed denials." Delayed denials impact public safety because those transactions may have resulted in an FFL transferring at least one firearm to a prohibited person before the transaction could be denied. When a delayed denial occurs, the FFL is contacted to determine whether the transfer of one or more firearms occurred. If a transfer did occur, ATF is notified by the NICS Section of the need to retrieve any firearms. Providing address information up front in delayed

transactions will benefit public safety because prohibited persons' residential addresses will be readily available to immediately provide to applicable local law enforcement authorities, who can then take any applicable action. Critical time will not be lost waiting for another contact with the FFL to collect the address at that point in time (or perhaps await confirmation as to whether the firearm was in fact transferred). If, for example, the FFL happens to be closed and NICS cannot connect with the FFL in a timely manner (to update the denial or collect the full address), particularly after the third business day, at which time the firearm may have already transferred, the resulting delays jeopardize public safety by potentially increasing the time that a prohibited person has a firearm.

This proposed rule also would benefit interested populations by minimizing impacts to prospective transferees and FFLs by requiring further residential address information only if the prospective transferee has been denied by NICS, has had a prospective firearm transfer delayed, may be subject to an applicable local or Tribal firearm prohibition, or is under 21 years of age. The Department does not propose that all prospective firearm transferees have their full residential address information submitted to NICS simply because that information is now required for some NICS transactions. Limiting the scope of the proposed rule in this way benefits prospective transferees because most will not need to have further address information provided to NICS. Similarly, limiting the scope of the rule in this fashion benefits FFLs as well by not requiring FFLs to spend time providing NICS with unnecessary additional address information in every transaction they submit. Further, by requiring the information be provided upon the initial contact (where an instantaneous review of available information about the person reveals that the transaction must be delayed or denied, the person is under 21, or to determine if

the person is potentially subject to an applicable local or Tribal firearm prohibition), this rule reduces the need to contact the FFL at a later time to obtain this information.

4. Costs

This proposed rule will affect NICS transactions that: (1) may be impacted by local or Tribal prohibitions; (2) have been delayed or denied; or (3) involve persons under 21 years of age wishing to receive or be transferred a firearm from an FFL. Because the scope of applicable local or Tribal prohibitions is still being researched, it is unknown how many such prohibitions exist, but the FBI does not anticipate many will be identified. Notably, FBI research currently reveals that 43 States have preempted local jurisdictions from imposing firearms prohibitions that exceed the firearms prohibitions imposed by State law.⁴³ States cannot preempt Tribal laws, however, so the FBI is continuing its research for applicable Tribal firearm prohibitions. There are 574 federally recognized Tribes, *see* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 FR 54654, 54654 (Aug. 11, 2023), exercising jurisdiction in Indian country, 18 U.S.C. 1151. More than 300 of these Tribes are currently located within the States of Alaska, California, and Oklahoma.⁴⁴ An initial review of publicly available resources revealed that a number of these federally recognized Tribes may have enacted laws regulating the possession or use of firearms within their respective

⁴³ *See* Nat'l League of Cities, *City Rights in an Era of Preemption: A State-by-State Analysis* 23 (2018), <https://www.nlc.org/resource/city-rights-in-an-era-of-preemption-a-state-by-state-analysis/>; *see also* Giffords Law Ctr., *Preemption of Local Laws*, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws/> (last visited Oct 4, 2024) (reporting that there are five States with “no state laws expressly preempting local authority to regulate firearms or ammunition” and two additional States that “allow local governments to retain substantial authority to regulate firearms and ammunition,” but where “the state legislature has expressly removed this authority in certain areas”).

⁴⁴ *See, e.g.*, U.S. Dep't of the Interior, Indian Affairs, *Tribal Leaders Directory*, <https://www.bia.gov/service/tribal-leaders-directory> (last visited Oct. 4, 2024); Nat'l Cong. of Am. Indians, *Tribal Nations & the United States: An Introduction* (Feb. 2020), <https://www.ncai.org/about-tribes/demographics>.

jurisdictions.⁴⁵ Review of Tribal codes is ongoing to determine to what extent the use of Tribal firearm possession prohibitions will arise during NICS background checks and will, therefore, impact FFLs, prospective transferees, or Tribes. More specifically, to reasonably assess any applicable impact such prohibitions may have, the FBI will review active Tribal codes for firearm prohibitions that differ from existing Federal (or applicable State) prohibitions. The Department welcomes comments from the public that, for example, may assist the FBI in effectively and accurately identifying the federally recognized Tribes that have imposed their own firearm prohibitions. Many Tribes already contribute relevant orders to FBI CJIS systems to help determine possible Federal firearm prohibitions in individual cases, and the FBI encourages Tribes to continue to do so. Given the number of Tribes and the diverse nature of Tribal firearms laws, the FBI is unable, at this time, to reasonably estimate the impact the additional Tribal firearm possession prohibitions will have during NICS background checks. The FBI will be conducting outreach with representatives of federally recognized Tribes and seeking comment from the public generally as the FBI moves to incorporate additional Tribal firearm prohibitions into the analysis of prospective firearm transfers. Consequently, the fiscal impact analysis of this proposed rule will focus upon the other impacts that denial notifications and research associated with enhanced outreach during under-21 transactions may have upon firearm transfers submitted by FFLs.

As described above, under the NDNA, the FBI is required to send denial notifications to the local law enforcement authority of the State or Tribe in whose jurisdiction a firearm was sought and, if different, where the denied person resides when the FBI denies a NICS transaction

⁴⁵ See, e.g., Nat'l Indian Law Library, *Tribal Law Gateway: Find Tribal Law Material by Tribe*, <https://narf.org/nill/triballaw/index.html> (last visited Oct. 4, 2024).

that would violate 18 U.S.C. 922(g) or (n) or State, local, or Tribal law. The FBI needs to collect more specific residency information during a subset of NICS transactions to comply with the NDNA.

For under-21 transactions, as set out above, an enhanced NICS background check entails contacting State and local entities to determine if the prospective transferee has a possibly disqualifying juvenile record as described in 18 U.S.C. 922(d). Some enhanced outreach during under-21 transactions may show that cause exists to further investigate a possibly disqualifying juvenile record under 18 U.S.C. 922(d). If such cause exists, the under-21 transaction will be placed into an additional delay period not to exceed the tenth business day from when the licensee contacted NICS.

For all of these described transactions, FFLs must, using information the prospective transferee places on the revised Form 4473, provide to the FBI the prospective transferee's complete residential address so that NICS can determine whether a local or Tribal prohibition should be considered and for investigation and reporting when a NICS transaction has otherwise been delayed or denied. Further, where cause exists for additional delay of an under-21 transaction, and the FFL has been so notified before expiration of the third business day, the FFL will be prohibited from transferring the firearm until after the tenth business day, unless the FFL first receives a "Proceed" response. In such instances, conveying the additional delay period to an FFL will likely require an additional contact—telephonically or electronically—beyond what was previously necessary, as well as an obligation by an FFL to record the additional delay on the revised Form 4473.

i. Costs: Updated Prohibitions

In order to determine whether a local or Tribal prohibition would be applicable to a prospective transfer, the Department proposes requiring FFLs to provide the residential addresses (and city limits information) of a prospective firearm transferee for certain transactions. Address information would be based upon the State of residence of the prospective transferee, State of purchase, and initial results from the three primary databases NICS searches during each transaction. As noted previously, State law preempts many local firearm prohibitions, and initial research has not revealed a substantial number of existing local firearm prohibitions.

As noted above, review of Tribal codes is ongoing to determine to what extent the use of Tribal firearm possession prohibitions will arise during NICS background checks and will, therefore, impact prospective transferees or Tribes. The FBI is, however, unable at this time to reasonably estimate the costs, if any, that the added consideration of Tribal firearm possession prohibitions will have during NICS background checks.

Ultimately, the FBI does not anticipate that a large number of NICS transactions will involve local or Tribal prohibitions that would preclude transfers permitted by applicable Federal or State law. Further, the FBI believes that most instances would fall under the broader delayed or denied circumstances noted below and would impose nominal to no financial impact upon FFLs. The Department requests public comments regarding potential costs that may impact Tribes, prospective transferees, and FFLs.

ii. Costs: Under-21 Transactions

Federal law authorizes FFLs to transfer only long guns to individuals under the age of 21. *See* 18 U.S.C. 922(b). In 2021, internal FBI subject matter experts estimated there were approximately 6.5 million total transactions involving the prospective transfer of a long gun.⁴⁶

⁴⁶ FBI, *NICS Firearm Checks: Year by State/Type*,

Subject matter experts within the FBI also anticipate 5 percent, or lower, of annual long gun transactions constitute under-21 transactions. That percentage equates to approximately 325,000 under-21 transactions.⁴⁷ For the purposes of this analysis, the FBI estimates that it would take 30 seconds (0.0083 hours) per under-21 transaction to provide address information from the Form 4473 to NICS (telephonically or electronically). That process is therefore estimated to result in an additional 2,698 work hours from FFLs per year.⁴⁸

The FBI uses some possible wage rates from the Bureau of Labor Statistics (“BLS”) and uses the average wage rate as the wage rate for FFLs. The FBI uses a loaded wage rate to account for fringe benefits such as insurance. The “load rate” used for this proposed rule is 1.42.⁴⁹ Table 1.0 shows the estimated wage rates and loaded wage rates.

Table 1.0 Wage Categories used for the FFL Community⁵⁰

Job Category	Wage Rate	Loaded Wage Rate
11-2022 Sales Managers	\$68.46	\$97.22
41-2011 Cashiers	\$12.87	\$18.28

https://www.fbi.gov/file-repository/nics_firearm_checks_-_year_by_state_type.pdf/view (last visited Oct. 4, 2024).

⁴⁷ 325,000 transactions = 6.5 million NICS checks * 5 percent of transactions involving individuals under the age of 21.

⁴⁸ 2,698 aggregate hourly burden = 325,000 transactions * 30 seconds (.0083 hours) per transaction.

⁴⁹ BLS Series ID CMU201000000000D, CMU201000000000P (average of 2021 quarterly Private Industry Compensation = \$37.15) / BLS Series ID CMU202000000000D, CMU202000000000P (average of 2021 quarterly Private Industry Wages and Salaries = \$26.23) = load rate of 1.42 (rounded up). See BLS, *BLS Data Finder 1.1*, [https://beta.bls.gov/dataQuery/find?fq=survey:\[cm\]&s=popularity:D](https://beta.bls.gov/dataQuery/find?fq=survey:[cm]&s=popularity:D) (last Oct. 4, 2024). The “load rate” takes into account additional compensation for fringe benefits such as insurance.

⁵⁰ Chart sources for Wage Categories used for the FFL community from BLS:

BLS, *Occupational Employment and Wages, May 2021: 11-2022 Sales Managers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes112022.htm>.

BLS, *Occupational Employment and Wages, May 2021: 41-2011 Cashiers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes412011.htm>.

BLS, *Occupational Employment and Wages, May 2021: 41-2031 Retail Salespersons* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes412031.htm>.

41-2031 Retail Salespersons	\$15.35	\$21.80
Average	\$32.23	\$45.77

Using an average, loaded wage rate for staff of BLS job categories that the FBI anticipates may be involved in prospective firearm transfers for FFLs, which is \$46.00 per hour (rounded up), providing address information to NICS for under-21 transactions would result in an estimated annual cost to the FFL community of \$125,000.⁵¹ Even if the FBI's address collection time from an FFL is estimated at 1 minute (.0167 hours) per transaction, this would only be an anticipated yearly cost of approximately \$250,000.

For a subset of these under-21 transactions, there may be an additional delay notification. For the purposes of this analysis, the Department assumes 50 percent (162,500) of all under-21 transactions will have cause established and require that the FFL be notified of additional delay being applied to the transaction (which includes providing the FFL with the amended Brady transfer date⁵²). Estimating an average of 3 minutes (.05 hours) per additional delay notification, this may require an additional 8,125 work hours per year for all FFLs in total.⁵³ Multiplying 8,125 hours by the estimated BLS average loaded wage rate of \$46.00 (rounded up), this additional delay notification will impose an estimated yearly combined cost to FFLs of

⁵¹ 2,698 work hours * \$46 loaded hourly wage rate = \$124,108 (\$125,000, rounded up).

⁵² The amended Brady transfer date would be the day after the tenth business day.

⁵³ FBI internal subject matter experts have noted that almost all POCs have some form of State-implemented processes that, even before BSCA, already required FFLs in those States to collect and report the full residence addresses of some subjects. Further, FFLs in some POC States will not be impacted by enhanced delay for some subjects of under-21 transactions because those States have mandatory waiting periods that meet or exceed 10 business days. Additionally, many POC States currently have laws that, generally, do not allow even long guns to be transferred to persons who are under 21 years of age. *See, e.g.,* Giffords Law Ctr., *Minimum Age to Purchase & Possess*, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited Oct. 4, 2024).

approximately \$374,000. The aggregate estimated impact to all FFLs in total for under-21 transactions is therefore anticipated to be \$499,000 per year.⁵⁴

In conjunction with the impacts to FFLs, there are a limited number of vendors that will also incur cost to provide software programming updates to some FFLs' electronic systems used to communicate with NICS. These updates will be required for the FFL to receive the amended Brady transfer date during an under-21 transaction when cause for additional delay exists. This cost will only impact those FFLs who submit their background checks by E-Check and are eXtensible Markup Language ("XML") users.⁵⁵ There are approximately 10 total vendors serving all XML users. XML users predominantly are within the larger, corporate FFLs (some of which have in-house personnel that would perform these system updates), but the FBI estimates 95 FFLs that would be considered small entities also utilize XML to communicate with NICS and are served by these vendors. Using the same load rate (1.42) used in Table 1.0 above for calculating costs to FFLs, the FBI calculates below the average loaded wage rate for anticipated job categories of vendors providing XML software updates for the FFLs. The Department has identified BLS job categories within these 10 vendors that are anticipated to be involved with these software updates. Table 2.0 provides the wage rates and loaded wage rates for such vendor employees as well as their averages.

⁵⁴ \$499,000 = \$374,000 (50 percent additional delay of under-21 transactions total of 162,500) + \$125,000 (aggregate cost to provide under-21 address information at 30 seconds (.0083 hours) per transaction). The aggregate cost impact to the FFL community for under-21 transactions is approximately \$635,000 (\$374,000 + \$261,000) if estimating 1 minute (.0167 hours) average for FFLs to provide address information during each under-21 transaction.

⁵⁵ XML provides FFLs an additional, electronic secure server-to-server method (in addition to E-Check) of submitting a NICS background check to the FBI. Operational Report at 10.

Table 2.0 Wage Categories Used for the Software Updates⁵⁶

Job Category	Wage Rate	Loaded Wage Rate
15-1251 Computer Programmers	\$46.46	\$65.97
15-1252 Software Developers	\$58.17	\$82.60
Average	\$52.32	\$74.29

Assuming that it would take 100 hours to update their software, multiplied by an estimated average loaded wage rate (rounded up) of \$75.00, the FBI anticipates a one-time cost to each vendor of \$7,500 or less to make these updates. The FBI anticipates this would not be a significant financial impact to the vendors because the costs would likely be passed onto the particular FFLs that would require the updates or the costs would be covered by existing contracts or agreements between the vendors and FFLs.

iii. Costs: Notifications Required by the NDNA

In addition to requiring that FFLs provide address information for under-21 transactions and where needed to determine whether a local or Tribal prohibition may apply, the proposed rule will require FFLs to provide the residential addresses of prospective firearm transferees for all delayed and denied transactions to allow the FBI and POCs to implement the NDNA's requirement of sending denial notifications as described above. In 2021, internal FBI subject

⁵⁶ Chart sources for Wage Categories used for the FFL community from BLS:

BLS, *Occupational Employment and Wages, May 2021: 15-1251 Computer Programmers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes151251.htm>.

BLS, *Occupational Employment and Wages, May 2021: 15-1252 Software Developers* (Mar. 31, 2022), <https://www.bls.gov/oes/2021/may/oes151252.htm>.

matter experts estimated that 1,428,000⁵⁷ firearm background checks processed by the FBI⁵⁸ were either delayed or denied.⁵⁹ As above for under-21 transactions, if it takes 30 seconds (0.0083 hours) per transaction for the FFL to provide the NICS Section with the applicant's address as required, then providing this information will require an additional 11,853 (rounded up) working hours per year for the FFL community. The average loaded wage rate used for the FFL community (*see* Table 1.0) is estimated at \$46.00 per hour (rounded up). This address

⁵⁷ According to internal FBI subject matter experts' estimate of transactions the NICS Section performed in 2021, 1,388,000 were delayed and approximately 40,000 more were immediately denied without being placed into delay. An example of an immediate denial would be a transaction denied based upon a biographic match to a NICS Indices entry. The NICS Section reported performing a total of 11,106,931 NICS background checks in 2021. *See* Operational Report at 13.

⁵⁸ The NDNA will impact POCs but, due to a variety of factors, the Department anticipates the address collection necessary to implement the NDNA will have little to no economic impact (let alone a significant economic impact) on small entity FFLs in POC States. FBI internal subject matter experts estimate there are 10,300 FFLs in POC States that would be considered small entities. In addition to the Form 4473 needing to be completed by prospective firearm transferees, some POC States have laws that also require separate State paperwork to be completed and provided to the POC. Those State forms will often require FFLs in those States to collect and provide the POC with the subject's full residence address. *See, e.g.*, California Dep't of Just., Bureau of Firearms, Dealer's Record of Sale (DRoS) Worksheet (May 2023), https://des.doj.ca.gov/forms/DRoS_Worksheet_BOF-929.pdf. Also, as discussed in Section II.B of this preamble, before the NDNA was enacted, most POC States already had their own denial notification procedures in place, and those procedures would require the FFLs to produce the subject's residence information at some point. Some POCs may collect full residence address information through means other than the FFL, such as by completing a driver's license check on the subject. Some POC States have laws that require that permits to purchase be obtained before any firearms can be purchased in those States; as a result, some of those permit applicants may never be approved for a permit that would allow them to attempt a firearm transfer through FFLs in that State. These State processes mean there are a variety of ways in which FFLs in POC States are already required to collect and report residence address information of subjects or where State laws reduced the pool of (potentially) prohibited persons that could be subject to the NDNA because they are ineligible to attempt firearm purchases in those POC States.

⁵⁹ The NICS Section reported denying 153,565 transactions in 2021. *See* Operational Report at 18–19. FBI subject matter experts note that this total includes an estimated 3,000 denials of non-Brady NICS background checks, which would not be denied transactions where the NDNA mandates notification to local law enforcement authorities. These other checks include checks for the Disposition of Firearms and for the Nuclear Regulatory Commission, *see id.* at 25, as well as those conducted for ATF under their National Firearms Act and Gun Control Act responsibilities, *see, e.g., id.* at 21. Further, also not subject to this rule, the totals for explosives checks, *see id.* at 14, would be in addition to the totals provided in this footnote and footnote 57 above.

collection for delayed and denied transactions will impose an estimated yearly cost of \$545,238⁶⁰ to the FFL community.⁶¹

Between anticipated yearly under-21 transaction costs and other costs anticipated from yearly delay or denial address collections stemming from the NDNA, the FBI anticipates an aggregate economic impact of approximately \$1.04 to \$1.18 million for all FFLs in States in which the FBI processes NICS background checks and an estimated cost of \$75,000 for the vendor community, which is expected to be passed onto the FFLs.⁶² The total impact to the FFL community is estimated to be \$1.12 to \$1.26 million. This amount includes the requirement to produce to NICS further address information during under-21 transactions and for purposes of the NDNA; some FFLs receiving subsequent notification for (and recording on the revised Form 4473) the amended Brady transfer date during under-21 transactions as required by BSCA; and the estimated vendor costs that are anticipated to be passed on to the FFLs.⁶³

iv. Costs: Government

State, local, and Tribal agencies that enforce juvenile criminal justice and mental health laws, as well as any State repositories of such records, may receive requests for juvenile record information from NICS that they have not received in years past; however, those entities are under no obligation to respond, and some government entities are prohibited under State laws

⁶⁰ Even if the address collection time were estimated at 1 minute (.0167 hours) per transaction, this would be an anticipated yearly cost of \$1.1 million.

⁶¹ The FBI notes that there were 7,711,803 total, non-permit NICS checks conducted by all POCs in 2021. *See* Operational Report at 13.

⁶² Not taken into account is the fact that use of the 2021 total of delayed and denied transactions will include some persons who also fall into the under-21 transaction category, resulting in some duplication of FFL costs related to address collection needs described in this preamble.

⁶³ The total estimated cost incurred by FFLs for under-21 transactions is \$499,000 (\$635,000 if estimating 1 minute per address collection) + \$545,238 (FFL total costs incurred by the NDNA address collection) + \$75,000 (estimated vendor costs passed on to FFLs), for a total of between \$1.12 million and \$1.26 million.

from providing juvenile records to NICS. The Department seeks comments from State, local, and Tribal entities on costs of processing a contact for juvenile records for an under-21 transaction. In addition to the State, local, and Tribal agencies described in 34 U.S.C. 40901(l) receiving the FBI's requests for juvenile justice and mental health records, any records those agencies provide to the FBI may lead to the FBI requesting further records from additional State, local, or Tribal agencies (such as courts or prosecuting authorities). Again, Federal law does not require State, local, or Tribal agencies to respond to the FBI's requests for records (and, in some instances, State, local, or Tribal laws may prohibit those agencies from disseminating records concerning a juvenile's mental health or juvenile justice history).

Should the Department ultimately decide to use the enhanced under-21 outreach or denial notifications during other authorized uses of NICS, there would be some additional contacts of some State and local entities. That additional number of contacts cannot be currently estimated because there are unknown numbers of persons determined to be prohibited or under 21 years of age who may be checked through NICS. While some statistics are available concerning denials recommended through use of NICS, those numbers also cannot be reasonably estimated after enactment of BSCA.⁶⁴

B. Executive Order 13132 (Federalism)

This proposed rule may have direct effects on the States; however, such effects will not be substantial, nor will such impact concern the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of

⁶⁴ For example, 2021 saw ATF run about 138,500 NICS checks for explosives licensing, *see* 18 U.S.C. chapter 40, with 1656 being recommended for denial; there were 133 total backgrounds of security personnel under 42 U.S.C. 2201a in 2021; and there were 121,961 Disposition of Firearms checks through NICS, with 2150 denied. Operational Report at 14, 25. The FBI routinely publishes such statistics.

government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

This proposed rule amends the Department's regulations to incorporate changes made by statutory provisions enacted as part of the CAA and BSCA. The FBI is developing systematic solutions for collections, notifications, and contacts required by the CAA and BSCA. The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, generally requires that when an agency issues a proposed rule or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*. *See* 5 U.S.C. 603, 604. An initial regulatory flexibility analysis ("IRFA") is not required if the head of the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). While the statistics below support a conclusion that this proposed rule, if promulgated, would not result in a significant economic impact on a substantial number of small entities, the FBI has, in an abundance of caution, nonetheless prepared an IRFA.

In accordance with the RFA, the FBI prepared an IRFA that examines the impacts of the proposed rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of fewer than 50,000 people. The FBI performed an IRFA of the impacts on small businesses and other entities of this proposed rule. The FBI performed this IRFA using the known or estimated statistical and cost information discussed below.

Based on the information from this analysis, the FBI found:

- The FBI's internal subject matter experts estimate that in States in which the FBI processes NICS background checks, the FBI served 47,100 FFLs (rounded up) in 2021 that would have been considered small businesses under Small Business Administration sizing standards.⁶⁵
- The FBI estimates that this proposed rule would potentially affect most FFLs that use NICS to determine whether a potential firearm transfer may "Proceed," is "Denied," or is "Delayed."
- The highest anticipated cost will be for under-21 transactions, where personnel for a small entity FFL, within the third business day, would need to take time to locate the prospective transferee's Form 4473 and indicate that additional delay of that transaction has been established and that there is a new Brady transfer date (the day after the tenth business day). The Brady transfer date reflects when Federal law would allow that firearm to be transferred if the FFL is not first provided with a "Proceed" or "Denied"

⁶⁵ There are an estimated 3,500 FFLs in States where the FBI processes NICS background checks and that the FBI anticipates would not be considered small entities because they are larger, retail, or corporate stores that have chains of locations throughout the United States. As noted in footnotes 53 and 58 of this preamble, for a variety of reasons, internal FBI subject matter experts anticipate that, because of State processes required in many POC States before the NDNA or BSCA were effective, the processes this rule reflects or proposes to implement for denial notifications and under-21 transactions will not result in a significant economic impact to most of the 10,300 small entity FFLs in POC States. For those same reasons, however, the Department cannot reasonably estimate a more precise economic impact that those FFLs in POC States may experience due to denial notifications or under-21 transactions; again, however, it is anticipated that most FFLs in POC States will experience little to no economic impact due to this rule.

response from the FBI or a POC. The FBI anticipates these scenarios will average 3 minutes (.05 hours) of time for the FFL to complete this new process.

- FFLs would need to make \$2,200 or less in revenue in order to incur an impact of 1 percent or more. This estimate is based upon the following analysis: The FBI estimates a \$2.65 cost per small-entity FFL to provide address information for under-21 transactions ($\$125,000$ aggregate cost to FFL community / $47,100$ estimated small entity FFLs) + a \$7.82 cost per FFL for additional delay notifications ($\$373,000$ aggregate / $47,100$) + a \$11.58 cost per FFL for the NDNA address collection ($\$545,238 / 47,100$) = estimated \$22 (rounded down) per small entity FFL, per year to implement these new provisions.⁶⁶
- The FBI estimates that 10 or fewer software vendors that serve a limited portion (estimated to be 100 or fewer) of these 47,100 small entity FFLs may indirectly have a one-time significant impact as a result of the mandates from Congress reflected in this proposed rule, but that they may redistribute the overall costs in small fees to the FFLs they serve.
- There will be an impact on government entities, but that impact will not be significant, and those government entities are not obligated to take any particular actions based upon the notifications or requests that are submitted to them by the FBI.

⁶⁶ The total impact to each FFL using the larger estimates provided earlier is \$37.00 (rounded up) cost per small entity FFL ($\$5.54$ (for under-21 address collection of $\$261,000 / 47,100$ FFLs) + $\$23.36$ (for NDNA address collection at $\$1.1$ million / $47,100$) + $\$7.94$ (for additional delay notifications $\$374,000 / 47,100$)). This results in an FFL needing to earn \$3,700 or less in revenue to incur an impact of one percent or more. Again, not taken into account is the fact that the use of the 2021 total delayed and denied transactions will include some persons who also fall into the under-21 transaction category, resulting in some duplication of FFL costs related to address collection needs described in the preamble. Also not included here are FFLs located in POC States because there are variety of factors that may exclude many of those FFLs from the equations noted above. For example, not all FFLs in POC States will conduct under-21 transactions because several of those States, like Florida and Hawaii, have laws that do not (or with limited exceptions, do not) allow persons under 21 years of age to purchase firearms. See footnotes 53, 58, and 65.

Preliminary Initial Regulatory Flexibility Analysis:

The RFA establishes that agencies must try to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this goal, agencies must solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure that such proposals are given serious consideration.

Under the RFA, agencies are required to consider what, if any, impact a proposed rule would have on small entities. Although the FBI anticipates that this proposed rule will not have a significant economic impact upon a substantial number of small entities, the FBI has prepared an IRFA. Under 5 U.S.C. 603(b), the regulatory flexibility analysis must provide or address:

- (1) A description of the reasons why action by the agency is being considered;
- (2) A succinct statement of the objectives of, and legal basis for, the proposed rule;
- (3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- (4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, under 5 U.S.C. 603(c), the IRFA must also contain a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable

statutes and that minimize any significant economic impact of the proposed rule on small entities.

Following is an analysis of each of these factors:

A description of the reasons why action by the agency is being considered.

The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA and BSCA.

A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objective of this proposed rule is to comply with procedures mandated by Congress to prevent prohibited persons from obtaining firearms from FFLs. The Department is publishing this proposed rule to amend NICS regulations to implement various parts of the CAA and BSCA.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Based on the FBI's statistics reported from 2021,⁶⁷ there are an estimated 50,855 FFLs that may be impacted by this rule, the majority of which would be considered as small entities. The FBI's internal subject matter experts note that, indirectly, an estimated 10 or fewer computer software vendors may be affected by this proposed rule. The FBI's internal subject matter experts also estimate the majority of these FFLs and vendors would be considered small.

A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

As described previously, FFLs currently collect the information about prospective transferees necessary for NICS to implement the congressional mandates of the CAA and BSCA

⁶⁷ See Operational Report at 7.

as relevant to this proposed rule. This rule proposes that FFLs would now be required to provide this information to NICS for (1) under-21 transactions subject to an enhanced background check under BSCA; (2) individuals who may be subject to a firearm prohibition under applicable local or Tribal law; and (3) individuals whose background has led to their NICS transaction being delayed for further research of a possible disqualification or denied due to a disqualification as described in 18 U.S.C. 922(t). Each FFL will also, on an annual basis, likely have to record the additional delay of a limited number of under-21 transactions that the FFL processes (moving the allowed Brady transfer date from the day after the third business day to the day after the tenth business day) after the FBI has notified the FFL the transaction has been placed into additional delay. Where an FFL utilizes electronic recordkeeping, the FBI anticipates updates to those computer systems by software vendors necessary to capture the additional delay information.

An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

There are no duplicate or overlapping rules. While there may be similar rulemakings from ATF associated with BSCA, these rulemakings are coordinated with each other and do not overlap.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There are no significant alternatives to the proposed rule. This proposed rule puts in place the minimum changes to NICS regulations needed to accomplish the mandates of the CAA or BSCA and avoid any significant impact on small entities.

E. Congressional Review Act

This rule, when finalized, is not expected to be a major rule as defined for purposes of the legislation commonly known as the Congressional Review Act, Pub. L. 104-121, sec. 251, 110 Stat. 847, 868 (1996). *See* 5 U.S.C. 804(2).

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any 1 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, Pub. L. 104-4, 109 Stat. 48. *See* 2 U.S.C. 1532.

G. Paperwork Reduction Act

The Department believes any collections of information needed to implement the above requirements, such as further residential address information, are or will be generally covered under the collection of information through ATF Form 4473. All address information sought by these amendments, except for whether an individual resides within city or municipal limits, is currently collected by the FFL on the Form 4473. To further implement any “local” firearm prohibitions added by the CAA, the Department is proposing to require the FFL to inquire and collect whether the prospective transferee lives within city or municipal limits if that information is known by the transferee. A revised Form 4473 received approval by OMB on August 30, 2023, and was renewed for another 3-year period. Use of the new form by the industry becomes mandatory on February 1, 2024, and will continue through August 31, 2026.⁶⁸ The revisions add this question and make other modifications relevant to carrying out the new requirements

⁶⁸ ATF, *Updated ATF Form 4473 - Firearms Transaction Record (August 2023 Revisions)* (last reviewed Feb. 12, 2024), <https://www.atf.gov/firearms/updated-atf-form-4473-firearms-transaction-record-august-2023-revisions>.

imposed by the NDNA and BSCA. ATF has published the revised Form 4473.⁶⁹ The Department is amending relevant NICS regulations through this proposed rule to reflect that, for some transactions as noted herein, the FBI will require the FFL to provide all address information already collected on the revised Form 4473 to NICS regarding a prospective transferee.

H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The Department has determined that formal Tribal consultation under Executive Order 13175 is not required because this proposed rule is provided as part of a public collaboration that includes Tribes and is being issued to implement congressional mandates regarding Tribal law prohibitors, enhanced background checks for transferees under the age of 21 years, and NICS denial notifications. Further, implementation of these provisions is not discretionary, nor do there appear to be any policy decisions in this proposed rule that would affect federally recognized Tribes.

List of Subjects

Administrative practice and procedure, Arms and munitions, Computer technology, Crime, Firearms, Juvenile delinquency, Law Enforcement, Penalties, Privacy, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, 28 CFR part 25, subpart A, is proposed to be amended as follows:

PART 25, Subpart A—the National Instant Criminal Background Check System

⁶⁹ *See id.*

1. The authority citation for part 25 is revised to read as follows:

Authority: Public Law 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321; Public Law 117–103, 136 Stat. 49; Public Law 117–159, 136 Stat. 1313; 34 U.S.C. 40901; 18 U.S.C. 921; 18 U.S.C. 922; 18 U.S.C. 925B; 18 U.S.C. 925C.

§ 25.1 [Amended]

2. Amend § 25.1 to read as follows:

§ 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 information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of law as described in subsection (t) of 18 U.S.C. 922. The regulations in this subpart are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain 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. The regulations in this subpart are also issued pursuant to Public Law 117–103 (18 U.S.C. 925B, 925C), and Public Law 117–159 (34 U.S.C. 40901) to reflect the need to contact local law enforcement for purposes of providing denial notification reports in accordance with 18 U.S.C. 925B and reporting certain data in accordance with 18 U.S.C. 925C; and with respect to enhanced background checks of

prospective transferees who are under 21 years of age. The provisions of this subpart shall be construed as being severable from one another and any remaining upheld or unchallenged provisions shall be treated independently of any invalidated provision.

§ 25.2 [Amended]

3. In § 25.2:

(a) Revise the definitions of “Delayed,” “Denied,” “Denying agency,” “NICS,” “NICS Representative,” “Open,” “POC (Point of Contact),” and “Proceed;”

(b) Add new definitions of “Local Law Enforcement Authority,” “NICS Indices,” “NICS Section,” and “No Known Prohibitors: At least one state or local agency has not responded or cannot respond;” and

(c) Remove the definitions of “NICS Index” and “NICS Operations Center.”

The revisions and additions read as follows:

§ 25.2 Definitions.

* * * * *

Delayed means the response given to the FFL indicating that the transaction is in an “Open” status and that more research is required prior to a NICS “Proceed” or “Denied” response.

(1) Except as provided in paragraph (2) of this definition, a “Delayed” response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up “Proceed” response from the NICS or the expiration of three business days without notification of a “Denied” response, whichever occurs first.

(2) For a prospective transferee under 21 years of age, if the NICS has notified the FFL before three business days have elapsed from initial contact that additional delay is required to

determine whether the prospective transferee has a prohibiting record under 18 U.S.C. 922(d), a “Delayed” response to the FFL indicates it would be unlawful to transfer the firearm until receipt of a follow-up “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response from the NICS or the expiration of 10 business days from initial contact without notification of a “Denied” response, whichever occurs first.

Denied means denial of a firearm transfer based on a NICS response, or through the enhanced background check of a person under 21 years of age as provided in 34 U.S.C. 40901, indicating one or more matching records were found providing information demonstrating that a prospective transferee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

Denying agency means a POC or the NICS Section, whichever determines that the subject is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t).

* * * * *

Local Law Enforcement Authority means a bureau, office, department, or other authority of a state or local government or tribe that has jurisdiction to investigate a violation or potential violation of, or enforce, a state, tribal, or local law.

* * * * *

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether a person who is not licensed under 18 U.S.C. 923 can lawfully receive, or be transferred, a firearm as described in 18 U.S.C. 922(t).

* * * * *

NICS Indices means the database, to be managed by the FBI, containing information provided by Federal, state, tribal and local agencies about persons prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The NICS Indices is separate and apart from the NCIC and the Interstate Identification Index (III). For purposes of this subpart, the term NICS Index shall be understood to refer to the NICS Indices.

* * * * *

NICS Representative means a person who receives telephone or electronic inquiries to the NICS Section from FFLs requesting background checks and provides a response of “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied.”

NICS Section means the section 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 prohibited as described in 18 U.S.C. 922(t), researches criminal history records, tracks and finalizes appeals, and conducts audits of system use. For purposes of this subpart, the term NICS Operations Center shall be understood to refer to the NICS Section.

No Known Prohibitors: At least one state or local agency has not responded or cannot respond means, for a prospective transferee under 21 years of age, a NICS response indicating that the information available to the system at the time of the response did not demonstrate that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and: (1) all agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) have responded and at least one of those responses is that state law prohibits juvenile justice records, juvenile mental health records, or both from being

shared; or (2) at the end of the tenth business day if at least one of the state or local agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(1) has not responded to the request for records. A “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response to the FFL indicates that Federal law does not prohibit the licensee from transferring the firearm.

* * * * *

Open means those non-canceled transactions related to the prospective transfer of a firearm where the FFL has not been notified of a final determination. In cases of “Open” responses, the NICS continues researching potentially prohibiting records regarding the prospective transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a “Proceed” or a “Denied” response.

(1) Except as provided in paragraph (2) of this definition, an “Open” response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

(2) For an individual under 21 years of age, if the NICS has notified the FFL within three business days that additional research is required, an “Open” response does not prohibit an FFL from transferring a firearm after 10 business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

(3) An “Open” response, whether under paragraph (1) or (2) of this definition, does not relieve an FFL from compliance with other provisions of Federal, state, local, or tribal law that may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d), an FFL may not lawfully transfer a firearm if the FFL knows or has reasonable cause to believe that the

prospective transferee is prohibited by law from receiving or possessing a firearm for certain reasons.

* * * * *

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the Federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs, check available state, local, or tribal record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that the prospective transferee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t), and respond to FFLs with the results of a NICS background check. For an individual under 21 years of age, the POC will contact state and local agencies, in accordance with 34 U.S.C. 40901(l) and as further described in § 25.6, to determine if the individual has a possibly disqualifying juvenile record under 18 U.S.C. 922(d). When a POC processes a NICS transaction and notifies the FFL of a denial determination, the POC shall report that denial notification to local law enforcement authorities in accordance with 18 U.S.C. 925B. A POC shall also provide applicable statistics necessary for the FBI to comply with the requirements of 18 U.S.C. 925C. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

Proceed means a NICS response indicating that all relevant systems have been checked, all requests for records have received responses, and the information available to the system at the time of the response did not demonstrate that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). A “Proceed” response does not relieve an FFL from compliance with other provisions of Federal, state, local, or tribal law that may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d),

an FFL may not lawfully transfer a firearm if the FFL knows or has reasonable cause to believe that the prospective transferee is prohibited by law from receiving or possessing a firearm for certain reasons.

* * * * *

§ 25.6 [Amended]

3. In § 25.6:

- (a) Revise paragraphs (c)(1)(iii), (c)(1)(iv)(A) through (c)(1)(iv)(C), (f)(1), (g)(1), (g)(2), (h) and (i); and
- (b) Add paragraphs (c)(1)(iv)(D), (g)(3)(i), and (g)(3)(ii).

The revisions and additions read as follows:

§ 25.6 Accessing records in the system.

* * * * *

(c) * * *

(iii) Search the relevant databases (i.e., NICS Indices, NCIC, III) for any matching records and, for a prospective transferee under 21 years of age, perform the contacts required by 34 U.S.C. 40901(l), specifically: the criminal history repository or juvenile justice information system, as appropriate, of the state in which the person resides; the appropriate state custodian of mental health adjudication records in the state in which the person resides; and a local law enforcement agency of the jurisdiction in which the person resides. These contacts are made for the purpose of determining whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d). If a state has identified to the NICS Section that it does not have a criminal history repository, juvenile justice information system, or state custodian of

mental health adjudication records, a contact to an alternative agency (if one is identified by the state) shall be made; and

(iv) * * *

(A) “Proceed” response, if no disqualifying information was found:

(1) As a result of searching the NICS Indices, NCIC, or III; and

(2) During the enhanced background check required by 34 U.S.C. 40901 for transactions involving a person under 21 years of age.

(B) (1) “Delayed” response, except as provided in paragraph (c)(1)(iv)(B)(2) of this section, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). A “Delayed” response to the FFL indicates that the firearm transfer should not proceed until the receipt of a follow-up “Proceed” 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 transferee at 9:00 a.m. on Friday and shortly thereafter receives a “Delayed” response from the NICS. If 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.)

(2) In the case of a prospective transferee under 21 years of age at the time of the NICS check, if NICS notifies the FFL that additional delay is needed to further investigate whether the prospective transferee has a disqualifying juvenile record under 18 U.S.C. 922(d), the firearm transfer shall not proceed until receipt of a follow-up “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response from the NICS, or

the expiration of 10 business days (exclusive of the day on which the query is made) without a “Denied” response, whichever occurs first.

(C) “Denied” response, when at least one matching record is found as a result of searching the NICS Indices, NCIC, III, or through the enhanced background checks described in 34 U.S.C. 40901 for persons under 21 years of age, that provides information demonstrating that the prospective transferee would be prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The “Denied” response will be provided to the requesting FFL by the NICS Section during its regular business hours.

(D) “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response, when available information does not demonstrate the subject would be (potentially) prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t) and: (1) all agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) have responded and at least one of those responses is that state law prohibits juvenile justice records, juvenile mental health records, or both from being shared; or (2) at the end of the tenth business day if at least one of the state or local agencies contacted during the enhanced background checks required by 34 U.S.C. 40901(l) has not responded to the request for records. A “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” response to the FFL indicates that Federal law does not prohibit the licensee from transferring the firearm.

* * * * *

(f) * * *

(1) “No record” response, if the NICS determines, through a complete search, that no matching record exists. A “no record” response does not relieve a POC from its obligation under

§ 25.6 to perform an enhanced background check described in 34 U.S.C. 40901 for persons under 21 years of age.

* * * * *

(g) * * *

(1) Confirm any matching records;

(2) Notify the FFL with a response of “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied.” “Proceed,” “Delayed,” and “No Known Prohibitors: At least one state or local agency has not responded or cannot respond” notifications 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; and

(3)(i) Report denial notifications to local law enforcement authorities in accordance with 18 U.S.C. 925B (NICS Denial Notification Act) when a POC provides denial determination to FFLs; and (ii) provide the NICS Section with applicable statistics necessary for the FBI to comply with the requirements of 18 U.S.C. 925C.

(h) *POC Determination Messages.* POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: “Delayed” 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 “Delayed” or “Open” and later changed to “Proceed” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond;” and “Denied” transactions that have been overturned. The FBI shall provide POCs with an electronic capability to transmit this information. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL.

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 and NICS transactions of persons under 21 years of age, newly created POC NICS transactions that are not followed by a determination message (“Denied” or “Delayed”) 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. The information provided in the POC determination messages will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations in accordance with the procedures detailed in § 25.9(b).

(i) *Response recording.* FFLs are required to record the system response, whether provided by the FBI NICS Section or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 478 recordkeeping requirements. The FBI NICS Section response will always include an NTN and associated “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” “Delayed,” or “Denied” determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number or determination.

§ 25.7 [Amended]

4. Revise § 25.7(a) to read as follows:

§ 25.7 Querying records in the system.

(a)(1) The following search descriptors will be required in all queries of the system for purposes of a background check:

(i) Name;

- (ii) Sex;
- (iii) Race;
- (iv) Complete date of birth;
- (v) State of residence;

(2) For a transaction that involves a subject under 21 years of age, or where initial background check results of the subject reveal the transaction will be delayed or denied, or may be subject to a local or tribal prohibition preventing the transfer or receipt of a firearm, the following information will also be required prior to the FFL being provided with the NTN (or applicable STN) and initial status:

- (i) Residence address of the subject of the NICS check, to include the number and full street address, city, state, and ZIP Code;
- (ii) County, parish, or borough of residence; and
- (iii) Whether the individual resides within the city (to include town or other municipal boundary) limits.

* * * * *

§ 25.8 [Amended]

5. In § 25.8, revise paragraphs (f)(2) and (g)(2) to read as follows:

§ 25.8 System safeguards.

* * * * *

(f) * * *

* * * * *

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale, and the name, sex, race, date of birth, and state of residence of the prospective

buyer. For those transactions that are delayed or denied, may be subject to a local or tribal prohibition on the transfer or receipt of a firearm (based on initial background check results), or involve a prospective transferee under 21 years of age, the FFL must provide additional residence address information, to include the number and street address, city, state, and ZIP Code; county, borough, or parish of residence; and whether the residence is within the city (to include town or other municipal boundary) limits.

* * * * *

(g) * * *

* * * * *

(2) The NICS Representative will provide only 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 transferee. In cases in which potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a “Delayed” response to the FFL. Follow-up “Proceed,” “No Known Prohibitors: At least one state or local agency has not responded or cannot respond,” or “Denied” responses will be provided by the NICS Section during its regular business hours.

§ 25.9 [Amended]

6. In § 25.9, revise paragraphs (a), (b)(1)(iii), (b)(2)(i), and (b)(3), to read as follows:

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Indices records indicating that the individuals to whom the records pertain would be prohibited from receiving or being transferred firearms as described in 18 U.S.C. 922(t). The NICS will retain such records indefinitely unless they are canceled by the originating agency. In cases where a firearms disability is not permanent (e.g., a

disqualifying restraining order), the NICS will automatically purge the pertinent record when it is no longer disqualifying. 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) * * *

(1) * * *

* * * * *

(ii) NICS Audit Log records relating to transactions in an “Open status, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry; and

(iii) In cases of NICS Audit Log records relating to allowed transactions, all identifying information submitted by or on behalf of the transferee will be destroyed within 24 hours after the FFL receives a determination of “Proceed,” or “No Known Prohibitors: At least one state or local agency has not responded or cannot respond.” All other information, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry.

(2) * * *

(i) In addition to denial information required by law to be shared with relevant local law enforcement authorities, information in the NICS Audit Log, including information not yet destroyed under § 25.9(b)(1)(iii), that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation, may be shared with appropriate authorities responsible for investigating, prosecuting, or enforcing such law or regulation; and

* * * * *

(3) *Limitation on use.* 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, except with respect to persons prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

* * * * *

§ 25.10 [Amended]

7. In § 25.10, revise paragraph (g) to read as follows:

§ 25.10 Correction of erroneous system information.

* * * * *

(g) An individual may provide written consent to the FBI to maintain information about that individual in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing the future erroneous denial or extended delay by the NICS of a firearm transfer. Such file shall be used only by the NICS for this purpose. In accordance with 34 U.S.C. 40901 and applicable regulations of this part, for persons under 21 years of age, entry into the Voluntary Appeal File may not prevent that transaction from being subject to additional delay as described in paragraph (2) of the “Delayed” definition provided in § 25.2 of this part. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by that individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system. If the FBI finds a disqualifying record on the individual after the

individual's entry into the Voluntary Appeal File, the FBI may remove the individual's information from the file.

* * * * *

§ 25.11 [Amended]

8. In § 25.11, revise paragraph (b)(1) to read as follows:

§ 25.11 Prohibited activities and penalties.

* * * * *


(b) * * *

(1) State or local agencies', FFLs', or individuals' purposefully furnishing incorrect information to the system to obtain a "Proceed" or "No Known Prohibitors: At least one state or local agency has not responded or cannot respond" response, thereby allowing a firearm transfer;

* * * * *

November 29, 2024

Date



Merrick B. Garland
Attorney General