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(k) Additional Information

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(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2025-0055, dated March 11, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on October 19, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI-159; AG Order No. 7257-2026]

RIN 1110-AA35

Bipartisan Safer Communities Act of 2022—Criteria for National Instant Criminal Background Check System (“NICS”) Background Checks of Firearm Handlers

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice (“Department”) is amending several of its regulations pertaining to the National Instant Criminal Background Check System (“NICS” or “system”) of the Federal Bureau of Investigation (“FBI”) to authorize Federal Firearm Licensees (“FFLs” or “licensees”) to use NICS for purposes of voluntarily conducting employment background checks relating to certain current or prospective FFL employees. This final rule describes in more detail how, upon its effective date, FFLs will be able to conduct “firearm handler background checks” (“FHCs”) of “eligible employees.”

DATES: This final rule is effective November 27, 2026.

FOR FURTHER INFORMATION CONTACT: Jill A. Montgomery, Assistant Section 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. Executive Summary
- II. Background
- III. Notice of Proposed Rulemaking
- IV. Analysis of Comments and Department Responses
- V. Final Rule
- VI. Statutory and Executive Order Review
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- VIII. Severability

I. Executive Summary

A. Summary of the Regulatory Action

As part of combatting firearms trafficking and straw purchasing and advancing other goals, Congress passed the Bipartisan Safer Communities Act (“BSCA”), requiring the Attorney General, in relevant part, to promulgate regulations authorizing licensees to voluntarily use NICS as part of the licensees’ employment background checks of current or prospective FFL employees. *See* Public Law 117-159, sec. 12004, 136 Stat. 1313, 1326-1332 (2022); 34 U.S.C. 40901(b)(2). On December 12, 2024, the Department published a Notice of Proposed Rulemaking (“NPRM”) in the **Federal Register** seeking comments on the Department’s proposed revisions to 28 CFR part 25 that, if finalized, would allow FFLs to voluntarily conduct FHCs of eligible FFL employees. *See* Bipartisan Safer Communities Act of 2022—Criteria for National Instant Criminal Background Check System (“NICS”) Background Checks of Firearm Handlers, 89 FR 100424 (Dec. 12, 2024). With limited exceptions discussed in Section V of this rule, the amendments

to 28 CFR part 25 will be finalized as proposed in the NPRM.

B. Summary of Costs and Benefits

As proposed in the NPRM, this rule will impose little to no costs upon FFLs, eligible employees, or any State, local, or Tribal governmental entities. First, FFLs are not required by the rule to submit FHCs; FFLs may volunteer to submit FHCs. Similarly, FFLs will only incur minimal costs in terms of time and system upgrades if they opt to submit FHCs. Second, to submit an FHC, the eligible employee must have provided their informed, written consent for the background check. Agencies acting as “points of contact” (“POCs”) during NICS checks for firearm transfers will not be required to process FHCs unless they voluntarily choose to add FHC-related duties to their existing POC duties. POC duties are discussed further in Section II.A of this rule. Finally, this rule does not obligate State, local, and Tribal governmental entities to respond to FHC-related requests from the FBI or POCs.

Once effective, this rule will benefit FFLs that choose to submit FHCs by letting them know whether information available to NICS indicates the eligible employee is, or may be, prohibited from receiving or possessing firearms or ammunition. Having such information can assist FFLs in making informed determinations about whether that person should have employment duties that may involve access to firearms, ammunition, or their manufacturing components. This rule will also benefit public safety by implementing another mechanism that can keep more prohibited persons from being placed in positions that would otherwise afford them with access to firearms, ammunition, or their manufacturing components.

II. Background

A. Regulatory Context

BSCA made changes to Federal law regarding, among other things, firearms trafficking and the straw purchasing of firearms. *See* BSCA sec. 12004, 136 Stat. at 1326-1332. For instance, BSCA created new criminal offenses and increased punishments for some existing firearms-related offenses. *See id.* sec. 12004(a)(1), 136 Stat. at 1326-27 (e.g., adding 18 U.S.C. 932 and 933). BSCA also provided for a new, voluntary use of NICS, requiring the Attorney General to promulgate regulations that will allow FFLs to access NICS “for purposes of voluntarily conducting an employment background

check relating to a current or prospective employee.” *Id.* sec. 12004(h)(1)(B), 136 Stat. at 1330.

FFLs may inadvertently employ prohibited persons, who would then have access to firearms or ammunition through their employment duties and who may be able to use that access to engage in illegal firearms trafficking or straw purchases, or to otherwise illegally possess or use firearms. This rule’s expanded authorization for FFLs to use NICS to conduct NICS checks regarding certain current or prospective FFL employees is an additional tool to help prevent those illegal actions by reducing opportunities that some prohibited persons might otherwise have had to gain access to firearms, ammunition, or their manufacturing components.

B. The System

1. NICS Procedure

The Brady Handgun Violence Prevention Act (“Brady Act”) required the Attorney General to establish NICS, which is a system that certain FFLs must contact before selling or otherwise transferring a firearm. Public Law 103–159, sec. 103, 107 Stat. 1536, 1541–43 (1993). Specifically, the Brady Act requires persons licensed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) as manufacturers, dealers, or importers to initiate a NICS background check when seeking to transfer firearms to individuals who are not FFLs. *See* 18 U.S.C. 922(t)(1); *see also* 18 U.S.C. 921(a)(9)–(11) (defining “importer,” “manufacturer,” and “dealer”).¹ NICS provides, when possible, immediate information on whether receipt or possession of a firearm by an unlicensed person would be prohibited. *See* 18 U.S.C. 922(t)(1). The FBI manages and operates NICS by delegation of the Attorney General pursuant to 28 CFR 25.3. The NICS Section of the FBI’s Criminal Justice Information Services Division processed the first NICS background check on November 30, 1998.²

An FFL initiates a NICS background check by contacting the FBI’s NICS Section³ or a State or local law

enforcement agency known as a POC—*i.e.*, certain State or local law enforcement agencies with express or implied authority to perform NICS inquiries and respond to FFLs with the results. *See* 28 CFR 25.2, 25.6(a), (d).⁴ Relevant databases searched during NICS background checks are the NICS Index (now called the “NICS Indices”),⁵ the National Crime Information Center (“NCIC”), and the Interstate Identification Index (“III”). *See* 28 CFR 25.2, 25.4, 25.6; *see also* 89 FR 100425–100426. The NICS Indices is a database of information provided by Federal, State, local, and Tribal agencies about persons who are prohibited from receiving firearms under Federal or State law. *See* 28 CFR 25.2. After initiating background checks for the prospective transfer of firearms, FFLs receive one of three responses from NICS: “Proceed,” “Delayed,” or “Denied.” 28 CFR 25.6(c)(1)(iv).

There are other NICS uses authorized by Federal law or regulation. *See* 89 FR 100426. Until this final rule, however, the Department has expressly prohibited FFLs from initiating NICS background checks for any purpose other than the prospective transfer of firearms as required by the Brady Act. *See* 28 CFR 25.6(a).

III. The Notice of Proposed Rulemaking

On December 12, 2024, the Department published its NPRM proposing various amendments to 28 CFR part 25 that the Department believed would be necessary to implement the use of NICS for FHCs. *See* 89 FR 100424. The comment period

⁴ 28 CFR 25.2 defines “POC (Point of Contact)” as “[a] state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS.” That provision further provides that a POC will receive NICS background check requests from FFLs, check State or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm, and respond to FFLs with the results of a NICS background check. In addition, a POC must be an agency with express or implied authority to perform POC duties pursuant to State statute, regulation, or executive order. POCs perform NICS inquiries on either all or only a subset of the NICS background checks FFLs submit in the POC’s State. *See NICS Participation Map*, FBI, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics> (last visited Aug. 10, 2026).

⁵ The NICS Index has become known by most NICS users as the “NICS Indices.” The Department has proposed revisions, here and within another NPRM, to update references to the “NICS Index” to the “NICS Indices.” *See* Bipartisan Safer Communities Act of 2022 and Consolidated Appropriations Act of 2022—Implementation Revisions for National Instant Criminal Background Check System (NICS), 89 FR 100404 (Dec. 12, 2024); *see also* proposed 28 CFR 25.2, 25.4–25.6, 25.8, and 25.9 (as this rule revises).

for the NPRM concluded at 11:59 p.m. on January 13, 2025, with 25 total public comments received.

The NPRM proposed changes to existing NICS regulations that would allow FFLs to voluntarily submit “firearm handler background checks” (*i.e.*, FHCs) to the NICS. It was proposed that FFLs could submit these FHCs for persons who are or would be considered “firearm handlers” as well as other “eligible employees.” The NPRM defined each of these terms and also discussed exclusions.⁶ Both BSCA and the NPRM discussed that FFLs would have the discretion, under Federal law, to submit FHCs. State, local, or Tribal law(s) may mandate that some or all FFL employees be subjected to some level of background check, but those are matters outside of this rulemaking.

The NPRM noted that FFLs will not be able to submit an FHC without first providing notice to and obtaining written consent from the eligible employee. *See* 89 FR 100427 (citing 34 U.S.C. 40901(b)(2)(B)).⁷ The NPRM discussed that one proposed method for FFLs to collect all necessary information from the eligible employee before submitting an FHC would be through a new form from ATF. *See id.* 100432 (discussing ATF’s proposed Form 5300.47).⁸

The NPRM anticipated some POCs would be processing FHCs but acknowledged that the NICS Section would likely process FHCs for many

⁶ The NPRM proposed that, with exceptions, a “firearm handler” would “include . . . a person who has or may have an opportunity to access firearms or ammunition because of [their] duties as an employee of an FFL, regardless of whether the employee’s duties include or may include the actual or constructive transfer or handling of firearms or ammunition.” 89 FR 100427.

“Responsible Persons” were defined and excluded from FHCs because they are already subject to background checks, including NICS checks, by ATF. *Id.* 100430. The NPRM also proposed “that licensed manufacturers may submit FHCs for persons who do not have access to firearms or ammunition, but whose employment duties allow or may allow them access to the materials or tools used in firearms or ammunition manufacturing.” *Id.* 100427, 100430 (similar). Further, the NPRM noted FHCs “would not be available for any employee who does not or will not have employment duties that would allow the employee access to firearms or ammunition or any materials or tools necessary to manufacture firearms or ammunition.” *Id.* 100427.

⁷ The NPRM noted that it was not written to address all employment-related matters that may arise should an FFL voluntarily begin submitting FHCs. *See id.* 100432 & n.39. The Department encourages FFLs to consult with their own legal counsel for individualized legal advice on what may or may not be authorized from an employment law perspective under State, local, or Tribal law.

⁸ As discussed below in Sections IV.C and V of this preamble, ATF is no longer proposing to create the Form 5300.47. That change is one of only a few of the NPRM’s proposals that this final rule updates or modifies.

¹ ATF’s licensing authority is generally described in 18 U.S.C. 923. Persons licensed under 18 U.S.C. 923(b) as “collectors” are not required to conduct NICS transactions when transferring curios or relics under 18 U.S.C. 922(t), *see* 34 U.S.C. 40901(j)(1) (defining “licensee”); however, they are required to undergo a NICS check when purchasing a firearm other than a curio or relic.

² *See* National Instant Criminal Background Check System Regulation, 63 FR 58303, 58303 (Oct. 30, 1998).

³ *See* 89 FR 100425 n.3 (discussing how “the NICS Section” was formerly known as the “NICS Operation Center” until July 24, 2002).

POCs. *See id.* 100429. The NPRM proposed that during FHCs, FFLs would receive new responses from NICS; FFLs were proposed to receive either “Pass,” “Pending,” or “Did Not Pass.” *See* 89 FR 100427. The new terminology was proposed to clearly distinguish FHC responses from the responses of “Proceed,” “Delayed,” or “Denied,” that the NICS provides during background checks for firearm transfers submitted pursuant to 18 U.S.C. 922(t). *See* 89 FR 100427, 100430. The NPRM discussed how FFLs should not construe “Did Not Pass” responses from the NICS as telling the FFLs that those subjects could not be hired at all for other positions that would not have a nexus to firearms or ammunition. *See* 89 FR 100427.

The NPRM stated that FFLs would receive a “NICS transaction number” (“NTN”) for each FHC they submit, *see id.* 100436, but that no prospective transfer date would be provided with FHC responses of “Pending.”⁹ FHCs do not involve a firearm transfer and are not required by 34 U.S.C. 40901(b)(2) to be processed in any particular amount of time, whereas Federal law allows FFLs to transfer firearms after three business days if the FFL has not yet been informed the transfer was “Denied.” *See* 18 U.S.C. 922(t)(1)(B)–(C); 28 CFR 25.6(c)(1). Providing FFLs with a transfer date during FHCs was therefore deemed—and is—unnecessary.

The NPRM proposed that, after submitting an FHC, the licensee would not be able to review the record sources searched during the FHC, nor would NICS provide the FFL with any of the underlying information reviewed during the FHC. *See* 89 FR 100436 (proposing amendments to 28 CFR 25.6(c)). This exchange with FFLs would mirror the existing process used during prospective firearm transfers, which similarly limits dissemination of, and access to, record sources and information reviewed by NICS. *See* 28 CFR 25.6(c)(2). The NPRM also proposed that FFLs would generally be limited to one FHC per eligible employee every 12 months, but also noted circumstances where subsequent queries would be allowed. 89 FR 100431–100432.

The NPRM also proposed appeal rights that would be available when NICS has determined the eligible employee “Did Not Pass” their FHC. *See id.* 100430–100431. Such an individual would be able to appeal that result “in

the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm.” 34 U.S.C. 40901(b)(2)(D). The NPRM noted that the Department interpreted BSCA’s appellate mandate to include all processes similarly available to persons who received a “Denied” response following a prospective firearm transfer, and therefore an administrative challenge (appeal) of an FHC “Did Not Pass” response would also include the ability of the subject of the FHC to request the reason for a “Did Not Pass” response, as well as submit a Voluntary Appeal File application and bring a civil action under 18 U.S.C. 925A. *See* 89 FR 100431.

The NPRM did not propose any requirement that participating FFLs retain records of their FHC submissions for any particular amount of time. In a separate rulemaking, the Department suggested that participating FFLs retain FHC documentation for at least 90 days; keeping such paperwork even for a limited time (particularly if NICS provides a “Did Not Pass” response) can help in later proceedings and document that the FFL was appropriately using NICS. *See* 91 FR 24417. Neither the FBI nor ATF rulemakings have proposed provisions that would affect any State, local, or Tribal laws that may require FFLs to conduct background checks of certain employees or to retain those records.

In addition, the NPRM discussed the severability of each proposal the NPRM put forth in the unlikely event that any individual provision were to be invalidated in litigation. *Id.* 100432. Consequently, the NPRM proposed a severability provision be added to 28 CFR 25.1. *Id.* 100434. Further conforming amendments were proposed to 28 CFR 25.1, 25.2, 25.6, 25.8, 25.10, and 25.11 to establish procedures for FHCs that are separate from those concerning prospective firearm transfers. *Id.* 100434–100435, 100436–100439. Amendments to 28 CFR 25.8 proposed technical and security safeguards to have in place while submitting FHCs. *Id.* 100437. Lastly, the NPRM proposed revisions to 28 CFR 25.11 to reflect the Department’s ability to institute monetary or access sanctions, or both, for misuse of NICS during FHCs. *Id.* 100439.

IV. Analysis of Comments and Department Responses

Subsections in Section IV

- A. Issues Raised in Support of the Rule
- B. Issues Raised in Opposition to the Rule

C. Concerns with Specific Proposed Provisions

A. Overview of Comments

The Department received 25 comments in response to the NPRM. The Department considers most comments (approximately 80 percent) to have been neutral or expressed support for the NPRM’s proposals. The remaining comments expressed opposition to the NPRM. One comment did not address any issues presented in the NPRM and was accordingly not published on the electronic docket, nor is it addressed in this final rule.¹⁰ The Department addresses many of the 24 published comments in the following paragraphs.

B. Issues Raised in Support of the Rule

1. General Support

As this Section notes, commenters that supported the NPRM were generally FFLs and social policy-oriented organizations. Organizational commenters were the National Shooting Sports Foundation (“NSSF”), Giffords and Giffords Law Center to Prevent Gun Violence (“Giffords”), and Everytown for Gun Safety Support Fund (“Everytown”). Commenters raised various points about why they were supportive of the NPRM. Some comments supported the rule but provided suggestions where they believed the Department could do more or where regulatory text could be enhanced.

One FFL broadly expressed support for the NPRM stating “[a]s a gun store owner, I can wholeheartedly endorse this change[.]” and “[t]his is fantastic news.” Another FFL commented that “[m]aking [NICS] available to employers for hiring purposes related to firearm interactions is long overdue” while noting the FFL has historically used “third party systems, and they don’t return results in a timely manner and are not as comprehensive as” NICS checks. NSSF and Everytown both share the sentiment of FHCs being long overdue. *See* Everytown at 1; NSSF at 7. Another gun shop owner commented FHCs “would be invaluable to safeguarding the inventory and operations[.]” while another stated

¹⁰ *See Thompson v. Clark*, 741 F.2d 401, 408 (D.C. Cir. 1984) (“[The Administrative Procedure Act] has never been interpreted to require the agency to respond to every comment, or to analyze every issue or alternative raised by the comments, no matter how insubstantial.”); *cf. Home Box Off., Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977) (“[O]nly comments which, if true, raise points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rule cast doubt on the reasonableness of a position taken by the agency.”).

⁹ Compare 89 FR 100436 (proposing a definition of “Pending” without reference to timing), with 28 CFR 25.6(c)(1)(iv)(B) (including transfer timing as part of the definition of “Delayed”).

FHCs “will help ensure that those selling firearms are capable of doing so safely.”

One commenter noted the NPRM “would provide guidance to ensure FHCs are not abused” and that the proposal for FHCs to be conducted upon “eligible employees” would “faithfully implement[s] Congress’ intent[.]” NSSF said, overall, they “strongly support” the expanded use of NICS for this new purpose. Giffords’ comments said the NPRM is “consistent with” BSCA and noted it “faithfully implement[s] Congress’s intent in the BSCA.” Giffords at 3. Similarly, Everytown said the NPRM should be “promptly finalized” as it was a “sensible . . . well-crafted and balanced” proposal that “complies with BSCA[.]”

Department Responses

The Department acknowledges, appreciates, and agrees with the support provided by many commenters. This regulation, when implemented, will allow a new use of NICS by FFLs, positively impact public safety, and impose no mandated costs on FFLs or the general public. Any costs will arise only if this new NICS use, or a response to FHC record requests, is voluntarily undertaken. *See, e.g.*, 89 FR 100433–100434 (noting costs are “likely to be small” and “insignificant”).

2. Mandatory Checks

Comments Received

Many comments, expressing support and opposition, incorrectly remarked in some form that FHCs were proposed as mandatory, should be mandatory, or asked, in various ways, whether a particular process would be considered equal to an FHC. One commenter stated that “mom and pop FFLs with family units operating the business should be exempt” from FHCs. Another said “[t]his new requirement is not required and should not be allowed to take place.” Another asked if someone had “recently been approved for an NFA item wouldn’t that background check suffice?” Another asked if requiring employees to obtain a license to carry concealed firearms would “satisfy the BSCA requirements.” One commenter stated that “‘Authorized Persons’ on the FFL should automatically be exempt” from the rule.

One FFL wanted to discuss New Jersey’s status as a POC, and their processes within the context of the NPRM. They noted New Jersey was “not an authorized [POC] in your listed states.” That comment went on to describe a New Jersey “pink card” process the FFL had to complete for one

of its employees, as well as how the FFL applied to ATF for the employee to be approved as a “Responsible Person” for the FFL. The FFL concluded by asking if those steps “cover this new ruling? Can’t imagine having to yet do more [for] employment.”

Department Response

Although Congress required the Attorney General to issue these regulations and allow this new NICS query, as explained in the NPRM and throughout this preamble, neither BSCA nor the regulations as proposed in the NPRM required that licensees use NICS for this new purpose. *See* 89 FR 100433 (noting “this rule does not propose mandating that licensees submit FHCs”). Use of NICS for FHCs will be a completely voluntary choice under Federal law. All licensees and their eligible employees are, effectively, “exempt” from initiating or participating in FHCs according to Federal law. Whether an FHC is submitted to NICS is at the FFL’s discretion (and upon informed consent of the employee). This rule only provides the process by which FHCs may be submitted and processed if and when the FFL decides to participate.

As to the comments and questions posed specifically about New Jersey, the Department takes the comment about “listed states” to be discussing how the NPRM did not specify whether New Jersey or any other POC would be receiving FHCs from FFLs. The Department agrees the NPRM was not specific in that regard as time and circumstances could change those projections. The Department understands that, at the present time, New Jersey is not anticipated to process FHCs. As to the remainder of this specific comment, the Department reiterates how the NPRM specifically proposed that “Responsible Persons” not be considered “eligible employees” for purposes of FHCs because those individuals are already subjected to background clearance through ATF (including a NICS background check) every few years. *See* 89 FR 100430. Ultimately, again, because this final rule does not require FFLs to submit FHCs or any eligible employee to consent to an FHC, it is inconsequential whether any other process FFLs use during background checks of current or prospective employees “meets,” “suffices,” “covers,” or is otherwise equivalent to what the NPRM proposed.

C. Neutral Comments

1. FFLs in POC States

Comments Received

One commenter noted, “For multi-chain [FFLs] headquartered in a Point of Contact (‘POC’) state—please permit access to the FBI NICS E-Check system so that company HR representatives can conduct the Firearm Handler Checks.”

Department Response

The Department presumes the commenter was speaking of what the NPRM called “big box” FFLs headquartered in POC states that will not process FHCs. In such situations, the NICS Section will certainly be able to enroll FFLs in those POC states into NICS E-Check so that the headquarters of participating “big box” FFLs may submit FHCs to the FBI.

As a general matter, where larger chain or big box FFLs choose to centralize submission of FHCs through their headquartered locations, the FFL headquarters will submit FHCs of consenting eligible employees according to (i) the state(s) where the eligible employees will work, in combination with (ii) whether the state(s) have a POC that is participating in FHCs.

Scenario 1: Chain FFL XYZ (“XYZ”) has 37 stores licensed to deal firearms across POC1, POC2, POC3, and several non-POC states. All three POC states have said they will not receive FHCs for various reasons. If XYZ chooses to submit FHCs, then XYZ will submit all FHCs for consenting, eligible employees to the FBI for processing.

Scenario 2: Same facts as Scenario 1, except POC1 and POC3 have said they will receive FHCs from FFLs in their respective states. If XYZ chooses to submit FHCs, then for stores doing business in POC1 or POC3, XYZ will submit those FHCs (for consenting, eligible employees) to the designated POC agencies in those respective states. XYZ would submit any FHCs to the FBI for consenting, eligible employees of their stores doing business in POC2 as well as any of the non-POC states.

2. Suggestions for the Department

Comments Received

Everytown also provided several suggestions the Department could consider moving forward to help the FBI “capably administer” FHCs. It suggested that ATF ask FFL applicants about their intent to conduct FHCs as well as inquire of FFLs when renewing their licenses about the FHCs those FFLs conducted. Everytown also suggested annual statistics be reported about the number of FHCs submitted by FFLs, and

they requested the Department ensure that the FBI had sufficient staffing to process FHCs.

Another commenter suggested the “quickest and easiest” way to do things is to allow FFLs to run the same check as that performed on a potential purchaser.

Department Response

As to the “quickest and easiest” comment, FHCs will result in NICS searching the NCIC, the III, and the NICS Indices looking for available prohibiting or potentially prohibiting information about the eligible employee—so FHCs will consist of “the same check as” a prospective firearm transfer submitted pursuant to 18 U.S.C. 922(t).

The Department also acknowledges Everytown’s suggestions and, as the Department implements FHCs, it will give them due consideration. The FBI will coordinate with ATF regarding reminders on the availability of NICS for FHCs.¹¹ The Department notes that ATF has a robust FFL training and education platform and routinely provides updated guidance to FFLs. The FBI intends to supplement ATF’s already robust platform with FHC updates, including plans to issue annual statistics, through its annual NICS Operation’s Reports, of FHCs that were conducted. Those statistics are anticipated to include similar, if not identical, statistical categories as already provided for current Brady Checks conducted pursuant to 18 U.S.C. 922(t). For example, the FBI anticipates reporting FHC statistics about administrative appeals received, as well as the number of “Did Not Pass” responses provided to FFLs.

Finally, as to staffing concerns, BSCA provided further funding to the Department so that staffing could be added to handle, among other impacts BSCA has had upon NICS, the unknown volume of FHCs that may be submitted. This additional funding has been extremely beneficial to the NICS Section by allowing further staff hires, but the Department will continue to assess what, if any, additional staffing may be needed once this rule has been finalized.

¹¹ The Department notes that issuance of an FFL shall be approved by ATF if the conditions under 18 U.S.C. 923(d) are met and not conditioned on whether an FFL chooses to run an FHC.

D. Issues Raised in Opposition to the Rule

1. Providing FFLs With Background Data; Displeasure With Current NICS Responses

Comments Received

One comment stated FHCs “must include the immediate ability to provide the background check data to the employer/employee.” The comment stated that denial information “should be immediately [available] for review . . . in the same way law [enforcement] can see results of background checks.” Finally, without further explanation, this comment expressed frustration by claiming the current processes for “obtaining delayed or denial reasoning is arduous, burdensome, and confusing.”

Department Response

The Department disagrees that “background check data” (*i.e.*, records) used to arrive at any response should be provided to FFLs, and while this commenter did not provide their specific concerns with the processes for “obtaining delayed or denial reasoning,” the Department disagrees that existing processes are “arduous, burdensome, and confusing.”

The NICS website has a robust platform of helpful information, including general statistics and explanations of the appeal-related processes.¹² Specific to firearm transfers that have been “Delayed” or “Denied,” the FBI also has a free “Resolution Card” available for FFLs to use to help individuals quickly find important information on processes that can help resolve issues whenever possible. FFLs are not required to use the Resolution Card. FFLs use the card to provide the individual with the NTN of their transaction as well as the status of that transaction at that time. From there, depending on the status, the individual is able to pursue a number of options.

If “Denied” a firearm transfer, the Resolution Card tells individuals how they may quickly and easily request the general reason for the denial (Request), *e.g.*, being subject to a prohibiting domestic protection order, *see* 18 U.S.C. 922(g)(8), and how the person may administratively challenge that denial (Challenge). Using the Request or Challenge processes is not required of a denied subject; they may instead seek applicable remedies by appealing a

denial directly to a Federal district court. *See* 18 U.S.C. 925A.

Challenges may be sent through the FBI or, when applicable, the POC agency that denied the transaction. Responses to Requests must be provided within 5 business days, *see* 34 U.S.C. 40901(f), and Challenge responses are due within 60 days. *Id.* 40901(g). If a Challenge is unsuccessful, the FBI’s response identifies why the denial is being upheld, the agency (by name and location) that provided the prohibiting record, and other information when applicable (*e.g.*, an underlying court case number, or a “NICS Record Identifier” that identifies a NICS Indices entry for that subject). *See* 28 CFR 25.10(c). When Challenges remain under investigation after 60 days, the challenger is provided with contact information of the agency whose record forms the basis of denial and the individual may then apply directly to that agency for correction of the record. *Id.* 25.10(c)–(d).

A Request or Challenge may be sent to the FBI via snail mail or electronically.¹³ FBI subject matter experts note that nearly 90 percent of all Requests and Challenges are electronically submitted. The FBI does not charge a fee to use either process, and the FBI responds to Requests and Challenges within applicable statutory deadlines. Upon implementation of FHCs, the Resolution Card will also reflect how applicable processes may be used by subjects who “Did Not Pass” their FHCs or, as applicable, subjects whose FHCs are “Pending.”

With respect to the commenter claiming underlying records should also be provided to FFLs, information that Federal, State, local, and Tribal governmental agencies (law enforcement or otherwise) share with the FBI is subject to various Federal laws that limit further dissemination of that information. *See, e.g.*, 28 U.S.C. 534;¹⁴ 5 U.S.C. 552a;¹⁵ 28 CFR part 20;¹⁶ *see also* 28 CFR 25.6(j);¹⁷ *id.*

¹³ *Requesting Reason for and/or Challenging a NICS-Related Denial*, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/requesting-reason-for-and-or-challenging-a-nics-related-denial> (last visited Sept. 14, 2026).

¹⁴ Pertaining to the “[a]cquisition, preservation, and exchange of identification records and information; appointment of officials.”

¹⁵ Pertaining to privacy protections of personal information that Federal agencies maintain.

¹⁶ General parameters regarding Department criminal justice information systems.

¹⁷ *Infra*, outlining the limited situations in which NICS Indices information can be used outside of background checks submitted pursuant to 18 U.S.C. 922(t).

¹² *Firearms Checks (NICS)—FBI*, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics> (last visited Sept. 14, 2026).

25.9(b).¹⁸ To the extent the commenter was speaking to a State process, that process would not be germane to the NPRM. In short, just as is the case during prospective firearm transfers, there is no viable mechanism for NICS to share an eligible employee's substantive background information with an FFL as if the FFL were a criminal justice agency. FFLs will only be provided with an NTN, as well as a response of "Pass," "Pending," or "Did Not Pass." FFLs will not be provided the details of any record information, if any, the FBI databases provide about the subject in response to an FHC.

Congress mandated, through 34 U.S.C. 40901(b)(2)(D), that an individual who is found to be "prohibited from possessing a firearm or ammunition pursuant to [18 U.S.C. 922(g) or (n)]" can appeal "in the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm." Accordingly, FHC appeals of "Did Not Pass" responses are required to mirror the appeal process for appeals of "Denied" firearm transfers under the Brady Act. The appeal process for FHCs will provide the subject with an avenue to understand the reason for the "Did Not Pass" response as well as challenge any underlying records used in that determination.

The Department also reiterates that a "Did Not Pass" response signifies that available information demonstrates the individual is prohibited from possessing or handling firearms and ammunition, but the response does not prohibit the employer from employing that individual in a position that does not require the handling of or access to firearms or ammunition.

2. Punishes Law-Abiding Citizens; Improper Focus

Comments Received

One comment remarked "another waste of money and time[]" and the emphasis should be on criminals instead of "law abiding US gun owners."

Department Response

The Department disagrees that this rule is a waste of time or focuses on gun owners. The Department reiterates that the goal of these instant national background checks is to aid FFLs in identifying those who are prohibited by law from possessing or receiving firearms before deciding to offer them (or retaining them in) a position where

they have access to or can handle firearms or ammunition while minimizing any impact such queries have upon those who are not prohibited. Gun owners were not the focus of this rule, and this rule does not affect their ability to possess or receive firearms. As the NPRM discussed, Title II of BSCA was focused on those who do, or may, unlawfully engage in straw purchases or trafficking in firearms or ammunition. *See* 89 FR 100427–100428. One aspect of Title II focused on the fact that some current or prospective FFL employees could engage in or facilitate those crimes. This rule simply expands NICS use by allowing FFLs to initiate NICS queries as part of their employment background checks and mandates no costs to FFLs, all while benefiting public safety by identifying prohibited persons. FHCs are simply a tool FFLs can utilize if, with the consent of the eligible employee, they choose to do so.

3. Fees for the FHC

Comments Received

One comment expressed that "the employer should be the one paying for the criminal background check."

Department Response

BSCA mandated that the Attorney General cannot charge a fee for FFLs to use NICS during FHCs. *See* 34 U.S.C. 40901(b)(2)(A). Thus, the NPRM did not propose, nor does this rule impose, a fee for FFLs to use NICS for FHCs. This rule requires that both the FFL and eligible employee choose to move forward with the FHC; otherwise, it cannot be submitted. POCs participating in receiving FHCs may, however, charge a fee, but this rule does not mandate that POCs charge a fee. The Department cannot otherwise control whether a participating POC will charge a fee to process FHCs.

To the extent the comment is concerned that Federal funds are being used to implement FHCs, Congress mandated that FFLs be allowed (but not required) to use NICS for this purpose. It is well within Congress's power to legislate how Federal funds can and cannot be used, as well as the purposes for which Federal systems, like NICS, can be used.

4. Disproportionate Impact on Minorities

Comment Received

Without further explanation, one comment claimed FHCs, "could potentially have a disproportionate impact on minorities who have, as a subpopulation, higher rates of criminal convictions and arrests."

Department Response

The Department disagrees with this claim. This rule merely provides the process for conducting voluntary FHCs pursuant to BSCA; neither BSCA nor this rule distinguishes between communities in the United States. FHCs were not proposed to be, and will not be, a mandate on an FFL's ultimate hiring decision(s). FHCs are simply a tool made available to FFLs as part of their decision-making process.

Further, whether the subject of an FHC has a criminal history or not, the question for NICS (in passing back an applicable response) is whether that history demonstrates the subject is or may be prohibited from receiving or possessing firearms. Finally, without multiple layers of intervening, voluntary actions by both FFLs and the eligible employees, FHCs cannot even be submitted. The individual must first choose to seek employment with an FFL; the FFL must then choose to employ that person in a position that would qualify as an "eligible employee"; the FFL must then voluntarily choose to conduct an FHC on the individual; the individual must then choose to provide his or her informed, written consent to having an FHC submitted; and, finally, to receive a "Did Not Pass" response from NICS, the individual must have a background record that renders him or her ineligible to possess or receive firearms as described in 18 U.S.C. 922(t). All of those choices must align before an FHC could potentially impact the eligible employee. Even if all those conditions are met, this rule merely allows FFLs an opportunity to identify disqualified persons; FFLs are not mandated to take a particular employment action should NICS respond that the eligible employee "Did Not Pass" their FHC.

5. Violates the Second Amendment

Comments Received

One comment also asserted the NPRM violated the Second Amendment "because these types of background checks for people earning a living are not authorized."

Department Response

The Department disagrees with the comment. This rule's provisions do not burden Second Amendment rights in a way that is materially distinct from the NICS system already in place: they empower FFLs to ensure that current or prospective employees who cannot lawfully possess arms do not have access to them through their job duties. And the Department does not understand the comment to be objecting

¹⁸ Allowing NICS Audit Log information to be shared with "appropriate authorities" in appropriate circumstances. *See also* 18 U.S.C. 925B.

to the constitutionality of NICS background checks writ large. Nor did the comment give any reason to conclude that the narrow, optional background checks here facially violate the Second Amendment under controlling precedent. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*,¹⁹ the Supreme Court discussed background checks for firearms-related purposes, stating:

To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue" licensing regimes, under which "a general desire for self-defense is sufficient to obtain a [permit]." [] Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens."²⁰

The FBI will charge no fee for FHCs, and there will be no prohibition against FFLs selling firearms without running these background checks on eligible employees (although FFLs will of course still be required to comply with the Brady Act). At bottom, FFLs' ability to voluntarily run an existing background check of a consenting employee or prospective employee does not unconstitutionally burden that current or prospective employee's right to purchase, acquire, sell, or otherwise access constitutionally protected arms.

6. Paperwork Burden

Comments Received

One comment remarked that FHCs "only represent[] more paperwork[,] which will be completed and sent off and stored both by the government and by the business owner."

Department Response

The Department disagrees with these claims. The NPRM proposed, and this rule will impose, no mandates regarding any paperwork outside of noting that 34 U.S.C. 40901(b)(2) requires the FFL to collect the individual's written consent before submitting an FHC. To address FHCs and to accomplish that statutory mandate, ATF published in May 2026 two NPRMs that propose ATF's Form

5300.9 ("Form 4473") as the vehicle for licensees to conduct FHCs, set out instructions for such use, and propose a 90-day records retention period for Forms 4473 used for that purpose.²¹ In addition, ATF concurrently published an information collection notice pursuant to the Paperwork Reduction Act on revisions to Form 4473, which include adding a box to indicate that the form is being used for an FHC, and to indicate the eligible employee's written consent/certification, among other changes.²² The Department anticipates ATF will publish guidance on how to handle FHCs in the interim, and will finalize the proposed new Form 4473 and proposed regulations to document FHCs. But this rule does not require that FFLs use a specific form. Any documentation is necessary under Federal law only if the FFL voluntarily chooses to take part in FHCs and, further, if the eligible employee consents to the FHC. This final rule requests, for best practices, that FFLs retain any paperwork for FHCs for a minimum of 90 days. ATF similarly proposed a 90-day retention period for FHCs in the "Firearm Records Retention Periods." 91 FR 24417. If ATF finalizes that NPRM as drafted, then FFLs will have an obligation to retain Forms 4473 for FHCs for at least 90 days, but this current rule regarding FHCs does not impose any record retention requirement of its own. As noted previously, keeping such paperwork, even for a limited period of time, can also help document, if ever necessary, that the FFL was appropriately using NICS.

In short, the rule is unlikely to result in a significant amount of paperwork. And to the extent the rule does create paperwork burdens, they will arise from voluntary decisions and be far outweighed by the rule's benefits.

²¹ See *Revising Firearms Transaction Record, "Form 4473,"* 91 FR 25432, 25446 (May 8, 2026) (proposed rule) (revising 27 CFR 478.124 to add a new paragraph (f) on using Form 4473 to facilitate FHCs); *Firearm Records Retention Periods*, 91 FR 24413, 24424 (May 6, 2026) (proposed rule) (revising 27 CFR 478.129 to add a new paragraph (a)(3) on retention periods for Forms 4473 used to facilitate FHCs).

²² At the time this final rule was being finalized, Form 4473 had undergone proposed revisions and had begun the three-year renewal process required under the Paperwork Reduction Act for Office of Management and Budget ("OMB") approval to continue using the form. On May 8, 2026, ATF published the required 60-day notice for this information collection. The notice listed the proposed changes to Form 4473 and was open for 60 days of public comment through July 7, 2026. It was followed by a 30-day public notice period before proceeding to OMB for review.

8. The Term "Eligible Employees" Is Too Narrow

Comments Received

Although NSSF said it "strongly support[s]" the expanded use of NICS for FHCs, it also expressed "some concerns with the manner" in which the FBI proposed implementing the expanded use. NSSF at 1. According to NSSF:

Congress did not limit or restrict access to NICS for this purpose to any subsets or specific categories of FFL employees. The Proposed Rule, however, impermissibly places such a limit on NICS [FHCs] to "eligible employees." This restriction should be removed from the Proposed Rule because it is *ultra vires*.

NSSF at 2. NSSF claimed the NPRM proposals were "far from a natural interpretation of the statute[.]" *Id.* at 3. "Congress specifically required by statute that FHCs be available for all current or prospective employees without limitation." *Id.* at 4. NSSF cited *Iancu*²³ and *Cargill*²⁴ as supporting its claims that the Department did not apply FHCs in the proper manner.

NSSF also provided certain statistics in an attempt to refute statistics cited by the Department in the NPRM. The Department cited the statistics to demonstrate the proper reading of 34 U.S.C. 40901(b)(2).²⁵ Specifically, NSSF stated:

Since 2016, there have been more than 24 million NICS checks processed per year. NSSF's own research estimates the total number of individuals directly employed in the firearms industry is 154,611. [] Even assuming that FHCs are conducted on all direct firearms industry employees as well as all employees of "big box store" locations with licenses (which FBI estimates at 793,000), that figure only rises to 3%.²⁶

Department Response

For the reasons set out in the NPRM, and as this final rule discusses in the paragraphs below, the Department respectfully disagrees with NSSF's arguments that FHCs must be available to persons outside of "eligible employees." First, both Everytown and Giffords, which are organizations that, among other initiatives, advocate for more firearm-related background checks (e.g., "universal" background checks), did not share NSSF's position on this point. As noted earlier in this section, those organizations said the NPRM was,

²³ *SAS Institute, Inc. v. Iancu*, 584 U.S. 357 (2018).

²⁴ *Garland v. Cargill*, 602 U.S. 406 (2024).

²⁵ See 89 FR 100428–430.

²⁶ NSSF at 4.

¹⁹ 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

²⁰ *Id.* at 38 n.9 (cleaned up); see also *id.* at 80 (Kavanaugh, J., concurring) (noting that "shall-issue licensing regimes are constitutionally permissible" subject to as-applied challenges); *McRorey v. Garland*, 99 F.4th 831, 836 (5th Cir. 2024) (discussing how *Bruen* and *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008), "make clear that background checks preceding firearm sales are presumptively constitutional").

e.g., “well-crafted and balanced” as well as being “sensible.” Everytown at 3–4, and that it “faithfully implements Congress’s intent in the BSCA.” Giffords at 3. The Department is not acting *ultra vires* but, instead, is faithfully and appropriately implementing what Congress asked of the Department.

Neither *Iancu* or *Cargill* is applicable here, as neither involved an agency defining the term “employee.” In *Iancu*, the Supreme Court was interpreting the meaning of the word “any” under a Federal statute that allowed private parties to administratively challenge approved patents. In *Cargill*, the Supreme Court was interpreting the Department rulemaking that added “bump stocks” to the regulatory definition of “machineguns” under 27 CFR part 479. The legal analysis by the Supreme Court in those opinions also does not support NSSF’s position on this point. In fact, contrary to NSSF’s arguments here, *Iancu* shows that Congress clearly knows how to mandate that “any” (i.e., every) member of a group be included in a Federal statutory process. See *Iancu*, 584 U.S. at 359–60. Here, when it wrote 34 U.S.C. 40901(b)(2), Congress did not mandate that FFLs be allowed to run these checks on “any” (or “every,” or “all”) current or prospective employee(s). Further, unlike in *Cargill*, the Department’s NPRM here did not propose altering the definition of a term Congress had already defined via statute. See *Cargill*, 602 U.S. at 413. As discussed in the NPRM, in *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–46 (1997), the Supreme Court analyzed another Federal agency’s regulatory definition of “employee” and noted that the statute itself, the context in which the word “employee” appeared, and the “primary purpose” of the law at issue must all be considered when reviewing the agency’s actions.

In the NPRM, the Department followed that same approach in defining the term “eligible employee.” See 89 FR 100428. For example, the NPRM explained that the primary purpose of BSCA was to “ensure that individuals prohibited from receiving firearms would not be able to obtain them.” *Id.* (citing, e.g., BSCA sec. 12004(a)(1)). Focusing on employees who, by virtue of their current or prospective position, would have at least some connection to firearms or ammunition—rather than indiscriminately sweeping in all current or prospective employees—thus furthers the statute’s purpose and properly limits the breadth of the term “current or prospective employee.”

This conclusion is fully consistent with *Loper Bright Enters. v. Raimondo*,

603 U.S. 369 (2024). Although that case directs courts to strive for the “best” interpretation of the law, rather than deferring to administrative interpretations, a statute’s primary purpose remains a key interpretive tool in determining a statute’s best meaning. For example, in *United States v. Kokinda*, 146 F.4th 405, 417 (4th Cir. 2025), *cert. denied*, 146 S. Ct. 1775 (2025), the Fourth Circuit applied *Loper Bright* to the Attorney General’s interpretation of the term “habitually lives” in the Sex Offender Registration and Notification Act (“SORNA”). The Attorney General had interpreted that term in light of SORNA’s “objective” of comprehensively registering sex offenders, and the Fourth Circuit agreed that it was proper to “[t]ak[e] into account SORNA’s broad purpose” in arriving at a definition of the term. *Id.* at 418. BSCA’s “broad purpose”—preventing prohibited persons from obtaining firearms—similarly informs the Department’s interpretation of the term “current or prospective employee” and supports applying FHCs to those individuals who have at least some connection to firearms or ammunition. *Accord*, e.g., *Gen. Elec. Co. v. Boilermaker-Blacksmith Nat’l Pension Tr.*, 176 F.4th 1059, 1064 (8th Cir. 2026) (applying *Loper Bright* and adopting an interpretation that was most “consistent with the purpose of the statute”); *Mayfield v. U.S. Dep’t of Lab.*, 117 F.4th 611, 618 (5th Cir. 2024) (discussing how the agency’s definitional exemptions were consistent with the “broader structure” of the statute at issue there, and how application of that law to some persons would be “inconsistent with common sense”).

NSSF suggests that expanding the scope of the term “eligible employee” to sweep in all current or prospective employees—regardless of their likely access to firearms—would actually be more consistent with the purpose of BSCA, as doing so would subject a greater absolute number of individuals to background checks. But “[n]o statute pursues a single policy at all costs.” *Bartenwerfer v. Buckley*, 598 U.S. 69, 81 (2023). NSSF itself says it was “a reasonable limitation” for the Department’s NPRM to propose generally allowing FFLs to submit only one FHC per year per eligible employee “to manage any increased volume of NICS requests, or otherwise ensure that the system is not overwhelmed.” NSSF at 4–5. Thus, NSSF itself recognizes that concerns such as workability and practical consequences must inform the proper interpretation of section 12004 of BSCA.

Interpreting the term “current or prospective employee” to include only those persons with at least some connection to firearms or ammunition simply recognizes this same reality: As explained in the NPRM, expanding FHCs to any current or prospective employee, regardless of the person’s potential connection to firearms or ammunition—could have pernicious consequences for both the operation of NICS and for individuals who might lose or be denied employment as a result of these background checks. 89 FR 100428–29. As explained in the NPRM, while the FBI was appropriated additional funding to help with salaries and expenses associated with BSCA, *id.* at 100429, that was a one-time appropriation;²⁷ no portion of those funds have yet been annualized to continue covering any new NICS staff. Further, those FBI-designated funds were to also be used for other aspects of BSCA with FBI impacts (e.g., for system updates so NICS could conduct the newly required state and local outreach during “under-21 transactions”). See 89 FR 100429, 100432.

The NPRM estimated that the rule applied to approximately 80,000 FFLs across the country. See *id.* at 100429. The NICS Section normally receives Brady Checks from more than 50,000 of those 80,000 FFLs.²⁸ That number will only increase for purposes of FHCs because, as the NPRM described, it is believed that the majority of POCs that normally process Brady Checks will not have the legal authority under their State laws to also process FHCs. See *id.* Therefore, while it is yet unknown exactly how many of the remaining 30,000 FFLs will submit FHCs to POCs, the NICS Section anticipates it will process FHCs submitted by the majority of those remaining FFLs. See *id.* Additionally, the FBI anticipates increased transactional volume as it anticipates receiving FHCs from FFLs that normally do not submit Brady Checks (e.g., licensed manufacturers). Accordingly, once FHCs are implemented, the NICS Section will process transactional volume from FFLs and many states that is not processed by the NICS Section during Brady Checks.

Since 2022, the NICS Section processes approximately 10 million (or less) of all Brady Checks per year.²⁹ If

²⁷ See BSCA, Division B, 136 Stat. at 1338.

²⁸ See FBI, 2022 NICS Operations Report 5 (2022), <https://www.fbi.gov/file-repository/cjis/nics-2022-operations-report.pdf/view>.

²⁹ See, e.g., *id.* at 31 and FBI, 2024 NICS Operational Report iii (2024), <https://www.fbi.gov/file-repository/2024-nics-operational-report.pdf/view>.

the NICS Section ultimately processes FHCs for just 65,000 to 70,000 FFLs (of the 80,000) cited above, and those FFLs submit just 10 FHCs per month, the NICS Section would be processing 7.8 to 8.4 million FHCs plus the annual Brady Check volume. If FFLs could effectively submit FHCs anyone who consents to the check, and as often as the FFL chooses, regardless of the subject's potential to access firearms or ammunition, the NICS Section could receive 10 million FHCs in a matter of months, if not weeks. The Department therefore concludes that considering the pool of "current and prospective employees" without boundaries properly scoped with BSCA's broad purpose in mind could overwhelm NICS and the FBI and, therefore, result in a significant overall "cost" to public safety. *See Bartenwerfer*, 598 U.S. at 81.

The Department appreciates that NSSF provided some statistics regarding employees in the firearms industry that, NSSF believes, call into question the Department's concerns about practical consequences and workability. That information, however, has not swayed the Department on this question. NSSF estimates only 155,000 persons are "directly employed in the firearms industry," NSSF at 4, whereas the NPRM estimated approximately 793,000 persons alone were employed in "big box" stores that are licensed to deal in firearms at various locations throughout the United States. *see id.* at 100429.³⁰ Even dividing the "big box" number of current employees in half (to approximately 400,000) leaves a demonstrable gap between the Department's and NSSF's statistics.³¹ More problematically, NSSF's statistics do not address half of BSCA's mandate to the Attorney General. The scope of "current" employees of FFLs throughout the United States is just one factor that the Department was required by Congress to consider and discuss in the NPRM. The number of "prospective" hires for every FFL also

had to be considered in the NPRM, and NSSF's comment does not discuss that unquantified number of individuals. The Department accordingly believes that its analysis of the deleterious effects of expanding the scope of employees eligible for FHCs best reflects the potential magnitude of those effects. Even if the Department puts aside its disagreement with NSSF's current employee statistics, NSSF did not account for the full impact of FHCs on both current and prospective employees. The Department continues to believe that the term "current or prospective employee" in BSCA is limited to those whose employment actually presents, or would present, at least some risk of accessing firearms, ammunition, or their manufacturing components. *See* 89 FR 100428.

After publishing the NPRM and, to some extent, acknowledging NSSF's point regarding the proposed definition for "eligible employee," the Department identified further situations where licensees may have working relationships with other individuals who would not ordinarily be classified as employees but could have access to the FFL's inventory of firearms, ammunition, or manufacturing components. Industry experts believe many de facto FFL employees may be misclassified by the FFL as contractors for tax-related purposes. Those people should still be included within the scope of this rule's background checks at the FFL's choice if they provide their written consent as required by BSCA. As previously discussed in this Section of this rule, the Supreme Court in *Robinson* analyzed another Federal agency's regulatory definition of "employee" and noted that the statute itself, the context in which the word "employee" appeared, and the "primary purpose" of the law at issue must all be considered when reviewing the agency's actions. 519 U.S. at 340–46. The Department recognizes that the primary purpose of this section of BSCA is to generally prevent prohibited persons that work for an FFL from accessing firearms, regardless of whether the FFL has formally classified that individual as an employee. Thus, the term employee should be read in context of this purpose and should include individuals who work at the FFL (*e.g.*, contractors) and would have access to firearms. Accordingly, this final rule amends the definition of eligible employee to allow licensees to submit FHCs of consenting independent contractors and agents who work, or seek to work, at a licensee's business premises and are, or will be, capable of

accessing firearms, ammunition, or their manufacturing components. Other than that modification, the application of FHCs to "eligible employees" will otherwise be finalized as the NPRM proposed.

V. Final Rule

- A. Summary
- B. Changes to NPRM Proposals

A. Summary

With a few exceptions, the NPRM will be finalized as it was proposed because the majority of comments received either supported the rule, expressed no opposition to the rule, or provided critiques which do not merit revision or rescission of the NPRM. The paragraphs below in this Section describe the final rule.

B. Changes to NPRM Proposals

1. Application Form

The NPRM discussed a new form for FFLs to use to collect all necessary information from the eligible employee before submitting an FHC. *See* 89 FR 100432 (discussing ATF's proposed Form 5300.47). The NPRM also noted, however, that FFLs would not be required to use that form. *Id.* Since publication of the NPRM, ATF has determined that it will no longer move forward with ATF Form 5300.47. Instead, ATF has issued an NPRM proposing to use Form 4473 to document information necessary for FHC background checks and the employee's written consent.³² In addition, ATF has made available for review and public comment a revised version of ATF Form 4473 ("Revised Form 4473").³³ Those proposed rules and form revisions from ATF include, among others, a box to distinguish Forms 4473 used for FHCs, instructions on which parts of the Form to use, the written consent/certification for employees, and a proposed 90-day required records retention period (significantly shorter than for other Forms 4473). In the interim, should this regulation become effective prior to the Revised ATF Form 4473 being finalized, ATF will issue guidance to FFLs on how they can utilize the existing ATF Form 4473 to submit FHCs to NICS without the FHC forms being confused with firearms transfer forms. Again, however, FFLs are not required to use a particular form to capture the eligible employees' biographic information, but BSCA and this regulation require that FFLs obtain their eligible employees' informed, written consent before submitting FHCs

³⁰ The Department quoted employment numbers from the public website of just one of those big box stores that are licensed to deal in firearms, and that one corporation claims to employ more than 1.5 million people in the United States alone and more than 2 million worldwide. *See* 89 FR 100428 (citing Walmart, *How many people work at Walmart*, <https://corporate.walmart.com/askwalmart/how-many-people-work-at-walmart>). In drafting this regulation, that same website was rechecked and still reports employing "approximately 1.6 million associates" in the United States as of the end of their FY2024 (last accessed Aug. 10, 2026).

³¹ Further, the Department's estimate did not attempt to factor in the employees of the remaining FFLs, which would still be tens-of-thousands of licensed dealers (including both smaller retail chains and "mom and pop" dealers) in addition to all licensed manufacturers and importers.

³² *See* footnote 21.

³³ *See* footnote 22.

of those persons to NICS. A corresponding amendment is being made to the last sentence of 28 CFR 25.6(i)(2) to revise the term “applicable FHC form” to read “appropriate form” to mirror existing language of § 25.6(i).

2. Definitions in § 25.2

a. “Did Not Pass”

Federal firearm laws 18 U.S.C. 922(g) and (n), for example, apply to shipping, transporting, receiving, or possessing firearms and ammunition. Because this rule will allow FHCs of eligible employees that may handle only ammunition, this definition is being updated to also remind readers that criminal liability can result if a prohibited person handles ammunition just the same as can occur if that person handles a firearm.

b. “Eligible Employee”

Upon final review, the Department noted that the NPRM should have proposed paragraph (2) of this definition to reference “(1)(ii)(B)” rather than “(1)(B)(ii).” This rule finalizes paragraph (2) of this definition to correctly reference “(1)(ii)(B)[.]”

Additionally, to reflect the discussion in Section IV of this preamble responding to NSSF comments, this final rule further amends the “eligible employee” definition by inserting a new subparagraph (1)(iii), immediately preceding paragraph (2), to read as follows:

(iii) An independent contractor or agent who works, or seeks to work, at a licensee’s business premises and is, or will be, capable of accessing firearms, ammunition, or their manufacturing components.

c. “FFL (Federal Firearms Licensee)”

The NPRM proposed revising the definition of “FFL (federal firearms licensee).” See 89 FR 100435. However, as NSSF noted, that proposed revision was not necessary as the existing definition covered the same licensees. Accordingly, this rule will not finalize that proposed revision within 28 CFR 25.2.

d. “NICS Section”

The NPRM’s instructions for 28 CFR 25.2 stated that it was revising, among other terms, the definition of “NICS Section.” The NPRM, however, should have instead noted it was “adding” that term to the definitions in 28 CFR 25.2. This rule instead notes that § 25.2 is being amended by “adding” a new definition for “NICS Section.”

3. Modifications to 28 CFR 25.6

To more closely follow language of 18 U.S.C. 922(d), a technical revision will be made to the language the NPRM proposed for 28 CFR 25.6(c)(4). The NPRM proposed that an additional FHC could be submitted of someone “where the FFL believes it has received sufficient information demonstrating” that a person was subject to a potentially prohibiting event. As finalized, the relevant language will authorize subsequent FHCs “where an FFL has reasonable cause to believe” the person is subject to a potentially prohibiting event.

Next, a minor drafting error was located within § 25.6(h)(2). When discussing transmission of NICS determination messages, the NPRM proposed paragraph (h)(2) referenced “paragraphs (h)(i) and (h)(ii) of this section.” While the citation should have been to “paragraphs (h)(1)(i) and (h)(1)(ii),” to further simplify that provision, paragraph (h)(2) is being finalized to simply reference “paragraph (h)(1) of this section.”

The NPRM proposed that § 25.6(i)(1) be updated to reference 27 CFR part 478, rather than part 178. See 89 FR 100437. Upon its implementation, this rule finalizes further technical revisions to § 25.6(i)(1) to clarify that FFLs must record system responses “in accordance with the recordkeeping requirements in 27 CFR part 478.” Currently, the recordkeeping requirements in part 478 are detailed in subpart H titled “Records.”

Finally, a pair of drafting errors were found in the last two sentences of § 25.6(h)(2). In the NPRM, those two provisions should not have solely referenced “firearm transfer checks.” The NPRM should have included language broad enough to reflect that, in accordance with § 25.9(b), the NICS Audit Log would maintain and destroy POC determination messages for both firearm transfer checks and, when applicable, FHCs. Accordingly, to better reflect FHC information in the NICS Audit Log, the last two sentences of § 25.6(h)(2) are being finalized to remove references to “firearm transfer checks.”

4. Modifications to 28 CFR 25.10

While finalizing this rule, the Department noted that some revisions proposed to 28 CFR 25.10 were needed. A minor technical revision is being made at the end of § 25.10(a). That paragraph reads, in relevant part, “as applicable. (POCs at their discretion may waive the requirement for a written request.)” That language will be

finalized instead to remove unnecessary punctuation and read, “as applicable (POCs at their discretion may waive the requirement for a written request).” Next, a drafting error inadvertently deleted “a” near the end of the second sentence of § 25.10(c). As finalized, that provision will reference, in relevant part, “information upon which a ‘Denied’ or ‘Did Not Pass’ response was based.” Next, revisions proposed within § 25.10(e) (see 89 FR 100438–100439) could be reasonably misconstrued. There, the Department proposed § 25.10(e) to read, in relevant part: “In the case of a prospective firearm transfer, . . . and there are no other disqualifying or potentially disqualifying records upon which to continue the denial, the NICS will communicate a ‘Proceed’ response to the FFL. . . . In the case of an FHC, . . . and there are no other disqualifying or potentially disqualifying records upon which to continue the ‘Did Not Pass’ status, the NICS will communicate a ‘Pass’ response to the FFL.”

The spirit of these revisions is still accurate in that, after a successful appeal, NICS can only provide an FFL with an updated response of “Proceed” or “Pass,” as applicable, when no “disqualifying or potentially disqualifying records” remain within the subject’s background. However, as written, those revisions could have been read to suggest the FBI would maintain a “Denied” or “Did Not Pass” response if a “potentially disqualifying” record still needed to be resolved after a “disqualifying” record was cleared. To be clear: the FBI only provides and maintains “Denied” responses and will only provide and maintain “Did Not Pass” responses when information demonstrates the subject is in fact disqualified; those responses are not applicable if the subject is “potentially” disqualified.

Accordingly, this final rule provides a slight modification to 28 CFR 25.10(e), which will keep the intent of the original proposal, while eliminating the language that could be misinterpreted. Within the relevant passage, this rule eliminates the language “upon which to continue the denial” and “upon which to continue the Did Not Pass[.]” For FHCs, where a disqualifying record is cleared, but a potentially disqualifying record needs further research, the response to the FFL will change from “Did Not Pass” to “Pending” (the same way a prospective firearm transfer response would change from “Denied” to “Delayed” (i.e., “Open”).

5. Modifications to § 25.11(b)

In finalizing this rule, it was noted that § 25.11(b)(1) utilizes the possessive-plural words of “agencies,” “FFLs,” and “individuals.” In context, those words should not include the possessive apostrophes. This final rule makes technical amendments to that provision by removing those apostrophes, as well as identical apostrophes used in § 25.11(b)(2). Those deletions will not impact the substantive aspects of this rule.

C. Finalized Revisions

Beyond the limited exceptions described above, the Department is finalizing all other regulation amendments that the NPRM proposed. This includes, but is not limited to, all other new and modified definitions, how FHCs will be processed, FFL obligations, and provisions related to appeals.

VI. Statutory and Executive Order Reviews

A. Regulatory Flexibility Act

This regulation amends the Department’s NICS regulations to incorporate changes applicable to FHCs as required by BSCA. These changes provide FFLs the ability to use NICS to voluntarily request background checks for eligible employees. 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. A final regulatory flexibility analysis (“FRFA”) 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).

“[T]he term ‘small entity’ shall have the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’ defined in paragraphs (3), (4) and (5) of this section[.]” 5 U.S.C. 601(6). Therefore, 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. See 5 U.S.C. 601(3)–(6). The Department still anticipates that a majority of the licensees that will

request FHCs under this rule would be considered small entities for purposes of the RFA.

The FBI still anticipates that this rule will have no impact, economic or otherwise, on any licensee, including small entity licensees, unless the licensee voluntarily chooses to request FHCs through NICS. The FBI still concludes that this rule does not require any governmental unit, small entity or otherwise, to take any specific action upon being contacted by NICS for the purpose of an FHC. There are no maintenance or compliance costs and POCs are not required to conduct FHCs on behalf of the FBI. Again, neither the FBI, nor this rule, imposes any fee upon any licensee when using NICS to submit FHCs. See 34 U.S.C. 40901(b)(2).

The public comments received did not provide a basis to alter the FBI’s certification in the NPRM that this rule would not have a significant economic impact on a substantial number of small entities. Further, the NPRM is generally being finalized as it was proposed with no changes that would impact the small entity certification. Accordingly, the Attorney General certifies that this final rule will not have a significant impact on a substantial number of small entities and, as a result, a FRFA is not necessary for this regulation.

B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This regulation was drafted and reviewed in accordance with Executive Order 12866, section 1(b), The Principles of Regulation and Executive Order 13563, section 1(b), General Principles of Regulation. Both 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. Executive Order 13563 emphasizes the importance of using the best available methods to quantify both costs and benefits, and of reducing costs, harmonizing rules, and promoting flexibility.

Alternatives Considered. Promulgating this rule was required by BSCA, see 34 U.S.C. 40901(b)(2), so not putting forth this rule was quickly discarded as an option. The FBI considered the impacts of broader definitions and processes that would allow FHCs to be used as widely and as often as possible. See 89 FR 100428–100432. However, it was determined that FHCs being used in an overly broad manner (either in population or frequency) could negatively impact

NICS as well as persons whose employment responsibilities afford them access to firearms, ammunition, or their manufacturing components. See *id.*

Therefore, to meet the clear intent of 34 U.S.C. 40901(b)(2) to promulgate this rulemaking, while mitigating unnecessary negative consequences to the FBI and the public, the FBI determined that FHCs would be available regarding “eligible employees” and, generally, could be run one time per year for each eligible employee. 89 FR 100429–100430. Reasons for scoping the pool of eligible employees were discussed in Section V of this rule, as well as within the NPRM. See *id.* As to conducting FHCs once per year, the FBI could have proposed authorizing FHCs of each eligible employee once every five years. Such a time limit would mirror time limits used within 18 U.S.C. 922(t)(3).³⁴ The FBI could have also proposed mirroring ATF’s FFL licensing timeframes by proposing FHCs be allowed only once every three years. See 27 CFR 478.49. These procedures effectively allow a NICS background check to be considered valid for multiple years before needing to be refreshed. However, the FBI instead proposed FHCs could be submitted more frequently, while also giving each FFL flexibility to submit an FHC sooner should circumstances merit an additional FHC of the subject. *Id.* at 100431–100432. This rule, upon implementation, will keep those same considerations in mind.

The Office of Management and Budget (“OMB”) has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), as amended, and accordingly this rule has been reviewed by OMB.

The Department has, to the extent possible, assessed the costs and benefits of this regulation and believes that the final regulatory approach selected maximizes net benefits. The public comments either support the NPRM’s proposals or did not provide a basis to alter the affected populations, benefits, or costs analyses that the NPRM offered for purposes of these Executive Orders. As such, the discussion provided in the NPRM about these Executive Orders remains unchanged and a final economic impact analysis cannot be provided. In any event, due to FHCs

³⁴ Section 922(t)(3) establishes when firearms-related permits or licenses can be used by FFLs in lieu of the FFL conducting a Brady Check. Those provisions state, in relevant part, that such license or permit qualifies if “issued not more than 5 years earlier.” 18 U.S.C. 922(t)(3)(A)(i)(II). FFLs retain the discretion to submit a Brady Check even when being presented with a qualifying in-lieu of permit.

being a completely voluntary process by those participating, this regulation is not expected to have an annual impact of over \$100 million dollars.

C. Executive Order 13132 (Federalism)

This regulation may impact federalism to the extent that State entities respond to NICS inquiries during research of “Pending” transactions. Any such effects, however, will be only an indirect result of this rule because State entities may freely choose whether to respond to such NICS inquiries. In addition, such effects will not be substantial, nor will such effects concern the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of 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.

D. Executive Order 12988 (Civil Justice Reform)

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

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48. *See* 2 U.S.C. 1532.

F. Paperwork Reduction Act

This regulation does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163. *See* 44 U.S.C. 3501–3521.

G. Executive Order 13175—Tribal Consultation (Consultation and Coordination With Indian Tribal Governments)

The Department determined that formal Tribal consultation under Executive Order 13175 was not required. The NPRM was provided as part of a public collaboration that includes Tribes. The NPRM received no public comments from Tribes and no

comments expressed concerns from a tribal perspective. This regulation implements Congress’s mandate of the Attorney General to promulgate regulations that allow licensees under 18 U.S.C. 923 to use NICS for purposes of FHCs as described in this regulation. Implementation of these regulations will not have any substantial direct effects on federally recognized Tribes.

H. Executive Order 14192—Deregulation

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an Agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. This rule is intended to be a deregulatory action under Executive Order 14192 by allowing FFLs to be allowed to access NICS for another purpose in accordance with 34 U.S.C. 40901(b)(2).

I. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, OMB’s Office of Information and Regulatory Affairs has determined this rule does not meet the criteria in 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. While there may be impacts to FFLs, governmental agencies, or the general public (*e.g.*, through employment background checks), these impacts are all voluntarily assumed by those participating in FHCs or responding to FHC inquiries, as applicable, and this regulation will not have a significant impact on the overall economy.

J. Executive Order 14294

Executive Order 14294, titled “Overcriminalization in Federal Regulations,” requires agencies promulgating regulations with criminal regulatory offenses potentially subject to

criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not create or impose a criminal regulatory offense and is thus exempt from Executive Order 14924 requirements.

VII. Disclosure

Copies of the final rule, proposed rule, and comments received in response to the proposed rule will be available for public inspection through the Federal eRulemaking portal, <https://regulations.gov>.

VIII. Severability

BSCA addresses critical but distinct components of the NICS background check process. The Department believes that the provisions in this final rule are well-supported in law, reflect sound policy, and should be upheld against any legal challenge. However, if any portion of this final rule should be declared invalid or unenforceable by a court, the Department intends that the provisions contained herein be viewed as independent, necessary, and severable from each other to the maximum extent possible. As described previously, BSCA mandated that the Attorney General “promulgate regulations allowing licensees to use [NICS] for purposes of voluntarily conducting an employment background check relating to a current or prospective employee.” 34 U.S.C. 40901(b)(2)(A). Each of the policy and operational considerations described in this final rule is independently significant to the functioning of this rule. If a court were to invalidate one or more of the provisions of the final rule, the Department intends that the remaining provisions of the rule be severed from any invalidated provision and that all remaining provisions stand.

To obviate any doubt as to the Department’s intent, even if a provision (contrary to the Department’s views regarding legal support) were deemed invalid, the Department would still have proposed each of the other provisions that this rule finalizes. *Cf. Am. Fuel & Petrochemical Mfrs. v. EPA*, 3 F.4th 373, 384 (D.C. Cir. 2021) (severing one section of a rule that the court found invalid where the agency had stated that it intended that relevant section to be “severable from” another section that “operate[d] independently”). Each amendment in this final rule stands on its own with no reliance on another amendment. Each amendment is necessary, for example, to provide for the implementation of FHCs or to

account for the potential application of existing regulations (such as appellate procedures and penalty provisions) to FHCs. Consequently, this final rule amends 28 CFR 25.1 to include a general statement about the severability of the provisions within 28 CFR, part 25, subpart A.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Arms and munitions, Computer technology, Privacy, Security measures, Telecommunications.

Authority and Issuance

For the reasons discussed in the preamble, 28 CFR part 25 is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for 28 CFR 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 117–159, 136 Stat. 1313; 34 U.S.C. 40901; 18 U.S.C. 921, 922.

Subpart A—The National Instant Criminal Background Check System

■ 2. Revise § 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 subsection (t) of 18 U.S.C. 922. The NICS may also be contacted, pursuant to the Bipartisan Safer Communities Act, Public Law 117–159, 136 Stat. 1313, by any Federal Firearms Licensee (FFL) for purposes of a firearm handler background check (FHC). 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 section 12004(h)(1) of the Bipartisan Safer Communities Act, 136 Stat. 1330–31 (34 U.S.C. 40901(b)(2)(A)), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been determined not to have the right to receive a firearm as a result of

a NICS background check, including an FHC, performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency. 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.

■ 3. Amend § 25.2 by:

■ a. Revising the definitions of “Appeal” and “ARI”;

■ b. Adding definitions of “Did Not Pass,” “Eligible Employee,” “Firearm Handler,” “Firearm Handler Background Check (FHC)” in alphabetical order;

■ c. Revising the definition of “NICS,” “NICS Representative,” “NRI (NICS Record Identifier)”;

■ d. Adding definitions of “NICS Section,” “Pass,” and “Pending” in alphabetical order;

■ e. Revising the definition of “POC (Point of Contact)”;

■ f. Adding definitions of “Responding Agency” and “Responsible person” in alphabetical order.

The revisions and additions read as follows:

§ 25.2 Definitions

Appeal means a formal procedure to challenge the denial of a firearm transfer or a “Did Not Pass” response for an FHC.

ARI means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Indices.

* * * * *

Did Not Pass means the response given by the NICS, in the case of an FHC, to indicate that at least one matching record was found that demonstrates the eligible employee is prohibited from receiving or being transferred a firearm as described in 18 U.S.C. 922(t). The receipt of a “Did Not Pass” response should not be construed to indicate the person is not eligible for any employment with the FFL, but rather is solely a determination, based on information available to the NICS, that the person is not eligible to receive or be transferred firearms under 18 U.S.C. 922(t). Circumstances in which that person handles a firearm or ammunition during the person’s employment could lead to criminal liability for the person (and potentially the FFL) under applicable Federal, State, local or Tribal law.

* * * * *

Eligible Employee:

(1) For purposes of conducting FHCs, *eligible employee* means a person who

is not listed as a responsible person of the FFL and is a:

(i) Firearm handler;

(ii) Person whose current or prospective employment duties for a licensed manufacturer include, or will include, access to, or the handling of; any

(A) Forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a firearm or ammunition (e.g., unformed block of metal, liquid polymer, or other raw material); or

(B) Tool or other equipment used to manufacture a firearm or ammunition, or to otherwise finish a component part of a firearm or ammunition; or

(iii) An independent contractor or agent who works, or seeks to work, at a licensee’s business premises and is, or will be, capable of accessing firearms, ammunition, or their manufacturing components.

(2) Persons who have or will have access to tools or other equipment as described in paragraph (1)(ii)(B) of this definition include, but are not limited to, persons whose employment duties allow them entry to any device, room, or facility where such tools or other equipment of the manufacturer are used or stored.

* * * * *

Firearm handler means a person whose current or prospective employment duties for an FFL include or will include the opportunity to access firearms or ammunition, regardless of whether the person’s employment duties include or will include the actual or constructive transfer or handling in any way of firearms or ammunition. Persons who have or will have access to firearms or ammunition include, but are not limited to, persons whose employment duties allow them entry to any device, room, or facility where firearms or ammunition of the licensee are stored.

Firearm Handler Background Check (FHC) means a NICS background check voluntarily initiated by the FFL pursuant to 34 U.S.C. 40901(b) for an eligible employee after that eligible employee has provided the FFL with the employee’s written consent to the FHC.

* * * * *

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would be prohibited as described under 18 U.S.C. 922(t). An FFL also may

voluntarily contact the NICS for the purpose of conducting FHCs.

* * * * *

NICS Representative means a person who receives telephone inquiries to the NICS Section from FFLs requesting background checks and provides a response as to whether the receipt or transfer of a firearm may proceed or is delayed or, for FHCs, whether an eligible employee “Passed” or “Did Not Pass” a NICS background check or whether the FHC is “Pending.”

NICS Section means the section of the FBI that receives telephone or electronic inquiries from FFLs, performs NICS background checks, including FHCs, makes determinations based upon available information as to whether the receipt or transfer of a firearm would be prohibited as described under 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.

NRI (NICS Record Identifier) means the system-generated unique number associated with each record in the NICS Indices.

* * * * *

Pass means, in the case of an FHC, the response given by the NICS to indicate that, at the time of the response, no information was available to the NICS demonstrating that the eligible employee is prohibited from receiving or being transferred a firearm as described under 18 U.S.C. 922(t).

Pending means, in the case of an FHC, the response given by the NICS to indicate that more research is required prior to the NICS being able to provide a “Pass” or “Did Not Pass” response.

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 for prospective firearm transfers, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from receiving or being transferred a firearm as described under 18 U.S.C. 922(t), and respond to FFLs with the results of a NICS background check. A POC may also, if its state law allows, receive FHC requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an eligible employee is disqualified from receiving or being transferred a firearm

as described under 18 U.S.C. 922(t), and respond to FFLs with the results of an FHC. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

* * * * *

Responding agency means, in the case of an FHC, a POC or the NICS Section, whichever provides the response that information available to the NICS demonstrates that the eligible employee is prohibited from receiving or being transferred a firearm as described under 18 U.S.C. 922(t).

Responsible person means a sole proprietor or, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the corporation, partnership, or association, insofar as they pertain to any FFL.

* * * * *

■ 4. Revise § 25.4 to read as follows:

§ 25.4 Record source categories.

It is anticipated that most records in the NICS Indices will be obtained from Federal agencies. It is also anticipated that a limited number of authorized state, local, and tribal law enforcement agencies will voluntarily contribute records to the NICS Indices. Information in the NCIC and III systems that will be searched during a background check has been or will be contributed voluntarily by Federal, state, local, tribal, and international criminal justice agencies.

■ 5. Revise § 25.5 to read as follows:

§ 25.5 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

- (1) Ensuring the accurate adding, canceling, or modifying of NICS Indices records supplied by Federal agencies;
- (2) Automatically rejecting any attempted entry of records into the NICS Indices that contain detectable invalid data elements;
- (3) Automatically purging records in the NICS Indices after they have been on file for a prescribed period of time; and
- (4) Performing quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Indices remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Indices and will immediately

correct any record determined to be invalid or incorrect.

■ 6. Amend § 25.6 by:

- a. Revising paragraphs (a), (c)(1) introductory text, (c)(2);
- b. Adding paragraphs (c)(3) and (4);
- c. Revising paragraphs (d)(2), (f) introductory text, (f)(2), and (g)(2);
- d. Adding paragraph (g)(3); and
- e. Revising paragraphs (h), (i), and (j) introductory text.

The revisions and additions read as follows:

§ 25.6 Accessing records in the system.

(a) FFLs shall initiate a NICS background check in connection with a proposed firearm transfer as required by the Brady Act and may initiate a NICS background check in connection with an FHC. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL’s contacting the FBI NICS Section (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by ATF whether they are required to initiate NICS background checks with the NICS Section or a POC and how they are to do so.

* * * * *

(c)(1) The FBI NICS Section, upon receiving an FFL’s request for a background check for the transfer of a firearm, will:

* * * * *

(2) The FBI NICS Section, upon receiving an FFL telephone or electronic dial-up request for a background check for an FHC, will:

(i) Verify the FFL Number and code word;

(ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(iii) Search the relevant databases (*i.e.*, NICS Indices, NCIC, III) for any matching records; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) “Pass” response, if no disqualifying information is found demonstrating the eligible employee is prohibited from receiving or being transferred a firearm as described under 18 U.S.C. 922(t).

(B) “Pending” response, if a NICS search requires more research to determine whether the eligible employee is prohibited from receiving or being transferred a firearm as described under 18 U.S.C. 922(t).

(C) “Did Not Pass” response, when at least one matching record is found that

provides information demonstrating that the eligible employee is prohibited from receiving or being transferred a firearm as described under 18 U.S.C. 922(t).

(3) None of the responses provided to the FFL under paragraph (c)(1) or (2) of this section will contain any of the underlying information in the records checked by the system.

(4) Except where an FFL has reasonable cause to believe the eligible employee has become subject to a potentially prohibiting event (for example, a new criminal charge or conviction or a protection order), an FFL may conduct only one FHC for each eligible employee every 12 months.

(d) * * *

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm or an FHC; and

* * * * *

(f) When the NICS receives an inquiry from a POC, it will search the relevant databases (*i.e.*, NICS Indices, NCIC, III) for any matching record(s) and will provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

* * * * *

(2) Partial response, if the NICS has not completed the search of all of its records. This response will indicate the databases (*i.e.*, NICS Indices, NCIC, and III) that have been searched and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

* * * * *

(g) * * *

(2) In the case of a prospective firearm transfer, notify the FFL that the transfer may "Proceed," is "Delayed" pending further record analysis, or is "Denied." "Proceed" notifications made within 3 business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a "Denied" response.

(3) In the case of an FHC, notify the FFL of a "Pass" or "Did Not Pass" result for the FHC, or that the FHC is "Pending." The POC may or may not provide a transaction number (NTN or

STN) when notifying the FFL of a "Did Not Pass" result.

(h)(1) POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions:

(i) In the case of a prospective firearm transfer, "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"; and "Denied" transactions that have been overturned.

(ii) In the case of FHCs, transactions resulting in a "Pass" or "Did Not Pass" response; and transactions that have been overturned.

(2) The FBI shall provide POCs with an electronic capability to transmit the information identified in paragraph (h)(1) of this section. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For firearm transfer checks 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 FHCs, newly created POC NICS firearm transfer checks 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)(1) In the case of a background check for the transfer of a firearm, 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, in accordance with the recordkeeping requirements in 27 CFR part 478. The FBI NICS Section response will always include an NTN and associated "Proceed," "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.

(2) In the case of a background check for an FHC, FFLs may record the system response, whether provided by the FBI NICS Section or a POC, on the appropriate form for FHC checks. The

FBI NICS Section response will always include an NTN and associated response of "Pass," "Pending," or "Did Not Pass." POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs may be required to record the POC response, including any transaction number or determination. FFLs should follow the instructions on the appropriate form when recording responses.

(j) *Access to the NICS Indices for purposes unrelated to NICS background checks required by the Brady Act or an FHC.* Access to the NICS Indices for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) or an FHC shall be limited to uses for the purposes of:

* * * * *

■ 7. Amend § 25.8 by:

■ a. Revising paragraphs (a), (f)(2), and (g)(1);

■ b. Redesignating paragraph (g)(2) as paragraph (g)(2)(i); and

■ c. Adding paragraph (g)(2)(ii).

The addition and revisions read as follows:

§ 25.8 System safeguards.

(a) Information maintained in the NICS Indices is stored electronically for use in an FBI computer environment. The NICS central computer will reside inside a locked room within a secure facility. Access to the facility will be restricted to authorized personnel who have identified themselves and their need for access to a system security officer.

* * * * *

(f) * * *

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale or whether the background check is an FHC, and the name, sex, race, date of birth, and state of residence of the prospective buyer or eligible employee.

* * * * *

(g) * * *

(1) Access will be restricted to the initiation of a NICS background check in connection with the proposed transfer of a firearm or an FHC.

(2) * * *

(ii) The NICS Representative will only provide a response of "Pass," "Pending," or "Did Not Pass" (with regard to an FHC) and will not provide the details of any record information about the subject of the FHC. In cases where potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a "Pending" response to the FFL. Follow-up "Pass" or "Did Not Pass" responses will be provided by the

NICS Section during its regular business hours.

* * * * *

■ 8. Revise § 25.9 to read as follows:

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Indices records that indicate that receipt of a firearm by the individuals to whom the records pertain would be prohibited as described under 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 firearm 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) 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 or, with respect to FHCs, employee and the NTN).

(i) NICS “Denied” and “Did Not Pass” transaction records obtained or created in the course of the operation of the system will be retained in the Audit Log for 110 years.

(ii) NICS Audit Log records relating to transactions remaining in an “Open” or “Pending” status, except the NTN and the NTN’s creation 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 communication of the determination of “Pass” or “Proceed” response, as applicable. All other information, except the NTN and the NTN’s creation date, will be destroyed after not more than 90 days from the date of inquiry.

(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 and performance of the system. Searches

may be conducted on the Audit Log by timeframe, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transactions may be accessed directly only by the FBI and only for the purpose of conducting audits of the use and performance of the NICS, except that:

(i) Information in the NICS Audit Log, including information not yet destroyed under paragraph (b)(1)(iii) of this section, 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, and/or enforcing such law or regulation; and

(ii) The NTNs and their creation dates for allowed transactions may be shared with ATF in Individual FFL Audit Logs as specified in paragraph (b)(4) of this section.

(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 under 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.

(4) *Creation and Use of Individual FFL Audit Logs.* Upon written request from ATF containing the name and license number of the FFL and the proposed date of inspection of the named FFL by ATF, 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 denied transactions, and, with respect to all other transactions, only non-identifying information from the transaction. In no instance shall an Individual FFL Audit Log contain more than 60 days’ worth of transaction records with a status of “Delayed,” “Open,” “Pass,” “Pending,” or “Proceed” originating at the FFL. The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such Logs to ATF.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act’s requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer or “Pass” status for an FHC; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer or “Pass” status for an FHC.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act’s requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that results in an allowed transfer or “Pass” status for an FHC that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the subject and result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.

■ 9. Revise § 25.10 to read as follows:

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reason for the denial of a firearm transfer of a firearm from the agency that conducted the check of the NICS (the “denying agency,” which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. In the case of an FHC, an individual may request the reason for the “Did Not Pass” response from the agency that conducted the check of the NICS (the “responding agency,” which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide the individual the name and address of the responding agency and the unique NTN or STN associated with the FHC. A request for the reason for the “Denied” or “Did Not Pass” response must be made in writing to the denying agency or responding agency, as applicable (POCs at their discretion may waive the requirement for a written request).

(b) The denying or responding agency will respond to the individual with the reasons for the “Denied” or “Did Not

Pass” response within five business days of its receipt of the individual’s request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (*i.e.*, a claim that the record in question does not pertain to the individual making the request).

(c) If the individual wishes to challenge the accuracy of the record upon which a “Denied” or “Did Not Pass” response is based, or if the individual wishes to assert that the individual’s right to possess a firearm has been restored, the individual may make application first to the denying or responding agency, *i.e.*, either the FBI or the POC. If the denying or responding agency is unable to resolve the appeal, the agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which a “Denied” or “Did Not Pass” response was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the agency that issued a “Denied” or “Did Not Pass” response, which will, in turn, verify the record correction with the originating agency (assuming the originating agency has not already notified the denying or responding agency of the correction) and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the procedure as described in paragraphs (a) through (c) of this section, where a POC was the denying or responding agency, the individual may elect to direct the individual’s challenge to the accuracy of the record, in writing, to the FBI, NICS Section, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C–1, Clarksburg, West Virginia 26306–0147. Upon receipt of the information, the FBI will investigate the matter by contacting the POC that provided the “Denied” or “Did Not Pass” response or by contacting the source of the data on which the “Denied” or “Did Not Pass” response was based. The FBI will request the POC or the data source to verify that the record in question pertains to the individual who was the subject of the “Denied” or “Did Not Pass” response or to verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the

challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency, or any state, local, or tribal agency that was the data source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS and the denying or responding agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. In cases where multiple disqualifying or potentially disqualifying records are the basis for the “Denied” or “Did Not Pass” response, or where further disqualifying or potentially disqualifying records otherwise exist in the subject’s background, the individual must pursue a correction for each record before a “Proceed” or “Pass” response can be provided to the FFL. In the case of a prospective firearm transfer, if the appeal of a contested record is successful and 30 or fewer days have transpired since the initial check, and there are no other disqualifying or potentially disqualifying records, the NICS will communicate a “Proceed” response to the FFL. If the appeal of a prospective firearm transfer is successful and more than 30 days have transpired since the initial check, the FFL must recheck the NICS before allowing the transfer to continue. In the case of an FHC, if the appeal of a contested record is successful and there are no other disqualifying or potentially disqualifying records, the NICS will communicate a “Pass” response to the FFL.

(f) An individual who is the subject of a denied transfer may also contest the accuracy or validity of a disqualifying record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved. Similarly, an individual who is the subject of a “Did Not Pass” response during an FHC may bring an action against the state or political subdivision responsible for providing the contested information, or responsible for providing the “Did Not Pass” response or against the United States, as the case may be, for an order directing that the contested information be corrected or that the FHC be passed.

(g) An individual may provide written consent to the FBI to maintain

information about the individual in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing future erroneous “Denied” or “Did Not Pass” responses or extended responses of “Delayed” or “Pending” by the NICS. Such file shall be used only by the NICS for prospective firearm transfers and FHCs. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by the 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.

■ 10. Amend § 25.11 by revising paragraphs (b)(1) and (2) 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 “Pass” response.

(2) State or local agencies, FFLs, or individuals purposefully using the system to perform a check for unauthorized purposes.

* * * * *

Dated: October 22, 2026.

Todd Blanche,

Attorney General.

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DEPARTMENT OF JUSTICE

28 CFR Part 106

[JMD Docket No. 157; A.G. Order No. 7256–2026]

RIN 1105–AB71

Implementation of HAVANA Act of 2021

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On April 19, 2024, the Department of Justice published an interim final rule to implement the HAVANA Act of 2021. No comments were received on the interim final rule. The HAVANA Act authorizes agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. This