

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

28 CFR Part 25

[FBI 108P; AG Order No. 2466–2001]

RIN 1110-AA07

National Instant Criminal Background Check System

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department promulgated regulations to govern the National Instant Criminal Background Check System (NICS) in 1998 when the NICS became operational. Earlier this year, the Department published amendments to those regulations, which will take effect on July 3, 2001. In this notice, the Department is publishing, for public comment and further consideration, five proposals to make additional changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from purchasing firearms.

DATES: Written comments must be submitted on or before September 4, 2001.

ADDRESSES: All comments concerning this proposed rule should be sent to: Mr. Timothy Munson, Section Chief, Federal Bureau of Investigation, Module A-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147.

FOR FURTHER INFORMATION CONTACT: Fanny Haslebacher, Attorney-Advisor, Federal Bureau of Investigation, Module A-3, 1000 Custer Hollow Road, Clarksburg, WV 26306-0147, (304) 625-2000.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2001, the Department published a Final Rule to make two changes to 28 CFR 25.9(b):

- To reduce from six months to 90 days the maximum retention period for information relating to allowed firearm transfers in the system's chronological log of background check transactions ("NICS Audit Log"); and

- To permit the FBI to extract and provide information from the NICS Audit Log to the Bureau of Alcohol, Tobacco and Firearms ("ATF") for use in ATF's inspections of Federal Firearms Licensee ("FFL") records.

These revisions originally were scheduled to take effect on March 5, 2001. 66 FR 6470. On March 1, 2001, the Department postponed the effective date of the NICS rule from March 5 to May 4, 2001. 66 FR 12854 (March 1, 2001). On May 4, 2001, the Department further postponed the effective date for another 60 days to July 3, 2001. 66 FR 22898.

These postponements were prompted by the Department's need to conduct a review of the rule and record in light of the Department's original commitment that it would "work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS." 63 FR 58304 (1998). The Department made findings of good cause for forgoing notice and comment and for making these postponements effective immediately, in satisfaction of the legal requirements for rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), (d)(3), and on the assumption that section 553 might otherwise have been applicable. See 66 FR at 22898, 12855.

Based on the review occasioned by the 120-day postponement, the Department is taking two related steps at this time. First, the January 22, 2001, Final Rule will take effect on July 3, 2001, without further delay. Second, the Department is publishing this new Notice of Proposed Rulemaking ("NPRM") to propose further changes in the NICS regulations, as discussed in Part II below.

The January 22, 2001, Final Rule amended 28 CFR 25.9(b)(1) to provide that, in the case of allowed transfers, all information in the NICS relating to the transfer—except for the date of the request and the NICS Transaction Number ("NTN") assigned to that request—will be destroyed within 90 days. The FBI will implement this

regulatory requirement as soon as it takes effect on July 3, 2001.

Section 25.9(b)(2) authorizes only the FBI to access directly information in the NICS Audit Log pertaining to allowed transfers, and permits such access only for the purpose of conducting audits of the use and performance of the NICS. The January 22, 2001, Final Rule, however, permits the FBI to extract information from the NICS Audit Log and provide it to ATF in connection with ATF's inspections of FFL records:

Permissible uses include extracting and providing information from the NICS Audit Log to ATF in connection with ATF's inspections of FFL records, provided that ATF destroys the information about allowed transfers within the retention period for such information set forth in paragraph (b)(1) of this section and maintains a written record certifying the destruction.

This grant of permissive authority will also take effect on July 3, 2001. It does not, however, mandate any particular action. Rather, the provision states that "extracting and providing" information to ATF is among the "(p)ermissible uses" of the information in the NICS Audit Log.

Because the Department today proposes new changes to the maintenance and use of the NICS Audit Log, the FBI will not exercise this discretionary authority to "extract and provide" NICS Audit Log information to ATF except as specifically authorized by the Attorney General. Such restraint will maintain the status quo while the public provides comments on today's proposals and the Department considers those comments. This approach in no way alters or limits the FBI's legal authority under the NICS regulations as amended; it is instead a prudent and permissible exercise of discretion, during the pendency of this rulemaking, to preserve the current practices relating to the use of information in the NICS Audit Log.

II. New NPRM on the National Instant Criminal Background Check System

In this new rulemaking, the Department is publishing, for public comment and further consideration, several proposed changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from

purchasing firearms. The Department welcomes comments from all interested persons regarding both the legal and practical effects of these proposals.

1. Proposal #1: Prompt Destruction of Records of Allowed Transactions (§ 25.9(b)(1), (2) and (3))

The first proposal would amend § 25.9(b)(1) to provide for a general rule requiring prompt destruction of information in the NICS Audit Log pertaining to allowed transfers, coupled with specific authority to retain information in two respects in order to ensure the security and integrity of the system. This proposal also revises and reorganizes the existing provisions of § 25.9(b) for greater clarity.

The basis for this change lies in three provisions of the Brady Act. Section 103(h) requires the Attorney General to "prescribe regulations to ensure the privacy and security of the information of the system." Section 103(i) prohibits the establishment of a registration system with respect to firearms, and section 102(b) requires the FBI to "destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer," when the receipt of a firearm would not violate state or federal law.

This proposal would require the destruction of all information in the Audit Log relating to the lawful purchaser or the transfer (other than the NTN, and date of inquiry) on all allowed transactions prior to the start of the next business day following the date on which the "proceed" message was received by the initiator of the NICS check. Under this proposal, the FBI would retain only that information on allowed transfers specified in 18 U.S.C. 922(t)(2)(C)—namely, the NTN and the date the NTN was assigned. In addition, as discussed more fully below, this proposal would authorize the FBI to retain the ORI (Originating Agency Identifier), as defined in 28 CFR 25.2, and/or the FFL identifier issued by the Bureau of Alcohol, Tobacco and Firearms, when requested to do so, in writing, by ATF for inspection purposes.

This proposal makes no change in the existing provisions of the NICS rules pertaining to the retention of records of transactions where the transfer was *denied* because the putative purchaser is prohibited by state or federal law from purchasing a firearm.

This proposal balances the privacy interests of law-abiding citizens and the law enforcement interests of the Department in ensuring that the Brady

Act and Gun Control Act are enforced to prevent prohibited persons from purchasing firearms. The FBI and ATF need to enforce the law to prevent misuse of the NICS system by FFLs and POCs (as defined in 28 CFR 25.2). There is no change in the provision authorizing the FBI to retain and use information pertaining to allowed transfers as long as needed to pursue cases of identified misuse of the system. By retaining only that information specified by statute, this proposal reduces the impact on the privacy rights of individual purchasers while still meeting the law enforcement requirements of the Department and ensuring the security of the NICS system as a whole.

By keeping all records until the start of the next business day, the NICS Operations Center would be able to compile statistics on the operation of the system, such as the number of calls per state per day, the percentage of checks run on long guns versus handguns, and other statistical information that does not include personally identifiable information on lawful purchasers. The NICS operates every day of the year except Thanksgiving and Christmas Day. By destroying personally identifiable information on allowed transfers before the start of the next business day, the NICS Operations Center would have the hours between the close of one business day and the start of the next business day to run internal audits, amass statistical data, accomplish destruction of the necessary records, and carry out other system maintenance with minimal disturbance to the system. The Department welcomes comments as to whether this proposal will accommodate the needs of the NICS Operations Center regarding statistical compilations and internal operating procedures.

In addition, the Department seeks comments as to the ability of the NICS system to ensure the privacy and security of the information of the system in the absence of retaining all records of allowed transactions, specifically, the costs and increased efficiency available by conducting the quality control and system performance evaluations using control data and real time performance reviews.

2. Proposal #2: Individual FFL Audit Logs (§ 25.9(b)(4))

Under 18 U.S.C. 922(t), FFLs are required, prior to transferring a firearm to an unlicensed individual, to examine a valid identification document of the potential purchaser, contact the NICS system, receive and record from the

NICS a unique NTN, and either receive an indication that the transaction may proceed or wait until three business days have passed without receiving a determination from the NICS system that the transfer is denied. In addition, 18 U.S.C. 923(g)(1) outlines the FFL record keeping requirements and the authority for ATF to review records of the FFL. Specifically, subsection 923(g)(1)(B)(ii)(I) provides for ATF inspection or examination, not more than once in any 12-month period, of the inventory and records of a licensed dealer to ensure compliance with the record keeping requirements of the Gun Control Act and the Brady Act.

In order to ensure that ATF and the FBI have sufficient information to enforce the requirements of federal firearms laws, this proposal would allow the FBI to extract information from the NICS system to create, upon prior written request from ATF in connection with its inspections of FFL records, Individual FFL Audit Logs that contain not more than 30 days worth of allowed transactions from an identified FFL. Such Individual FFL Audit Logs would contain, with respect to allowed transfers, the NTN and the date of inquiry. All information on denied transactions or unresolved transactions will also be included in the Individual FFL Audit Log.

The proposal seeks to meet the law enforcement needs of ATF and the FBI by providing to ATF, prior to an inspection of an identified FFL, information necessary to ensure that the licensee is complying with the Brady Act's requirements to conduct a NICS check prior to transferring a firearm to an unlicensed person. By receiving an Individual Audit Log before inspecting an FFL, ATF will also have the tools necessary to determine if an FFL has run a NICS check on an individual who is not a potential firearm purchaser, which would be a misuse of the NICS system and therefore a violation of the Brady Act.

Example: Before June 1, ATF notifies the NICS Operations Center that it intends to audit Joe's Gun Shop on or after July 1. On June 1, the NICS Operations Center begins compilation of an Individual Audit Log for Joe's Gun Shop that contains the following information on those NICS checks originating at Joe's during the month of June: The NTN and date of inquiry for allowed transactions, and all information on transactions determined to be denied or unresolved. On July 1, the NICS Operations Center transfers this information to ATF. The ATF agent inspector, now equipped with a list of the last 30 days worth of transactions, visits Joe's Gun Shop to ensure that for every transaction on the Audit Log, there is a corresponding Form 4473, and that for every Form 4473,

there is a corresponding Audit Log record, indicating that a potential purchase is linked to each check and that each potential purchase received the NICS check required by federal law. If the inspector determines that the number of NICS transactions on the Audit Log does not correspond with the number of Form 4473s in Joe's Shop, further investigation is warranted.

Under this proposal, pursuant to the requirements of the Brady Act section 102(b) (destruction of all records of allowed transactions other than the NTN and date of inquiry) and section 103(i) (prohibition against establishing any registration system for firearms), ATF would be required to destroy all information on allowed transfers within a set period of time (90 days) after the date of creation of the Individual FFL Audit Log. The NICS would also be required to delete the ORI and/or FFL identifier from its system within 90 days of the date of the transaction.

As stated above, the provision authorizing the FBI and ATF to retain and use information pertaining to allowed transfers as long as needed to pursue cases of identified misuse of the system is maintained. By retaining only that information specified by statute, this proposal reduces the impact on the privacy rights of individual purchasers while still meeting the law enforcement requirements of both the Department and ATF.

3. Proposal #3: New Definition of "Unresolved" Transaction (§ 25.2)

This proposal would provide a new definition in § 25.2 pertaining to unresolved transactions, for two reasons.

First, in those states in which the NICS performs background checks for FFLs, if the NICS examiner cannot determine within three business days whether the proposed firearm transfer would violate state or Federal law, the transaction is designated informally as a "default proceed." Under the Brady Act, the FFL is not prohibited from transferring the firearm if the NICS has not responded with a denial notification within three business days. (18 U.S.C. 922(t)(1)(B)(ii)). Despite the fact that three business days have elapsed, it is the practice of NICS examiners to continue research on such transactions for 21 days to determine whether the transaction is an actual "proceed" (allowed) or "denied". Under Proposal #1 above, it is possible the system may be required to purge information concerning "default proceeds" after three business days. The Department does not intend this result. The NICS system should retain information on transactions that have not been

definitively resolved after three business days.

This proposal would create a new internal classification system for transactions that are "unresolved," meaning the NICS examiner could not verify that a "hit" in the database is or is not a disqualifier under state or federal law. This classification will allow the NICS system to maintain such unresolved transactions until either (1) a final determination on the transaction is reached resulting in the transaction being changed to a "proceed" (prompt destruction) or a "denied" (permanent retention) status, or (2) the expiration of the retention period for unresolved transactions. The Department proposes a retention period of no more than 90 days, consistent with the retention period under the final rule that takes effect on July 3, 2001. Statistics compiled by the FBI show that as a result of initially unresolved transactions that were later determined to be denied, over 5,400 firearms retrievals have been referred within 30 days of the default proceed, and that more than 9,700 have been determined to be denials by retention of such records for up to 90 days.

In cases of "unresolved" transactions, the NICS examiner would continue to respond to an FFL in the same manner as is current practice for "default proceeds". This change does not affect the manner or form in which response information is relayed by the NICS examiner to the FFL.

Second, in the POC (Point of Contact) states, a state agency is responsible for performing background checks for potential gun purchasers, including contacting the NICS system as part of that background check. When a state agency contacts the NICS as part of a POC-initiated background check, the NICS system presently records that transaction as an "implied proceed" unless and until the state transmits to the NICS system the ultimate determination for that transaction: either "proceed" or "denied". Once again, under a prompt destruction alternative, these transactions records could be removed from the NICS system before a final determination is made.

In order to have the most accurate record of denials in the system, this proposal would classify all state POC transactions as "unresolved" until the POC transmits the final determination to NICS. In cases of "proceed" or allowed transfers, the NICS system would be required to destroy such records within the time frame discussed in Proposal #1, above. Again, records of unresolved transactions would be deleted from the system within 90 days.

The new category of "unresolved" would not affect an FFL's ability to transfer or not transfer a firearm after three business days, but would allow the NICS system to keep accurate records of the precise status of NICS transactions.

4. Proposal #4: Require POC States To Transmit State Determinations to the NICS System (§ 25.6(h))

Under current § 25.6(h), POC states are encouraged, but not required, to transmit to the NICS system determinations that a background check indicates a firearm transfer is denied. Unfortunately, most POC states currently do not transmit this information to the NICS system. This means that a potential purchaser could be prohibited under state or federal law (based upon information available to a state from records available to that state only), yet the NICS system would not have access to that determination. If the prohibited purchaser then traveled to another state and again attempted to purchase a firearm, the NICS system would be unable to stop the prohibited purchase.

This proposal would condition participation as a POC state on transmission of state determination information to the NICS system as soon as it is available, so that the NICS system will have accurate records of all prohibited persons. Because state laws vary on how quickly the background check must be completed, the proposed rule does not specify a particular length of time for transmittal, but instead requires the transmittal "upon communication of the determination to the FFL or the expiration of any applicable state waiting period". Until the NICS system receives the determination information, it will identify the transaction as unresolved.

Determination information from POC states would still be subject to the rules governing record retention. The NICS system may not retain information on allowed transfers that originate in a POC state for a longer period of time than it may keep information about a NICS-originated allowed transaction.

5. Proposal #5: Voluntary Appeals File (§ 25.10(g))

This proposal addresses those situations in which a lawful firearms purchaser might desire to have personal information retained in the NICS system to avoid confusion or delays in future purchases. Because the NICS system must destroy all identifying information on allowed transactions after not more than 90 days (or before the start of the next business day under Proposal #1

above), if a potential purchaser is delayed or denied a firearm and then successfully appeals the decision, the NICS system would not be able to retain a record of the appeal and supporting documents.

This means that if a lawful purchaser has a similar name and date of birth as a convicted felon, he or she may be delayed, or denied a purchase, until the NICS system can determine that the lawful purchaser is not the felon. Often this is done through submission of fingerprints.

However, under the existing retention rules, once that purchase is determined to be allowed, the NICS system cannot retain the information identifying the person as a lawful purchaser for more than 90 days and must destroy all identifying information relating to the person and the transfer—even if retention is requested by the lawful purchaser. Both the NICS Operations Center and individual purchasers have requested creation of a mechanism by which NICS can keep, upon request of the purchaser, such clarifying information in a separate computer file within the NICS system.

This proposal would allow the creation of a Voluntary Appeals File for the purpose of allowing lawful purchasers to request that the NICS system retain such information to facilitate future NICS transactions. Under this proposal, potential firearms transferees experiencing erroneous delays or denials by the system will have the option to supply the FBI with information such as name, date of birth, social security number, any other identifying numbers, and any documents that may clarify their records or prove their identity. The NICS system would be required to destroy any records submitted to the Voluntary Appeals File upon written request from the individual. Of course, such information could be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although many FFLs are small businesses, they are not subject to any additional burdens under the plan adopted to audit their use of the NICS. In addition, the rule will not have any

impact on an FFL's ability to contact the NICS, nor will it result in any delay in receiving responses from the NICS.

Executive Order 12866

The Department of Justice has drafted this notice of proposed rulemaking in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of proposed rulemaking has been submitted to OMB for emergency review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the

Department of Justice, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue NW., Washington, DC 20530. Comments are specifically requested concerning:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice and the FBI, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information (see below);

(3) How the quality, utility, and clarity of the information to be collected may be enhanced; and

(4) How the burden of complying with proposed collection of information may be minimized, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The proposed rule adds as a condition for a state to participate in the system as a POC the requirement that POCs transmit determination information to the NICS as soon as it is available to the state, including determinations that a firearm transfer may proceed, is denied, or the check is unresolved. Some POCs already provide such information to the NICS. This collection of information is for the purpose of enhancing the performance of the NICS, by giving the system the same information about determinations on the checks processed by POCs that the system has about determinations made on the checks processed by the FBI.

The number of respondents that will be affected by this information collection will be 21, which is the number of states that act as POCs for the NICS (states that do NICS checks in connection with the issuance of firearm permits only are not considered POCs). The notifications will be made by electronic message to the NICS immediately upon the acknowledgment of the receipt of the determination by the FFL or the expiration of any applicable state waiting period. It is estimated that it will take 6 months for each POC state to make the programming changes necessary to provide this information to the NICS. It is estimated it will take one (1) minute for each POC state to send the information relating to each check to the NICS. Collectively, the POCs conduct approximately 4.4 million NICS checks

per year. Thus, it is estimated that the total public burden (in hours) associated with the collection from the estimated 21 respondents is 73,333 hours in the first year.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

Accordingly, part 25 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

1. The authority citation for Part 25 continues to read as follows:

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.2 [Amended] [Proposal #3]

2. In § 25.2, the following definition is added:

* * * * *

Unresolved means that information available to the system required further inquiry that could not be resolved before the end of three business days and resulted in no determination by the system that the receipt of a firearm by the prospective transferee would not violate Federal or state law. In cases of “unresolved” responses, the NICS continues research to discover definitive information 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 denied. An “unresolved” 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.

* * * * *

§ 25.6 [Amended] [Proposal #4]

4. In § 25.6, paragraph (h) is revised to read as follows:

* * * * *

(h) *POC Determination Notification.* POCs shall provide notification to the NICS of their determinations that a firearm transfer may proceed, is denied, or that the check is unresolved. These notifications will include all information relating to the transaction, including the identifying information provided for the background check, the FFL number, the records that were

returned by the check, the NTN, the date of the determination, and, in the case of denials, the category of denial. The information provided in the POC determination notification will be maintained in the NICS Audit Log described in § 25.9(b). These notifications shall be provided by electronic message to the NICS immediately upon communication of the determination to the FFL or the expiration of any applicable state waiting period. Until the POC determination notification is received by the NICS, the NICS will assume that the check is unresolved.

* * * * *

§ 25.9 [Amended] [Proposal #1]

5. In § 25.9, paragraph (b) is revised to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) The NICS Audit Log will contain all records of denied transfers, and unresolved transfers. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. NICS Audit Log records relating to NICS checks where an “Unresolved” response is indicated will be destroyed after not more than 90 days from the date of inquiry.

(ii) Except as provided in § 25.10(g), in cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed prior to the beginning of the next NICS business day following the date on which an FFL receives communication of the determination that the transfer may proceed.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or

agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system, and as provided in § 25.9(b)(4).

(3) *Limitation on use.* The NICS, including the NICS Audit Log, will 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 a firearm by 18 U.S.C. 922(g) or (n) or by state law. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

* * * * *

§ 25.9 [Amended] [Proposal #2]

6. Section 25.9 is amended by revising paragraph (b), to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) The NICS Audit Log will contain all records of denied transfers, and unresolved transfers. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. NICS Audit Log records relating to NICS checks where an “Unresolved” response is indicated will be destroyed after not more than 90 days from the date of inquiry.

(ii) Except as provided in § 25.10(g), in cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and, the date the number was assigned, will be destroyed prior to the beginning of the next NICS business day following the date on which an FFL receives communication of the determination that the transfer may proceed.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be

used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used by the FBI as long as needed to pursue cases of identified misuse of the system, and as provided in § 25.9(b)(4).

(3) *Limitation on use:* The NICS, including the NICS Audit Log, will 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 a firearm by 18 U.S.C. 922(g) or (n) or by state law. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(4) *Creation and Use of Individual FFL Audit Logs:* Upon written request from ATF containing the name and license number of the FFL, the proposed date of inspection of the named FFL by ATF, and the requested start date for record retention, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on unresolved transactions and denied transactions, and, with respect to allowed transfers, only the NTN and date of inquiry. In no instance shall an Individual FFL Audit Log contain more than 30 days worth of allowed transfer records originating at the FFL. The ATF shall destroy all records of allowed transfers within 90 days of the date on which the Individual Audit Log was created. The ATF shall maintain a written record certifying the destruction. Such information, however, may be retained as long as needed to pursue cases of identified misuse of the system.

* * * * *

§ 25.10 [Amended] [Proposal #5]

6. In § 25.10, a new paragraph (g) is added to read as follows:

* * * * *

(g) An individual may provide written consent to the FBI to maintain information about himself or herself in

a voluntary appeal file checked by the NICS for the purpose of preventing the future erroneous delay or denial of a firearm transfer. Such file shall only be used by the NICS for this purpose. The FBI shall remove all information in the voluntary appeal file upon receipt of a written request by the individual. However, the FBI shall not be prohibited from retaining such information contained in the Voluntary Audit Log as long as needed to pursue cases of identified misuse of the system.

* * * * *

Dated: June 28, 2001.

John Ashcroft,

Attorney General.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 125

[FRL-7009-2]

Reopening of Comment Period for Certain Documents Referenced in the Notice of Data Availability; National Pollutant Discharge Elimination System—Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On August 10, 2000, EPA published proposed regulations addressing cooling water intake structures at new facilities in the **Federal Register** for public review and comment (65 FR 49060). On May 25, 2001, EPA published a Notice of Data Availability in the **Federal Register** (66 FR 28853) regarding the proposed regulations. The comment period closed on June 25, 2001. This action reopens the comment period for certain documents for an additional 30 days, to August 6, 2001.

DATES: Comments on certain documents and issues related to those documents listed below under **SUPPLEMENTARY INFORMATION** will be accepted through August 6, 2001.

ADDRESSES: Send written comments to: Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk-W-00-03R, Water Docket, Mail Code 4101, EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Comments delivered in person and/or any overnight delivery should be submitted

to the Cooling Water Intake Structure (New Facilities) Proposed Rule Comment Clerk-W-00-03R, Water Docket, Room EB 57, 401 M Street, S.W., Washington, D.C. 20460. You may also submit comments electronically to ow-docket@epa.gov. Please submit any references cited in your comments. Please submit an original and three copies of your written comments and enclosures. No facsimiles (faxes) will be accepted. For additional information on how to submit comments, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Deborah G. Nagle at (202) 260-2656, or Claudio H. Ternieden at (202) 260-6026. The e-mail address for the above contacts is rule.316b@epa.gov.

SUPPLEMENTARY INFORMATION: The Notice of Data Availability presented a summary of the data EPA had received or collected since proposal, an assessment of the relevance of the data to EPA's analysis, some modified technology options suggested by commenters, and an alternative approach suggested by a trade group representing the utility industry.

EPA received a request to extend the comment period for all documents and issues discussed in the Notice of Data Availability. After considering this request and a similar but narrower request, EPA is reopening the comment period for six documents and the issues associated with these documents because certain pages of these documents or their references and attachments were not available for public review at the time the Notice of Data Availability was published in the **Federal Register**. EPA is also reopening the comment period for two lengthy documents that were available in the docket in an electronic format at the start of the public comment period but were not copied and made available for off-site review until June 1, 2001. The comment period for these documents is 30 days, through August 6, 2001.

If you already submitted comments to EPA in response to the Notice of Data Availability published on May 25, 2001, and wish to submit additional comments per today's reopening, EPA requests that the later set of comments clearly specify whether they supplement or supersede the earlier-filed comments.

In addition to accepting hard-copy written comments, please note that EPA will also accept comments submitted electronically. Electronic comments must be submitted as a Word Perfect 5/