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FINAL REPORT



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

December 21, 2012

[Redacted]
[Redacted]

Firearms Transaction Center
Department of State Police
Post Office Box 85608
Richmond, VA 23285-5608

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Dear [Redacted]

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Enclosed is the final audit report for the National Instant Criminal Background Check System Audit conducted by the FBI's Criminal Justice Information Services (CJIS) Division, CJIS Audit Unit. Based upon the reviews, no audit findings were identified and a response from you is not required.

Thank you for your cooperation throughout the audit process. I trust the audit process has been beneficial. Questions should be directed to [Redacted] at [Redacted] or [Redacted]

b6 -2
b7C -2
b7E -1

Sincerely yours,

Michelle S. Klimt
Section Chief
Law Enforcement Support Section
Criminal Justice Information
Services Division

Enclosure



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

National Instant Criminal Background Check System (NICS) Audit Report

VIRGINIA

NOVEMBER 2012

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Overview

The FBI's Criminal Justice Information Services (CJIS) Division is mandated to triennially audit every federal and state Point of Contact (POC) who contributes or has access to the National Instant Criminal Background Check System (NICS) to ensure the integrity and reliability of FBI CJIS systems and data. The audit is designed to assess policy compliance through a review of administrative policies and/or data quality procedures at the POC and/or local agencies within the jurisdiction of the POC. Although compliance with all policies is not assessed, adherence to all policies and procedures is required to be a NICS participant.

In summary, the FBI CJIS Division did not identify any areas requiring corrective action during their review of 40 NICS Denial Notifications and 400 NICS Index records submitted by the Virginia State Police, Firearms Transaction Center, serving as a full point of contact for the NICS. Since there were no audit findings, the Virginia State Police, Firearms Transaction Center, can consider this report as final and no response is required.

Audit Recommendations

Based on the fifth cycle NICS Audit of Virginia conducted during November 2012, the FBI CJIS Division audit staff did not identify any items requiring corrective action.

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

NICS Audit POC Policy Compliance Summary Chart

Process	
POC Agency	IN
Availability	IN
POC Determination Messages	IN
Retention and Destruction	IN
Background Check	IN
Managing an Appeal Process	IN
Conducting an IAQ	IN
System Safeguards	IN
POC, Partial-POC, or Alternate Permit Requirements	IN
Miscellaneous	
Prohibited Activities	IN
Accessing Records in the System	IN
Misuse	IN
Exclusions	
(1) Felony Conviction	IN
(2) Active Warrant	IN
(3) Controlled Substance User	IN
(4) Mental Defective	IN
(5) Illegal/Unlawful Alien	IN
(6) Dishonorable Discharge	IN
(7) Citizen Renunciate	IN
(8) Protective Order	IN
(9) MCDV	IN
(n) Felony Indictment	IN
Administrative	
Exception to the NICS Check	N/A
Renewal Process	N/A
NICS Data Accuracy	
Unable to Locate	IN
Valid	IN
Accurate	IN
*FYI Incomplete	IN

Background

The NICS Audit Program was established upon the recommendation of the Advisory Policy Board (APB) to the FBI Director that an audit be implemented of state and federal agency system users that provide and/or contribute nationwide access to the NICS. The audit program assesses the performance of the POC in providing the NICS and related services to the criminal justice community.

Scope

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

Methodology

On-site audits of POCs and/or local agencies include an administrative interview and/or data quality review, as applicable. Administrative interviews are conducted with appropriate agency personnel and are designed to assess methods used by an agency for access to and maintenance of NICS records. Data quality reviews include an examination of case files and other supporting documentation to ensure the NICS is not misused and verify the accuracy and validity of the data provided to the NICS Index. Collectively, the administrative interview and data quality review help to ensure compliance with federal and state laws, and applicable regulations. A simple random sampling formula is used to calculate the number of NICS Index records to be reviewed during the audit.

About This Report

The report is divided into policy sections as outlined in the Table of Contents. Each section contains a summary chart which displays policy compliance results, as well as, overall compliance. Red text within a chart indicates a policy violation. Each policy is defined and referenced beneath the summary chart. Policy violations are detailed as necessary following the respective policy definition. The violations listed in the executive summary are chronological throughout the report. Violations determined to be noncompliance issues requiring corrective actions are presented as bold text. Violations which are only considered an area of concern and do not require a response are presented as non-bolded text following the corresponding policy definition.

POC Regulations Compliance Summary Chart

	*POC Agency *N/A for permits	*Availability *N/A for permits	*NDN Messages Reviewed	*POC Determination Messages *N/A for permits	*Retention and Destruction *N/A for permits	Background Check	Managing an Appeal Process	Conducting an IAQ	System Safeguards	POC, Partial-POC, or Alternate Permit Requirements
Firearms Transaction Center	IN	IN	40	IN	IN	IN	IN	IN	IN	IN
Virginia State Police	IN	IN	0	IN	IN	IN	IN	IN	IN	IN

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

- (1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system;
- (2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and
- (3) Transmit the request for a background check via the NCIC interface to the NICS.

(e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in State and local law enforcement and other relevant record systems and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.

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

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

This down time is used for back-up, re-indexing databases, system tests, and other nightly batch processes. The current scheduled downtime is subject to change. (*NICS User Manual*)

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

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

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

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

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

Background Check: (1) (a) . . . Before the completion of the transfer, the licensee has contacted NICS; (c) Time Limitation on NICS checks: A NICS check . . . may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer. (Title 27, C.F.R., Chapter II § 478.102 (a))

Managing an Appeal Process:

- a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the "denying agency," which will be either the FBI or the state or local law enforcement agency serving as a POC). . . . The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.)

- b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. . . .
- c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. . . .
- d) As an alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center. . . . (Title 28, C.F.R., Chapter 1 § 25.10)

Conducting an Immigration Alien Query (IAQ):

The Attorney General mandate dated February 13, 2002, directed the FBI to work with the Bureau of Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States citizens who are prospective firearms purchasers. An IAQ, utilizing purpose code F, must be conducted to determine whether the alien is illegally or unlawfully in the United States or a non-immigrant alien and therefore prohibited from receiving a firearm.

System Safeguards:

- (b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed . . . are the minimum to be adopted by all POCs and data sources having access to the NICS.
- (c) State or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized National Crime Information Center (NCIC) users and shall observe all procedures set forth in the *NCIC Security Policy* when processing NICS background checks. . . .
- (2) Since personnel . . . can have access to data stored in the NICS, they must be thoroughly screened This screening will also apply to non-criminal justice maintenance or technical personnel.
- (d3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.
- (g2) Title 28, C.F.R., Chapter 1 § 25.8 (g)(2) states the NICS Representative will only provide a response of "Proceed" or "Delayed" . . . or "Denied" and will not provide the details of any record information about the transferee to the FFL (Title 28, C.F.R., Chapter 1 § 25.8 (b, c, d, g))

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

- (1) The POCs must access the NICS as part of their background check process. The POCs are not required, but are encouraged, to search available state data sources as part of the background checks they perform.
- (2) The POCs shall ensure that all FFLs within their state are provided access to the NICS through a designated state POC or network of state or local agencies. It is recommended that a single state POC be established.

- (3) The POCs, with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the FBI, shall notify the FFLs in its state regarding the procedures for contacting the POC and all other procedures related to firearm background checks.
- (4) The POCs will have automated access to the NICS via the NCIC telecommunications network.
- (5) The POCs will offer telephone access to the FFLs, at a minimum, between 10 a.m. and 9 p.m., Monday through Saturday, and during normal retail business hours within their state on Sundays.
- (6) The POCs shall have procedures in place that provide assurance that NICS background checks are initiated only by authorized personnel and only for purposes authorized under the Brady Act.
- (7) The POCs shall provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.
- (8) The POCs shall not deny the purchase of a firearm based on an arrest without a disposition. If such a practice is occurring, a state law must be in place authorizing the practice.
- (9) The POCs shall deny firearm sales based on criteria equal to or more stringent that imposed by the GCA of 1968 (18 United States Code (U.S.C.) § 922), as amended.
- (10) The POCs shall ensure that they adhere to all applicable federal laws regarding the NICS.
- (11) The POCs shall adhere to federal guidelines which dictate the purging of proceed transaction data according to the current retention period as published in the C.F.R., currently 24 hours. If this time limit is exceeded, there must be an independent state law regarding firearm transactions authorizing this practice.
- (12) The POCs shall ensure that a state-generated State Transaction Number for a NICS inquiry can be cross-referenced with the NICS Transaction Number generated by the NICS.
- (13) The POCs shall ensure that an IAQ is conducted through the ICE on all non-U.S. Citizen transactions.
- (14) If utilized within their state, the POCs shall ensure that all Identification for Firearms Sales flags are being properly set for Interstate Identification Index records.
- (15) The POCs shall not deny a transaction based solely upon the existence of a protective order without consideration being given to the Brady indicator.
- (16) The POCs in decentralized states shall ensure that information from the ATF and the FBI is disseminated to all agencies performing NICS background checks. The POCs should provide guidance and training regarding this information in order to ensure consistency throughout the state.
- (17) The POCs must ensure the transmittal of final transaction status to the NICS in accordance with Federal Rule 28 C.F.R. 25.

Misuse Compliance Summary Chart

	Prohibited Activities	Accessing Records in the System	Misuse
Firearms Transaction Center	IN	IN	IN
Virginia State Police	IN	IN	IN

Prohibited Activities:

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

- (1) State or local agencies, FFLs, or individuals purposefully furnishing incorrect information to the system to obtain a "Proceed" response, thereby allowing a firearm transfer;
- (2) State or local agencies, FFLs, or individual's purposefully using the system to perform a check for unauthorized purposes; and
- (3) Any unauthorized persons accessing the NICS. (Title 28, C.F.R., Chapter 1 § 25.11 (b))

Accessing Records in the System: . . . The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL's contacting the FBI NICS Operations Center or a POC. . . . (Title 28, C.F.R., Chapter 1 § 25.6 (a))

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

- (1) Providing information to federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or
- (2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the GCA (18 U.S.C. Chapter 44) or National Firearms Act (26 U.S.C. Chapter 53). (Title 28, C.F.R., Chapter 1 § 25.6 (j))

Federal Denial Compliance Summary Chart

	(1) Felony Conviction	(2) Active Warrant	(3) Controlled Substance User	(4) Mental Defective	(5) Illegal/Unlawful Alien	(6) Dishonorable Discharge	(7) Citizen Renunciate	(8) Protective Order	(9) MCDV	(n) Felony Indictment
Firearms Transaction Center	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN
Virginia State Police	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

Federal Denial Criteria

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person - (The GCA of 1968, Title 18, U.S.C, Chapter 44 § 922 (d))

Felony Conviction:

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

Active Warrant:

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

Controlled Substance User:

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

Mental Defective:

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

Illegal/Unlawful Alien:

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

Dishonorable Discharge:

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

Citizen Renunciate:

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

Protective Order:

Title 18, U.S.C. § 922 (g)(8): Who is subject to a court order that –

(i) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (ii) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (iii) (A) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (B) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

Misdemeanor Crime of Domestic Violence (MCDV):

Title 18, U.S.C. § 922 (g)(9): Who has been convicted in any court of a MCDV;

The definition of a MCDV is a federal, state or local offense that meets all the following criteria: Is a misdemeanor under federal or state law, or in states which do not classify offenses as misdemeanors, is an offense which is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine; (This is true whether or not the state statute specifically defines the offense as a “misdemeanor” or as a “misdemeanor crime of domestic violence,”) and Has an element that involves the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian (e.g., the equivalent of a “common law” marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home).

Felony Indictment:

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

Alternate Permit Requirements Compliance Summary Chart

	Permit Reviewed	Exception to the NICS Check	Renewal Process
Firearms Transaction Center	0	N/A	N/A
Virginia State Police	0	N/A	N/A

Exception to the NICS check and Renewal Process: . . . (1) The transferee has presented to the licensee a valid permit or license that –

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

- Currently, Virginia does not have a permit that qualifies as an alternative to the background check requirements of the Brady Law.

NICS Index Validation and Data Integrity Compliance Summary Chart

	Records Reviewed	Unable to Locate	Unable to Locate Records	Invalid	# Invalid Records	Inaccurate	# Inaccurate Records	*FYI Incomplete	#FYI Incomplete Records
Firearms Transaction Center	400	IN	0	IN	0	IN	1	IN	0
Virginia State Police	400	IN	0	IN	0	IN	1	IN	0

NICS Index Validation and Data Integrity of Records in the System:**Unable to Locate, Invalid, and/or Inaccurate Data Quality Error Types**

- (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 Index records supplied by federal agencies;
 - (2) Automatically rejecting any attempted entry of records into the NICS Index that contains detectable invalid data elements;
 - (3) Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and
 - (4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct.
- (b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect. (Title 28, C.F.R., Chapter 1 § 25.5 (a-b))

***FYI Incomplete:**

The NICS Index is a name based search and the entry of all available information increases the likeliness of a NICS Index hit. This is for informational purposes only.

Contact Sheet & POC Address

NICS FULL POC AUDIT CONTACT SHEET

State:	NA		
Cycle:			
Agency:	VA State Police - Firearms Transaction Center		
Confirm Agency's ORI:	VAV SP00091		
POC's Name:	<input type="checkbox"/> 1st audit		
Phone Number:			
Fax Number:	804-		
Email Address:			
Address: MAILING:	7700 Midlothian Turnpike, Richmond		
PHYSICAL:	PO 85608	23285-5608	23261
Agency head's (poc's boss) Name:			
Mailing Address: (If different)			

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Audit Date & Time:	NOV 28, 2012 - 9:00 am
Building descript: (is it easy to find?)	# Wed
Parking issues?	

TYPE	INFO	YES	NO
Permit to Purchase			
CCW - Alt./in lieu of			
Full POC		X	
Additional State Prohib.			

NOTES:

Type	#
Index	400
* NDNs	30
Permits	50

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NICS FULL POC AUDIT CONTACT SHEET

*Note to AM -

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Obtain from the POC:

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Discuss with the POC about how their process works. Get an idea of the flow.

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NICS Index Contact Name:	
Contact Number:	
Address:	
Email:	

Captain

Fax to (304) 625-3457 or e-mail to <acjis@leo.gov>.

*Virginia***Criminal Justice Information Services**

Program	Point-of Contact	Phone Number(s)	E-mail Address
NCIC	<input type="text"/>	<input type="text"/>	<input type="text"/>
NSOR	<input type="text"/>	<input type="text"/>	<input type="text"/>
N-DEx	<input type="text"/>	<input type="text"/>	<input type="text"/>
QAR	<input type="text"/>	<input type="text"/>	<input type="text"/>
NICS	<input type="text"/>	<input type="text"/>	<input type="text"/>
ITSA	<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/>
IAFIS	<input type="text"/>	<input type="text"/>	<input type="text"/>

Cc: 2/7/12

NICS Compliance Packet (Presented on-site)



Federal Bureau of Investigation
Criminal Justice Information Services Division
CJIS Audit Unit

National Instant Criminal Background Check System
Preliminary Audit Findings

CAU's

November 28, 2012
CJIS Systems Auditor:

NICS POC STATE AUDITOR:

VIRGINIA

			POC REQUIREMENTS
			Federal Regulation 28 C.F.R. Part 25§ 25.6(d) Access to the NICS through POCs (pg 114) A Point of Contact Agency (POC) is a criminal justice agency which has overall responsibility for the administration and usage of the FBI NICS within a state. In designing an agency as a POC, the state must ensure that a certain service baseline is provided to the FFLs. (1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system; (2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; (3) Transmit the request for a background check via the NCIC interface to the NICS; (4) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in State and local law enforcement and other relevant record systems and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check; (5) Based on the response(s) provided by the NICS, and other information available, a POC will: A-Confirm any matching record; B-Notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. Proceed notifications made within three business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number when notifying the FFL of a denied response.
			TRANSACTION RETENTION Federal Regulation 28 C.F.R. Part 25§25.9 (b)(1) Retention and Destruction of Records in the System (pg 116) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system. (iii)...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 that the transfer may proceed. All other information, except NTN and date, will be destroyed after not more than 90 days from the date of inquiry.

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b5 -1
b7E -2

b5 -1
b7E -2

b5 -1
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			REQUIREMENT OF ALWAYS CONDUCTING A NICS CHECK The Gun Control Act of 1968 Title 18 U.S.C. Chapter 44 §922(t)(1) Unlawful Acts (pg 14)A licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless- (A) before the completion of the transfer, the licensee contacts the National Instant Criminal Background Check System..... Title 27 C.F.R. Chapter 44 §478.102(a) Background Check (pg 55) Sales or deliveries of firearms on or after November 30, 1998. (a) Before the completion of the transfer, a licensee has contacted the NICS. (c) A NICS check conducted may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.
			SYSTEM SECURITY Federal Regulation 28 C.F.R. Part 25§25.8(b, c, d) System Safeguards (pg 115) (b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed in (c)-(f) are the minimum to be adopted by all POCs and data sources having access to the NICS. (c) State and local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NICS users and shall observe all procedures set forth in the NCIC Security Policy when processing NICS background checks. (2)personnel must be screened thoroughly including non-criminal justice maintenance or technical personnel (d3)copies of NICS data obtained from terminal devices must be afforded appropriate security (g3) The NICS representative will only provide a response of Proceed, Delayed or denied and will not provide the details of any record information about the transferee to the FFL.
			CONDUCTING IAQs ON ALL NON-UNITED STATES CITIZENS Attorney General Mandate dated February 13, 2002 The attorney General instructed the FBI to deny gun transfers to those aliens who are prohibited from purchasing firearms. The Attorney General directed the FBI to work with the Bureau of Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States citizens who are prospective firearm purchasers. An Immigration Alien Query (IAQ), utilizing purpose code F, must be conducted to determine whether the alien is illegally or unlawfully in the United States or a non-immigrant alien and therefore prohibited from receiving a gun. *Discussed eliminating "A" prior to number per ICE's request. VA will implement programming change in January 2013 to rectify issue.

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			FINAL DETERMINATION NOTIFICATION MESSAGES Federal Regulation 28 C.F.R. Part 25§25.6(h) POC Determination Messages (pg 115) POCs (with exception of permit checks) shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: open transactions that are not resolved before the end of the operational day; denied transactions; transactions reported to the NICS as open and later changed to proceed; and denied transactions that have been overturned. *VA always sent messages until July when NICS changed programming requirements. VA will implement fix in 01/13 to rectify issue of rejected submissions.
			MANAGING AN APPEAL PROCESS Federal Regulation 28 C.F.R. Part 25§25.10 Correction of Erroneous System Information (pg 117) (a) An individual may request the reason for the denial from the agency that conducted the check of the NICS. 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. The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.) (c)....If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. (d) As a alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, directly to the FBI, NICS Section, CJIS, 1000 Custer Hollow Road, Clarksburg, WV 26306-0147.
			NICS INDEX SUBMISSION REQUIREMENTS Title 28 C.F.R. Part 25§25.5 Validation and data integrity of records in the system (pg 113) (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 Index records supplied by federal agencies; (2) Automatically rejecting any attempted entry of records into the NICS Index that contain detectable invalid data elements; (3)Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and (4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct. (b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect. DATA QUALITY: 1/400 = accurate; 1/400 = inaccurate ; 1/400 = inaccurate

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b5 -1
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			NICS INDEX BEST PRACTICE
			Record Completeness
			<p>The NICS is a name based check and the more information that is entered into a NICS Index record, the greater likelihood of a hit on the record and identifying a positive match.</p> <p>Complete records include all information that was available on the person at the time of entry.</p> <p>Complete entries include numeric identifiers, e.g., social security number, passport number, additional dates of birth, military number, alien registration number, etc. that could be added to the record. This also includes all names/aliases used by the disqualified individual.</p>
			MISUSE OF THE NICS
			Title 28 C.F.R. Chapter I, Part 25§ 25.6 (a) & (j) & 25.11
			<p>Accessing Records in the System (pg 113-114)</p> <p>(a)The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL contacting the FBI NICS Section or a POC.</p> <p>Access to the NICS Index for Purposes Unrelated to NICS Background Checks Required by the Brady Act (pg 115)</p> <p>(j)Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 992(t) shall be limited to uses for the purpose of:</p> <p>(1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or</p> <p>(2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act or the National Firearms Act.</p> <p>Prohibited Activities and Penalties (pg 118)</p> <p>(b) misuse or unauthorized access includes, but is not limited to, the following:</p> <p>(1) State or local agencies, FFLs, or individuals purposefully furnishing incorrect information to the system to obtain a proceed response, thereby allowing a firearm transfer;</p> <p>(2) State or local agencies, FFLs or individuals purposefully using the system to perform a check for unauthorized purposes, and</p> <p>(3) Any unauthorized persons accessing the NICS.</p>

FEDERAL DENIAL CRITERIA

The Gun Control Act of 1968

Title 18 U.S.C. Section 922(g)(1-9) and (n)

Unlawful Acts (pg 10-11)

It shall be unlawful for any person.....

(1) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Who is a fugitive from justice;

(3) Who is an unlawful user or addicted to any controlled substance;

(4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) Who, being an alien is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions;

(7) Who, having been a citizen of the United States, has renounced his citizenship;

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

(9) Who has been convicted in any court of a misdemeanor crime of domestic violence;

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year -
.....to ship or transport interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition.....

			ALTERNATIVE PERMIT REQUIREMENTS Title 27 C.F.R. Part 478.102 (d)(1) Exceptions to NICS Check (pg 56) The provisions of paragraph ((a) FFLs conducting NICS checks) of this section shall not apply if - (1) The transferee has presented to the licensee a valid permit or license that - (i) Allows the transferee to possess, acquire, or carry a firearm; (ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and (iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State or local law.
			POC STATE REQUIREMENTS Criminal Justice Information Services Systems User Agreement, Signed by CSA Head, Page 3 The following documents are incorporated by reference and made part of this agreement: <i>NICS User Manual, NICS Interface Control Document</i> NICS User Manual, Section 2 The following are the minimum requirements for a state to act as a POC for the NICS: 1) The POCs must access the NICS as part of their background check process. The POCs are not required, but are encouraged, to search available state data sources as part of the background checks they perform. 2) The POCs shall ensure that all FFLs within their state are provided access to the NICS through a designated state POC or network of state or local agencies. It is recommended that a single state POC be established. 3) The POCs, with the assistance of the ATF and the FBI, shall notify the FFLs in its state regarding the procedures for contacting the POC and all other procedures related to firearm background checks. 4) The POCs will have automated access to the NICS via the NCIC telecommunications network. 5) The POCs will offer telephone access to the FFLs, at a minimum, between 10 am and 9 pm, Monday through Saturday, and during normal retail business hours within their state on Sundays. 6) The POCs shall have procedures in place that provide assurance that NICS background checks are initiated only by authorized personnel and only for purposes authorized under the Brady Act. 7) The POCs shall provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.

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

Reference Materials:

ATF Federal Firearms Regulations Reference Guide September 2005
FBI CJIS Systems User Agreement
NICS User Manual March 2005
and Applicable State Firearm Laws

NICS Questionnaire

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

State:	VIRGINIA	Cycle:	5
Email:	<input type="text"/>	Main ORI:	VAVSP0091
Telephone:	<input type="text"/>	Fax:	<input type="text"/>
Contact (s):	<input type="text"/>		
Agency Name:	VIRGINIA STATE POLICE		
Mailing Address:	7700 MIDLOTHIAN TURNPIKE, RICHMOND, VA 23261		
Physical Address:	PO BOX 85608, RICHMOND, VA 23285-5608		
Date of Audit:	NOVEMBER 28, 2012 2 9:00 AM - WEDNESDAY		

b6 -1
b7C -1

OVERALL PROCESS

Discuss the following:

Customer completes both federal and state forms.
Dealer calls 800# or intranet program (VCheck)
Receives approval number or is delayed

\ TEST record=

QTEST, EUGENE C, W/M, DOB: 19470611

POB - WV

SOR - STATE AUDITING

CTZ - C / USA

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

OPERATIONAL CAPABILITY		
Do you have full inquiry capability into the FBI NICS?		
What Transaction Codes are used for Firearm queries 01, 01, 03 (H, L, B,) etc.		
Can you request the QNR or do you have to run III? If they request the record via III, ensure purpose code "F" is being used.		
Do you have a single POC? If NO, what other agencies are performing NICS checks?		
Is there a waiting period for a person to purchase a firearm?		
HANDGUN		
LONG GUN		
Does state law have stricter requirements regarding the purchase of a handgun vs long gun?		
Does your state issue any type of permits? Details: Concealed Handgun Permits are issued by courts. SPOL issues Nonresident Concealed Handgun Permits		
Do you have a waiting period for a POC background check?		YES NO
Do you have a waiting period for a POC background check?		YES NO
Do you have a waiting period for a POC background check?		YES NO
Do you have a waiting period for a POC background check?		
Do you have a waiting period for a POC background check?		YES NO
Do you have a waiting period for a POC background check?		YES NO

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

		YES	NO
Does your state submit data to the NICS Index?		YES	NO
What types of records are submitted to the Index? G1-104,195, G3-28, G4-177,916, G9-13			
Who is responsible for correcting and/or removing a NICS Index entry?			
How many records have been submitted to the Index?	282 152		
Does your state have any future plans of submitting more records or different types of records to the Index?			
Details:			
In addition to running NICS, do you search any additional state databases to check for disqualifiers? VA Wanted, Missing & Protection Orders, mental health, CCH, & IAQs	YES	NO	
Is your state programmed to submit notification messages for delays, denials and process?			
Since July 1 been rejected. Programming issue since PCA codes have been implemented			
If YES, to above - If a denial is overturned, does your state notify FBI NICS?			
What are your hours of operation?			
Fees involved in conducting NICS checks? \$2 per trans			
Does your state utilize the NICS system for any purpose other than firearm background checks?			

b7E -2

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

LIST ALL USES UNRELATED TO FIREARM SALES/PERMITS <u>discuss possible scenarios:</u> Return of weapon to owner-dism PO, suicide, Court order from judge?			
Do you conduct checks at gun shows?			
DETAILS:			
		YES	NO
What is the retention period for:			
DENIAL: 2 yrs			
DELAY:			
PROCEED: Little handgun transactions will be maintained for 12 months. per section 18.2-308.2:2 Code of VA			
Are all NICS related III/NCIC Hot File log(s) deleted? (see iii TRANSACTION ANALYSIS 190 III non-resident CCW? ...)			
If no, what is the retention period for the logs?			
What ORIs do you request NICS checks with? 78, 81, F8, F9, G1, G2, N3, P2, P3, P4, P5, U2			
Where is the location of these terminals?			
Do you have a method to SEARCH or RETRIEVE previous transactions? ARE ALL LOGS DELETED?			
Is a STN also created for each transaction?			
Can you cross reference your STN to our NTN?			
Can you retrieve data based on			
Can you cross reference			
Do you process any transactions without an			
Explain:			

b7E -2

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b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

Do you assign any FFL/SFL numbers to any entities other than firearms dealers either internal or external?			
FEDERAL PROVISIONS			
Does your state deny on a felony conviction or disqualifying Misdemeanor? Includes some juv delinq 14+			
Does your state deny on a naked Felony arrest? State Statute:			
Does your state deny on individuals who are under indictment or information for a Felony?			
Does your state deny on a general Misdemeanor arrest (NOT MCDV)? State Statute:		YES	NO
How long will you delay making a decision if disposition information is not present?			
Is the time frame mandated by state law? Statute:		YES	NO
Does your state put the ONUS on the purchaser?		YES	NO
What are your procedures for denying based on a recent drug conviction or multiple arrests w/in past 5 yrs? VA 18.2-308.1:5 with 36 cons month, been convicted of 2 misd offenses to purchase a handgun for 5 years.			
DISQUALIFYING DISCHARGES			
Does your state deny on all Dishonorable Discharges including a DISMISSAL by a GCM (officers)			
Does your state deny on all active warrants, including misd?			
Does your state perform hit confirmation requests per NCIC			

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

policy on all active warrants?			
Is POB or Citizenship a required field when processing a NICS check?			
Is an IAQ conducted on all non U.S. Citizens that are purchasing?			
Reminder – IAQs- Purpose code 'F' and the offense code 0399			
Does your state deny on a MCDV conviction?			
On MCDVs, what does your state research? What is the procedure? Assault and Battery, ~Affray, CtoDofM, Point Fire		YES	NO
Is there a date restriction/limit on how far back the state would research possible MCDV charges?			
Does your state deny on all Protection Orders, regardless of the Brady Indicator? State statute: 18.2-308.1:4 VA			
Does your agency deny on PCO 07 - Aware?			
Is the entering law enforcement agency notified when an individual with a protection order against them attempts to purchase a firearm? Conducting Hit Confirmations?			
Does your state have access to a mental health database to review and satisfy federal prohibitor #4?			
Does your state automatically deny on a NICS Index hit? (Discuss CITIZEN RENOUNCE)			
Any other reason to deny other than federal law? Details, consistency, usage, cite state law.	All POs W/in 36 mos, convicted 2 misd drug offenses=5 yrs		

b7E -2

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

What is your denial rate for firearm transactions?	
Does the POC have an appeals process?	
Are denied individuals provided the reason for a denial in writing (w/in 5 days)?	
How does the appeal process work? - discuss details. Ensure the agency researches and resolves.	
What is provided to the appellant	
Are appellants held to a specific time period to initiate an appeal? Within 30 days of the denial.	
Are appellants informed about their right to directly appeal to the FBI NICS Section? It is on brochure.	
What percentage of denials result in an appeal?	
Who handles appeals? (Person/unit)	
Who makes the final decision on each appeal?	
Do you retain appeal documentation? How long?	
What percentage of appeals is overturned?	%
If the decision is upheld, does the appellant have any other course of action?	
To whom? (AG/Gov/Court)	
If you reverse a denial thus making the individual eligible to purchase, is the appellant provided a letter to give to the FFL?	

b7E -2

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

[Redacted]			
Are FFLs ever informed of an individuals' specific reason for denial?			
Do you provide ATF a monthly listing of all denials? If YES, which office (HQ or FIELD) (by submitting NDN messages, NICS will forward denials to ATF automatically)		YES	NO
Are you familiar with the VAF? VA has UFIN		YES	NO
Do you access LEO to verify UPINs for the VAF?		YES	NO
DO you have a web site related to your firearms program? Address: WWW.VSP.STATE.VA.US		YES	NO

b7E -2

[Redacted]			
Are background checks performed on employees at the POC prior to employment?			
How many employees process NICS checks?			
Are all employees fingerprinted?			
Are all employees trained and certified NCIC terminal operators? Biennial retesting?			
Are terminals locked or logged out when employee leaves computer?			
Are transactions monitored at the POC to detect system misuse? Internal audit program?			
Does the POC have an official discipline policy when misuse is detected?			
Is appropriate use of hot file and restricted files monitored?			
If YES, is III use monitored and logged for appropriate purpose code use, retention, and potential misuse?			

b7E -2

b7E -2

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

What firearm training are ~~operators provided~~ 6 months of training before employee works independently.
Specific NICS training?
By who and when?

b7E -2

IFFS	Does your state set IFFS flags?	
	Is the agency aware of IFFS flags?	
	Would the agency deny on an IFFS flag being set?	

NICS Representative	
Name of NICS Representative Observing:	
Did the Rep contribute to any research prior to the audit? If yes, date: _____	
Did the NICS Rep have any comments to add or disagree with any findings? Document! Date: _____ Time: _____	

**National Instant Criminal Background Check System (NICS)
Point of Contact (POC)
On-site Questionnaire**

Date: [REDACTED]			
Type	Total Submitted	# Reviewed	Issues
NDNs	510	40	UTL
			Invalid
			Proceed
NICS Index	281,997	400	UTL
			Invalid
			Inaccurate
			Incomplete-fyi
[REDACTED]			
Proceeds	n/a		
Permits	n/a		

b7E -2

b6 -1
b7C -1

Virginia NICS
October 2015
Audit Report

Audit Report
and
Response to Audit Findings



National Instant Criminal Background Check System (NICS) Audit Report

Virginia

October 2015

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Executive Summary

Overview

The FBI's Criminal Justice Information Services (CJIS) Division is mandated to triennially audit every federal and state Point of Contact (POC) who contributes or has access to the National Instant Criminal Background Check System (NICS) to ensure the integrity and reliability of FBI CJIS systems and data. The audit is designed to assess policy compliance through a review of administrative policies and/or data quality procedures at the POC and local agencies within the jurisdiction of the POC. Although compliance with all policies is not assessed, adherence to all policies and procedures is required to be a NICS participant.

Audit Results

Based on the NICS Audit conducted during October 2015, the FBI's CJIS Division makes no recommendations to the POC.

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

Compliance Summary

POC Regulations		Findings
POC Agency		In Compliance
POC Determination Messages		In Compliance
Retention and Destruction		In Compliance
Background Check		In Compliance
Managing An Appeal Process		In Compliance
Conducting an Immigration Alien Query		In Compliance
System Safeguards		In Compliance
POC, Partial-POC, or Alternate Permit Requirements		In Compliance
Use of NICS		
Use of NICS and III		In Compliance
Purpose Code Usage		In Compliance
Federal Denial Criteria		
Felony Conviction		In Compliance
Felony Indictment		In Compliance
Active Warrant		In Compliance
Controlled Substance User		In Compliance
Mental Defective		In Compliance
Illegal/Unlawful Alien		In Compliance
Dishonorable Discharge		In Compliance
Citizenship Renunciation		In Compliance
Protective Order		In Compliance
Misdemeanor Crime of Domestic Violence		In Compliance
Alternate Permit Requirements		
Alternate Permit NICS Check and Renewal Process		Not Assessed
NICS Index Submission Requirements		
Integrity of NICS Index Records		In Compliance
Completeness of NICS Index Records		In Compliance

Introduction

Background

The NICS Audit Program was established upon the recommendation of the Advisory Policy Board (APB) to the FBI Director that an audit be implemented of state and federal agency system users that contribute to and/or access the NICS. The audit program assesses the performance of the POC in providing the NICS and related services to the criminal justice community.

Scope

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

Methodology

On-site audits of POCs and/or local agencies include an administrative interview and/or data quality review, as applicable. Administrative interviews are conducted with appropriate agency personnel and are designed to assess methods used by an agency for access to and maintenance of NICS records. Data quality reviews include an examination of case files and other supporting documentation to ensure the NICS is not misused and verify the accuracy and validity of the data provided to the NICS Index. Collectively, the administrative interview and data quality review help to ensure compliance with federal and state laws, and applicable regulations. A simple random sampling formula is used to calculate the number of NICS Index records to be reviewed during the audit.

About This Report

The report is divided into policy sections as outlined in the Table of Contents. Each section contains a summary chart which displays policy compliance results, as well as overall compliance. Red text within a chart indicates a policy violation. Each policy is defined and referenced beneath the summary chart. Policy violations are detailed as necessary following the respective policy definition. The violations listed in the executive summary are chronological throughout the report. Violations determined to be noncompliance issues requiring corrective actions are presented as bold text. Violations which are only considered an area of concern and do not require a response are presented as non-bolded text following the corresponding policy definition.

POC Requirements

Compliance Summary

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

POC Agency

A POC is a criminal justice agency which has overall responsibility for the administration and usage of the FBI NICS within a state. In designating an agency as a POC, the state must ensure that the following baseline services are provided to Federal Firearms Licensees (FFLs):

- Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system.
- Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm.
- Transmit the request for a background check via the National Crime Information Center (NCIC) interface to the NICS.
- Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in state and local law enforcement and other relevant record systems and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.
- Based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will confirm any matching records and notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. Proceed notifications made within three business days will be accompanied by the NICS Transaction Number (NTN) or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a Denied response. (*Title 28, C.F.R., § 25.6 (d), (e), (g)*)

Finding: In Compliance

Recommendation: None

POC Determination Messages

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

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

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

Finding: In Compliance

Recommendation: None

Retention and Destruction

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

Finding: In Compliance

Recommendation: None

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

Except as provided in paragraph (d) of the cited reference, a licensee shall not sell, deliver or transfer a firearm to any other person who is not licensed unless, before the completion of the transfer, the licensee has contacted NICS. A NICS check may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer. (*Title 27, C.F.R., § 478.102*)

Finding: In Compliance

Recommendation: None

Managing an Appeal Process

An individual may request the reason for the denial from the agency that conducted the check of the NICS (the "denying agency," which will be either the FBI or the state or local law enforcement agency serving as a POC). The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. As an alternative to the above procedure where a POC was the

denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center. (*Title 28, C.F.R., § 25.10*)

Finding: In Compliance

Recommendation: None

Conducting an Immigration Alien Query (IAQ)

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

Finding: In Compliance

Recommendation: None

System Safeguards

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

- Personnel of state or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users.
- Since personnel can have access to data stored in the NICS, they must be thoroughly screened. This screening will also apply to non-criminal justice maintenance or technical personnel.
- Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.
- The NICS Representative will only provide a response of "Proceed," "Delayed," or "Denied" and will not provide the details of any record information about the transferee to the FFL. (*Title 28, C.F.R., § 25.8 (b), (c), (d), (g)*)

Finding: In Compliance

Recommendation: None

POC, Partial-POC, or Alternate Permit State Requirements

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

- The POCs must access the NICS as part of their background check process. The POCs are not required, but are encouraged, to search available state data sources as part of the background checks they perform.
- The POCs shall ensure that all FFLs within their state are provided access to the NICS through a designated state POC or network of state or local agencies. It is recommended that a single state POC be established.

-
- The POCs, with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the FBI, shall notify the FFLs in its state regarding the procedures for contacting the POC and all other procedures related to firearm background checks.
 - The POCs will have automated access to the NICS via the NCIC telecommunications network.
 - The POCs shall have procedures in place that provide assurance that NICS background checks are initiated only by authorized personnel and only for purposes authorized under the Brady Act.
 - The POCs shall provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.
 - The POCs shall not deny the purchase of a firearm based on an arrest without a disposition. If such a practice is occurring, a state law must be in place authorizing the practice.
 - The POCs shall deny firearm sales based on criteria equal to or more stringent than imposed by the GCA of 1968 (18 U.S.C. § 922), as amended.
 - The POCs shall ensure that they adhere to all applicable federal laws regarding the NICS.
 - The POCs shall adhere to federal guidelines which dictate the purging of proceed transaction data according to the current retention period as published in the C.F.R., currently 24 hours. If this time limit is exceeded, there must be an independent state law regarding firearm transactions authorizing this practice.
 - The POCs shall ensure that a state-generated STN for a NICS inquiry can be cross-referenced with the NTN generated by the NICS.
 - The POCs shall ensure that an IAQ is conducted through the ICE on all non-U.S. Citizen transactions.
 - If utilized within their state, the POCs shall ensure that all Identification for Firearms Sales flags are being properly set for Interstate Identification Index (III) records.
 - The POCs shall not deny a transaction based solely upon the existence of a protective order without consideration being given to the Brady indicator.
 - The POCs in decentralized states shall ensure that information from the ATF and the FBI is disseminated to all agencies performing NICS background checks. The POCs should provide guidance and training regarding this information in order to ensure consistency throughout the state.
 - The POCs must ensure the transmittal of final transaction status to the NICS in accordance with Federal Rule 28 C.F.R. 25.

Finding: In Compliance

Recommendation: None

Use of NICS

Compliance Summary

	# NICS Transactions Reviewed	# Disposition of Firearms Transactions Reviewed	Use of NICS and III	Purpose Code Usage
Virginia State Police	125	14	IN	IN

Use of NICS and III

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

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

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

Finding: In Compliance

Recommendation: None

Purpose Code Usage

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

Finding: In Compliance

Recommendation: None

Federal Denial Criteria

Compliance Summary

	Felony Conviction	Felony Indictment	Active Warrant	Controlled Substance User	Mental Defective	Illegal/Unlawful Alien	Dishonorable Discharge	Citizenship Renunciation	Protective Order	Misdemeanor Crime of Domestic Violence
Virginia State Police	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

Federal Denial Criteria

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person... (Title 18, U.S.C. § 922 (d))

Felony Conviction

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

Finding: In Compliance

Recommendation: None

Felony Indictment

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

Finding: In Compliance

Recommendation: None

Active Warrant

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

Finding: In Compliance

Recommendation: None

Controlled Substance User

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

Finding: In Compliance

Recommendation: None

Mental Defective

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

Finding: In Compliance

Recommendation: None

Illegal or Unlawful Alien

...being an alien: (1) is illegally or unlawfully in the United States; or (2) except under certain circumstances, has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)). (*Title 18, U.S.C., § 922 (g)(5)*)

Finding: In Compliance

Recommendation: None

Dishonorable Discharge

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

Finding: In Compliance

Recommendation: None

Citizenship Renunciation

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

Finding: In Compliance

Recommendation: None

Protective Order

...is subject to a court order that: (1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (2) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (3) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. (*Title 18, U.S.C., § 922 (g)(8)*)

Finding: In Compliance

Recommendation: None

Misdemeanor Crime of Domestic Violence

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

- Is a misdemeanor under federal or state law or, in states which do not classify offenses as misdemeanors, is an offense which is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine (This is true whether or not the state statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence").
- Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon.
- Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home). (*Title 18, U.S.C., § 922 (g)(9) and Title 27, C.F.R., § 478.11*)

Finding: In Compliance

Recommendation: None

Alternate Permit Requirements

Compliance Summary

	# of NICS Permit Transactions Reviewed	Alternate Permit NICS Check and Renewal Process
Virginia State Police	N/A	N/A

Alternate Permit NICS Check and Renewal Process

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

- Allows the transferee to possess, acquire, or carry a firearm.
- Was issued not more than 5 years earlier by the state in which the transfer is to take place.
- The law of the state provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of federal, state or local law, and that the information available to such official includes the NICS. (*Title 18, U.S.C., § 922 (l)(3)(A)*)

Finding: Not Assessed

Recommendation: None

NICS Index Submission Requirements

Compliance Summary

	# NICS Index Records Reviewed	# Invalid - Documentation does not support entry	# Unable to Locate Supporting Documentation	# Unable to Access Supporting Documentation	# Inaccurate	# Incomplete	Integrity of NICS Index Records	Completeness of NICS Index Records
Virginia State Police	400	0	0	0	9	1	IN	IN

Integrity of NICS Index Records

Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect. Each data source must maintain documentation supporting the validity of entries into the NICS Index. (Title 28, C.F.R., § 25.5 (b))

Finding: In Compliance

Recommendation: None

Completeness of NICS Index Records

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

Finding: In Compliance

Recommendation: None

NICS Audit Manager Book

Repository Pre-Audit Questionnaire and Documentation

Virginia NICS Audit October 2015

- NICS Participation Level:
 - [REDACTED]
- VA also has a concealed weapons permit that is issued at the VSP. [REDACTED]
- VA also submits to the NICS Index [REDACTED]
- Also VA is utilizing the NICS System [REDACTED]
 - This is an authorized use of the NICS System...they need to utilize the [REDACTED]
- However, all of these transactions, and for that matter, all of the NICS transactions in the state are [REDACTED]
- Per our discussion earlier, if an agency runs [REDACTED]
 - More importantly, the NICS Index will [REDACTED]
 - Again, can only be ran for [REDACTED]

b7E -2

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b7E -2

[redacted]
From: [redacted]
Sent: Wednesday, August 12, 2015 12:35 PM
To: [redacted] (CJIS) (FBI)
Cc: [redacted]
Subject: Virginia NICS Pre-Audit Questionnaire
Attachments: [redacted] appeal.docx; FULL POC PreAUD Questionnaire 2015.docx; Firearms Dealers Procedures Manual 2015.pdf; Training Check List .pdf

b6 -1, 2
b7C -1, 2

Follow Up Flag: Follow up
Flag Status: Flagged

b6 -3
b7C -3

[redacted]
I have attached the completed questionnaire, and the following requested information:

b6 -2
b7C -2

B.1:
Appeal Instructions: http://www.vsp.state.va.us/Firearms_Denied.shtml
Brochures: http://www.vsp.state.va.us/Firearms_Brochures.shtml
Sample of Letter: attached

C.3:
Dealers Procedures Manual: attached
[redacted] have an electronic resource of reference materials, desk procedures, guides, etc..
Training Check List : attached

[redacted]
Firearms Transaction Center
Department of State Police
<http://www.vsp.state.va.us/Firearms.shtml>

b6 -1
b7C -1

Post Office Box 85608 / Richmond, Virginia 23285-5608 / Tel: [redacted] / Fax: 804-674-2791

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State

VSP

NICS Audit

Date of Audit: 10-28

10-29

**NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)
PREAUDIT QUESTIONNAIRE**

Please answer all of the following questions and provide attachments as requested. Please provide copies of all state statutes cited. If more space is needed, write "see attached" in the space provided and answer the question on a separate page. If a question does not apply to your system, write "N/A" to signify *not applicable*.

A. OPERATIONAL ENVIRONMENT

1. Does a single NICS Point of Contact (POC) exist?

☒ Yes☐ No

If any other agencies perform any type of firearm background check including permits, **identify** the network of agencies providing NICS checks.
Provide a list of all Originating Agency Identifiers conducting checks.

2. Explain the entire process beginning with the customer at the gun dealer to complete resolution of a background check by your agency.
Customer presents appropriate ID and residency documentation, customer and dealer complete both state and federal form, which attests to eligibility by the buyer, gives consent for the background check, and documents dealer compliance with procedures. The dealer requests a background check by intranet program (VCheck) or calling the 800-telephone line. The instant background check is performed and results in either an approval number (instant clearance) or delayed result. A "delayed" transaction is subject to be modified to approval, denied, or further research. Transaction is researched as necessary and eligibility determined. Transaction is modified to approval or denial. The dealer receives a call-back in all instances of denial and in approved transaction wherein the 800-telephone line was utilized. Approved transactions are retained for 30 days and denied transactions are retained for 2 years.

3. Is a waiting period required for a firearm purchase or transfer?

☐ Yes☒ No

If yes, **identify** the time period and what state statute authorizes this practice.
Provide copies of the state statute that authorizes this practice.

State

NICS Audit

Date of Audit:

4. Does the POC or any other agency within your state issue firearm permits to substitute for NICS background checks?

☐ Yes ☒ No

If yes, **identify** what procedures are in place to satisfy all Bureau of Alcohol, Tobacco, Firearms and Explosives and Brady Handgun Violence Prevention Act requirements.

Provide a copy of the state statute that authorizes this practice.

5. Does the POC retain NICS proceed data for more than 24 hours?

☒ Yes ☐ No

If yes, **provide** the statute enabling the POC to retain proceed data beyond 24hrs.
Section 18.2-308.2:2, Code of Virginia

6. As part of the data quality review portion of the audit, the NICS Section will select a sampling of proceed transactions processed by the POC prior to the visit. This will require the POC to maintain the transaction and all documentation associated with making the final decision.

- a. When and how would the POC like to be notified by the NICS Section when a specific transaction is to be retained as part of the audit?

☐ Immediately not to exceed 24 hrs

☐ Day of the Audit

☒ Other, Within 30 days of date created.

- b. Please name a specific contact person within the POC to facilitate the maintaining of proceed transaction and documentation requests.

Name Number

b6 -1
b7C -1

7. Does the POC search information that originates outside of the NICS database, such as in state wanted person records and mental health records?

☒ Yes ☐ No

If yes, **identify** the additional resources utilized during a NICS check.

VA Wanted and Missing Person File, VA Mental Health Database, VA Criminal History, VA Protective Orders File, IAQ

State

NICS Audit

Date of Audit:

8. Identify the time period the POC would delay a NICS transaction on a criminal history record which contains an open disposition?

All transactions are brought to a logical conclusion regardless of the time it takes to reach a decision of approval or denial. The dealer is provided a date wherein the firearm may be released while in "further research" status and the dealer is requested to notify us if a firearm is released without a final determination.

If more than three business days, provide the state statute allowing this authority.

Section 18.2-308.2:2, Code of Virginia

9. Is the NICS system utilized for any purpose other than firearm background checks?

☒ Yes ☐ No

If yes, identify the additional reasons why the system is being utilized.
Provide a copy of the state statute that authorizes this practice.

Virginia Department of State Police issuance of Nonresident Concealed Handgun Permits and Disposition of Firearms (DOF).

10. Are NICS Denial Notification (NDN) messages submitted electronically to the NICS?

Note: As part of the audit, a random sample of NDNs will be reviewed.
A list of these transactions will be provided prior to the audit.

☒ Yes ☐ No

11. Does the POC deny firearm transactions based on criteria equal to or more stringent than that imposed by the Gun Control Act of 1968 (Title 18 U.S.C. § 922 1-9 & n) as amended?

☒ Yes ☐ No

If no, identify the reason(s) why?

State

NICS Audit

Date of Audit:

12. Does the POC deny based on more stringent criteria such as additional state firearm restrictions or prohibitors?

☒ Yes ☐ No

If yes, **provide** a copy of the state statute authorizing this practice.
18.2-308.1:5, Code of Virginia, attached.

13. Does the POC research and deny firearm transactions for Misdemeanor Crimes of Domestic Violence or the Lautenberg Amendment?

☒ Yes ☐ No

If no, identify the reason(s) why?

14. Does the POC deny on all Protection Orders regardless of the Brady Indicator Field?

☒ Yes ☐ No

If yes, **provide** a copy of the state statute granting the POC this authority.

Virginia's protective order statute prohibits the purchase by a person subject to an order, even if it is an "ex parte" order, federal law does not include these orders. Virginia includes any type of family violence. A brother against brother/sister or a child against parent are not prohibited under federal law. § 18.2-308.1:4 attached.

15. Can a non-U.S. citizen purchase a firearm in your state?

☒ Yes ☐ No

If no, **provide** a copy of the state statute authorizing this practice.

If yes, how does the POC ensure that an IAQ is conducted on all non-U.S. citizens attempting to purchase a firearm?
Please explain or provide procedures beginning with the gun dealer.

The Virginia Firearms Transaction Program automatically transmits an IAQ in noncitizen transactions.

16. Is your state a medical marijuana state?

State

NICS Audit

Date of Audit:

☐ Yes

☒ No

17. Does the POC perform NICS checks on private or secondary firearm sales?

☐ Yes

☒ No

If yes, provide a copy of the state statute authorizing this practice.

B. APPEALS

1. Does the POC provide, manage, and support an appeals process?

☒ Yes

☐ No

Please provide **sample** documentation such as sample letters, brochures, and the procedures for the state's appeals process.

2. Does the POC provide the reason for the denial in writing? ☒ Yes ☐ No

Within 5 business days? ☒ Yes ☐ No

Yes, when appeals are in writing.

3. Is notification made to the NICS regarding transactions that are overturned in the appeal process?

☒ Yes

☐ No

4. **Provide** the denial rate for firearm transactions.
Approximately 1%.

C. SECURITY/TRAINING

1. Does the POC conduct background checks on employees who have direct terminal access to NICS data?

☒ Yes

☐ No

2. What measures are taken to protect NICS data? (physical and technical measures)

State

NICS Audit

Date of Audit:

Access is controlled by a password. All activity can be monitored. Building and section is secure.

3. What type of NICS background check specific training is provided to POC staff?
Six months training before new employee works independently.

Provide copies of procedures, manuals, or presentations.

FYI - As part of the audit, staffing at all levels will be interviewed.

4. Has all agency staff accessing the NICS been initially and biennially NCIC trained and tested?

☒ Yes

☐ No

NICS Audit Manager Book

Repository Contact Sheet and On-site Questionnaire

NICS FULL POC AUDIT CONTACT SHEET

* Mailed Letter

6/18/15

* Sent Pre-Audit

Questionnaire

7/28

* Sent

All Data b7E -3

Quality

8/12

b6 -1

b7C -1

State:	Virginia
Agency:	Virginia State Police, Firearms Transaction Center
Confirm Agency=s ORI:	
POC=s Name:	
Phone Number:	
Fax Number:	804-674-2791
Email Address:	
Address: MAILING:	Firearms Transaction Center Virginia State Police PO Box 85608 Richmond, VA 23285-5608
PHYSICAL:	7700 Midlothian Turnpike North Chesterfield, VA 23235
Agency head=s (poc=s boss) Name:	

Audit Date & Time:	October 26 thru October 30, 2015
Building descript: (is it easy to find?)	
Parking issues?	

Permit to Purchase	N/A
CCW - Alt./in lieu of	Permit to Carry (Non-ATF)
Full POC	Full POC
Additional State Prohib.	

NOTES: Passwords:

--

Type	#
Index	400
NDNs	30
Permits (NON-ATF)	125

DOF'S 14

b7E -3

*Note to AM - Ask NCIC AM for copy of state=s Protection Orders.

Pull PO statute from NICS to see if PCO 07 is automatic.

* ☐ E-MAILED Pre-Audit

b6 -1

b7C -1

Back 8/12/15

(SAVED IN

b7E -3

FBI 21-cv-1601-68

Virginia

Captain [REDACTED]
[REDACTED]

b6 -1

b7C -1

**Criminal Justice Information
Services**

Virginia State Police

Post Office Box 27472

Richmond, VA 23261-7472

[REDACTED]
Fax: 804-674-2918

Email:

[REDACTED]

VIRGINIA

NICS AUDIT

**October
2018**

FINAL REPORT



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

March 22, 2019

Captain [REDACTED]
Division Commander
Criminal Justice Information Services
Virginia State Police
Post Office Box 27472
Richmond, VA 23231-7472

b6 -1
b7C -1

Dear Captain [REDACTED]

b6 -1
b7C -1

The purpose of this letter is to present the final results of the October 2018 National Instant Criminal Background Check System audit of Virginia conducted by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division, CJIS Audit Unit (CAU). Audit results are based on the assessment of requirements set forth in applicable laws, regulations, rules, policies, and procedures. For this audit, assessments were conducted of the Virginia State Police Criminal Justice Information Services.

The CAU reviewed your response to the draft audit findings. Additional information was requested and the e-mails are attached as part of your response. The CAU concluded that with inclusion of this additional information your response addresses the findings sufficiently to finalize the audit. Applicable final results will be forwarded to the CJIS Advisory Policy Board and/or the National Crime Prevention and Privacy Compact Council for review pursuant to their respective shared management responsibilities.

242-HQ-A-1-EXTSTALD
DMB
3/22/19
3008019

b6 -2
b7C -2

Captain [redacted]

b6 -1
b7C -1

Thank you for your cooperation throughout the audit process. If you should have any questions, please contact Ms. [redacted] at [redacted] or [redacted]

b6 -2
b7C -2
b7E -1

Sincerely yours,

Scott A. Rago
Section Chief
Global Law Enforcement Support Section
Criminal Justice Information
Services Division

b6 -2
b7C -2

By: [redacted]

Unit Chief

Attachment

Virginia
2018 National Instant Criminal Background Check System (NICS)
Audit Findings and Response

The NICS audit resulted in two findings of noncompliance. Pursuant to applicable laws, regulations, rules, policies, and procedures, these findings are currently subject to the formal sanctions process.

1. Use of NICS - Use of NICS and the Interstate Identification Index (III): Ensure access to the NICS is used only for authorized purposes in accordance with Title 18, U.S.C., § 922 (t).

A review of 50 Virginia concealed weapon permits revealed that the Virginia State Police (VSP) could not provide supporting documentation/reason for one transaction. Authorized use of the NICS requires some form of supporting documentation that substantiates the transaction such as the concealed weapons permit application.

Jurisdiction-wide response: The Virginia Department of State Police began conducting background checks and issuing nonresident concealed handgun permits on July 1, 2004. The Special Programs section of the Firearms Transaction Center believes the one transaction that was missing the supporting documentation was a result of an alias listed on the application and this was not attached to the application by way of the NTN number which would have been impossible to locate due the antiquated archiving system in place.

In 2017 The Firearms Transaction Center (FTC) requested to have a 2015 NCHIP Grant Project 60284 modified to allow the purchase of Perceptive software that would allow for archiving all documents related to nonresident concealed handgun permits. This was accomplished in August of 2018, and the Special Programs section began using the new software in November 2018.

The FTC has also just completed a 2016 NCHIP Grant Project 0000110072 that created an interface between the Supreme Court of Virginia and the Department of State Police to allow the circuit courts the ability to enter resident concealed handgun permits directly into the Virginia Criminal Information Network (VCIN) to alleviate the work of the Special Programs Section.

The Department of State Police was awarded a 2017 NARIP Grant Project 112306 which is allowing for a modification to the VCheck system to incorporate the ability for Virginia Nonresident Concealed Handgun Permits to conduct automated background checks. This will create an online version of the required application and will be maintained with the corresponding background. The online transaction will archive any alias names run with in an application, and should avoid any issues in the future in connecting a QPC to an alias for a permit.

Virginia
2018 National Instant Criminal Background Check System (NICS)
Audit Findings and Response

Local Agency-specific response: Click Here to Enter Response...

2. **NICS Index Submission Requirements - Integrity of NICS Index Records:** Ensure NICS Index records are accurate and valid in accordance with Title 28, C.F.R., § 25.5 (b).

During the review of 300 NICS Indices records at the VSP, four records were found to be invalid as follows:

- Deceased subject since November 14, 2016.
- Inaccurate purge date causing the record to stay in the NICS Indices longer than allowed.
- Charge dropped and purged off the record since 1990.
- Incorrect arrest entry causing a NICS Indices entry to be generated.

b7E -2

In addition, during the review of the 35 denied transactions it was discovered that three transactions had been denied for being adjudicated as a mental defective or committed to a mental institution per Title 18 U.S.C. Section 922 (g) (4). The individuals were actually subject to denial but under a state prohibition for voluntary admission to a mental institution. These records along with the inaccurate 27 PCA codes previously discussed were a result of records being entered into the NICS Indices as adjudicated as a mental defective or involuntarily committed to a mental institution (Title 18 U.S.C. Section 922 (g) (4)) instead of the state prohibition for voluntary admissions.

Jurisdiction-wide response: The Virginia Department of State Police has previously maintained an automated interface with NICS and our VA CCH system that would enter and purge NICS Indices as needed based on the entry of a felony conviction that is not indexed in III. This interface has been interrupted due to the result of a programing defect that is replacing our older legacy system with newer upgrade. The interruption of the interface was not noticed immediately and we have substituted a work around until the issue can be corrected. The Firearms Transaction Center (FTC) became aware of the deceased subject while preparing for the audit and the Indices record was removed immediately. The FTC accepts full responsibility for the inaccurate purge date, we would like to state this issue could be rectified with safe guards on the enter denied person (EDP) screen for all drug disqualifications to not allow an expiration date in excess of one year from the entry date. this safe guard could eliminate any excessive errors due to human interaction. A criminal history record that has had a record purged or through an appeal the a conviction overturned would require a way to link a NICS NRI number to the SID for removal and this is not something

Virginia 2018 National Instant Criminal Background Check System (NICS) Audit Findings and Response

available with the current state of the Virginia CCH system. Since access to NICS is for firearm purposes only checking the NICS database each time a conviction is either purged or overturned appears to be an illegal use of the system. The FTC removed the NICS Indices entries once the error was found.

The denial process for the mental health prohibition in Virginia for voluntary admissions touches the same lines as the 27 inaccurate PCA codes. This issue was discussed with NICS liaison [REDACTED] in 2008. Ms. [REDACTED] has agreed that under Code Section 37.2-814 if a commitment is ordered as a result of a hearing then this would equal g(4) prohibition. Virginia Code Section 37.2-805 which covers the voluntary admission subsequent to a temporary detention order relies on the same commitment hearing listed in 37.2-814 (B). This states that at the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided in 37.2-805.

b6 -1
b7C -1

The connection between the voluntary admission and involuntary admission is they are both relying on the same commitment hearing. This hearing is basically saying we are seeking an involuntary admission and after the determination is made by the court, the court is offering the individual to go voluntarily and if this is not chosen then you will go involuntary.

The other determining factor in the voluntary admissions is the district court or special justice holding the commitment hearing makes a specific evidentiary finding that is reflected on the commitment order that "Because of mental illness this individual presents a danger to himself or others". The definition of adjudicated as mental defective according to ATF regulations is as follows, "A determination by a court, board, commission or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease. 1. Is a danger to himself or others or 2. Lacks the mental capacity to contract or manage his own affairs."

The Department of State Police believes that voluntary admissions pursuant to Virginia Code Section 37.2-805 satisfies the requirement. Accordingly we decided to act on the side of public safety for the NICS Indices entries. If the FBI/NICS wishes The Department of State Police to remove an estimated 46,000 entries and have them reclassified as a state only prohibitor, we can look into the length of time required to accomplish this and respond accordingly.

Local Agency-specific response: [Click Here to Enter Response...](#)

Virginia
2018 National Instant Criminal Background Check System (NICS)
Audit Findings and Response

Additional comments: The CAU contacted the CSO regarding the response to the finding for the NICS Index Submission Requirements, specifically the PCA of "D" records that should have been entered as PCA "J" under the state prohibition per the Virginia statute. The e-mail chain attached to this response explains the plan of action and timeline for correcting the at least 46,000 records under the incorrect PCA code identified during the audit.

[REDACTED] (CJIS) (FBI)

b6 -2
b7C -2

From: [REDACTED]
Sent: Thursday, February 7, 2019 2:46 PM
To: [REDACTED] (CJIS) (FBI)
Subject: Re: Virginia Audit Response

b6 -1, 2
b7C -1, 2

[REDACTED]

I met with Captain [REDACTED] and our IT department about fixing our Mental Health system to transmit the voluntary admissions under PCA code of "J" and it appears this process might take about two months. Once we have this completed on our end we can produce the list of the voluntary entries and have NICS change the purpose code to J with SPC being VA0003.

Involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to 19.2-169.2, involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to 37.2-809 and subsequently agreed to voluntary admission pursuant to 37.2-805. **NOTICE FOR PERMIT CHECKS:** This prohibition MAY NOT apply to permit applications that are NOT ATF-Qualified Alternate Permits.

We are currently working on 4 projects in our IT department and this will delay some of those which are grants and since they have become more restrictive on the grant extensions we are trying to make headway there before starting a new project.

[REDACTED]

Firearms Transaction Center

Va. State Police

b6 -1
b7C -1

[REDACTED]

[REDACTED]

(804)674-2791 (Fax)

<http://www.vsp.state.va.us/>

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contents) by anyone other than the intended recipient(s). No representation is made that this email and any attachments are free of viruses. Virus scanning is recommended and is the responsibility of the recipient.

On Thu, Feb 7, 2019 at 1:49 PM [REDACTED] (CJIS) (FBI) [REDACTED] wrote:

b6 -1, 2
b7C -1, 2
b7E -1

[REDACTED]

PCA of D should not hard coded to default for all mental health record regarding commitment (involuntary/voluntary) because of your state statute for the voluntary admission situation. I didn't realize it was that way during the audit. I thought when you showed me your system that you had a PCA of J in the drop down menu. But if you can provide a time line for that system modification I can note that for finalization of the audit report.

I had checked with NICS during the audit and again afterwards but we have no record of the [REDACTED] response and you couldn't provide me one either. The email you did provide from [REDACTED] stated she had spoken with [REDACTED] and she had stated that it may apply and would need reviewed on a case by case basis. Therefore, it remains as stated in the report.

b6 -1
b7C -1

If you can let me know as soon as possible, what your plans are for changing at least the 46,000 currently identified that would be great and I can make that happen as well as note it in the final report.

Please let me know if I can be of any assistance.

Thanks

[REDACTED]

b6 -2
b7C -2

From: [REDACTED]
Sent: Wednesday, February 6, 2019 2:12 PM
To: [REDACTED] (CJIS) (FBI) [REDACTED]
Subject: Re: Virginia Audit Response

b6 -1, 2
b7C -1, 2
b7E -1

[REDACTED]

b6 -2
b7C -2

I will have to check with Captain [redacted] on this, as I am not in charge of the mental health files. This would only fix half of the problem, until our IT department could fix the code on our end we would still have records being sent to NICS under the PCA of D.

b6 -1
b7C -1

I am guessing that NICS doesn't agree that a voluntary admission in Virginia still meets for the federal definition of involuntary based on the court hearing.

[redacted]

b6 -1
b7C -1

Firearms Transaction Center

Va. State Police

[redacted]

b6 -1
b7C -1

[redacted]

(804)674-2791 (Fax)

<http://www.vsp.state.va.us/>

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On Wed, Feb 6, 2019 at 2:05 PM [redacted] (CJIS) (FBI) [redacted] wrote:

b6 -1, 2
b7C -1, 2
b7E -1

[redacted]

I wanted to reach out regarding resolution of the finding for the voluntary admission to a mental institution records noted in the NICS Indices as PCA "D" (adjudicated as a mental defective or involuntarily committed to a mental institution) but should be designated as PCA "J" under the state prohibition for voluntary admission to a mental institution as per Virginia statute. As we had discussed the day of the audit, I have

again spoken with [redacted] regarding our ability, with the state's permission, to convert the designated estimated 46,000 records from a "D" to "J" and therefore resolve the compliance issue. I have copied [redacted] on this email as well. Can you provide us with the permission and the specific records to include the Names and NRIs in soft copy to allow us to correct the records? Please let me know if this is achievable on your part.

b6 -1
b7C -1

Thanks,

[redacted]

b6 -2
b7C -2

[redacted]

Management and Program Analyst

FBI CJIS Division Audit Unit

1000 Custer Hollow Road

Clarksburg, WV 26306

[redacted]

b7E -1

[redacted] (cell)

[redacted]

" This e-mail has been transmitted to you by the FBI Criminal Justice Information Services Division's Audit Unit. This message and any attached documents is to be considered confidential and legally privileged. If you are not the intended recipient, you are notified that any dissemination, copying of this e-mail and any attachments thereto or use of their contents by any means whatsoever is strictly prohibited. If you have received this e-mail in error, please advise the sender immediately by separate email or by calling 304-625-4165 and delete this e-mail and all attached documents from your computer system."

Follow-up Correspondence

[redacted] (CJIS) (FBI)

b6 -2
b7C -2

To:

Cc:

[redacted]

[redacted] (CJIS) (FBI);

[redacted]

(CJIS) (FBI);

[redacted]

(CJIS) (FBI); [redacted] (CJIS) (FBI)

Subject:

Virginia NICS Final Audit Findings

b6 -1, 2

Attachments:

VA FINAL RPT PACKET.pdf

b7C -1, 2

Dear Captain [redacted]

Please find for your records the attached final results from the NICS audit conducted by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division.

Thank you for your cooperation throughout the audit process. If you have any questions, please contact me.

Sincerely yours,

[redacted]

b6 -2
b7C -2
b7E -1

[redacted] (CJIS) (FBI)

b6 -2
b7C -2

From: [redacted] (CJIS) (FBI)
Sent: Thursday, December 6, 2018 1:54 PM

b6 -1, 2
b7C -1, 2

To: [redacted]
Cc: [redacted] (CJIS) (FBI); [redacted] (CJIS) (FBI); [redacted] (CJIS) (FBI)

Subject: NICS Draft Audit Findings
Attachments: RecommendationResponsesVA2019.docx; VA 2019 Dft Rpt Packet.pdf

Importance: High

Tracking: Recipient

Read

b6 -1, 2
b7C -1, 2

Read: 12/6/2018 3:50 PM

Read: 12/6/2018 2:08 PM

Dear Captain [redacted]

b6 -1
b7C -1

Please find attached for review the draft results from the NICS audit conducted by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division.

Thank you for your cooperation throughout the audit process. If you have any questions, please contact me.

Sincerely yours,

[redacted]

b6 -2
b7C -2
b7E -1



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

December 4, 2018

Captain [REDACTED]
Division Commander
Criminal Justice Information Services
Virginia State Police
Post Office Box 27472
Richmond, VA 23261-7472

b6 -1
b7C -1

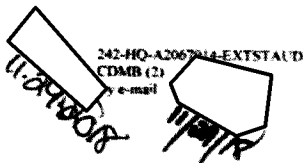
Dear Captain [REDACTED]

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The CAU has provided an Audit Findings and Response template for completion. Each finding includes the policy title, corrective action required, and supporting analysis. For reference purposes, specific requirements and source citations associated with each policy title have been provided in a separate document. To finalize the audit, please provide a response using the fields in the Audit Findings and Response template. Please return the template electronically via e-mail in Microsoft Word format. The response must include a detailed narrative of any corrective actions that have been or will be taken for each finding. Corrective actions must be provided from a jurisdiction-wide perspective, as well as for each local agency where compliance issues were identified. In addition, completion dates should be provided for each corrective action.

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b6 -2
b7C -2



Captain [redacted]

b6 -1
b7C -1

Thank you for your cooperation throughout the audit process. If you should have any questions, please contact [redacted] at [redacted] or [redacted]

b6 -2
b7C -2
b7E -1

Sincerely yours,

Christopher A. Nicholas
Section Chief
Law Enforcement Support Section
Criminal Justice Information
Services Division

b6 -2
b7C -2

By: [redacted]

Unit Chief

Attachment



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

December 4, 2018

Captain [REDACTED]
Division Commander
Criminal Justice Information Services
Virginia State Police
Post Office Box 27472
Richmond, VA 23261-7472

b6 -1
b7C -1

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Virginia
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A review of 50 Virginia concealed weapon permits revealed that the Virginia State Police (VSP) could not provide supporting documentation/reason for one transaction. Authorized use of the NICS requires some form of supporting documentation that substantiates the transaction such as the concealed weapons permit application.

Jurisdiction-wide response: [Click Here to Enter Response...](#)

Local Agency-specific response: [Click Here to Enter Response...](#)

2. NICS Index Submission Requirements - Integrity of NICS Index Records: Ensure NICS Index records are accurate and valid in accordance with Title 28, C.F.R., § 25.5 (b).

During the review of 300 NICS Indices records at the VSP, four records were found to be invalid as follows:

- Deceased subject since November 14, 2016.
- Inaccurate purge date causing the record to stay in the NICS Indices longer than allowed.
- Charge dropped and purged off the record since 1990.
- Incorrect arrest entry causing a NICS Indices entry to be generated.

b7E -2

In addition, during the review of the 35 denied transactions it was discovered that three transactions had been denied for being adjudicated as a mental defective or committed to a mental institution per Title 18 U.S.C. Section 922 (g) (4). The individuals were actually subject to denial but under a state prohibition for voluntary admission to a mental institution. These records along with the inaccurate 27 PCA codes previously

Virginia
2018 National Instant Criminal Background Check System (NICS)
Audit Findings and Response

discussed were a result of records being entered into the NICS Indices as adjudicated as a mental defective or involuntarily committed to a mental institution (Title 18 U.S.C. Section 922 (g) (4)) instead of the state prohibition for voluntary admissions.

Jurisdiction-wide response: [Click Here to Enter Response...](#)

Local Agency-specific response: [Click Here to Enter Response...](#)

Additional comments:
[Click here to enter text.](#)



National Instant Criminal Background Check System Supplemental Audit Document

Virginia

October 2018

POC Requirements

Compliance Summary

	NICS Denial Notifications Reviewed	POC Agency	POC Determination Messages	Retention and Destruction	Background Check	Managing an Appeal Process	Conducting an Immigration Alien Query	System Safeguards	POC, Partial-POC, or Alternate Permit Requirements
Virginia State Police	35	IN	IN	IN	IN	IN	IN	IN	IN
Virginia State Police	35	IN	IN	IN	IN	IN	IN	IN	IN

Use of NICS

Compliance Summary

	NICS Transactions Reviewed	Disposition of Firearms Transactions Reviewed	Use of NICS and III	Purpose Code Usage
Virginia State Police	50	20	OUT	IN
Virginia State Police	50	20	OUT	IN

Federal Denial Criteria

Compliance Summary

	Felony Conviction	Felony Indictment	Active Warrant	Controlled Substance User	Mental Defective	Illegal/Unlawful Alien	Dishonorable Discharge	Citizenship Renunciation	Protective Order	Misdemeanor Crime of Domestic Violence
Virginia State Police	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN
Virginia State Police	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

NICS Index Submission Requirements

Compliance Summary

	NICS Index Records Reviewed	Invalid - Documentation does not support entry	Unable to Locate Supporting Documentation	Unable to Access Supporting Documentation				Completeness of NICS Index Records
Virginia State Police	300	4	0	0				IN
Virginia State Police	300	4	0	0				IN

Note:

Completeness of NICS Index Records (Best Practice): The NICS is a name based check and the more information that is entered into a NICS Index record, the greater likelihood of a hit on the record and identifying a positive match. Complete records include all information that was available on the person at the time of entry. Complete entries include numeric identifiers, e.g., social security number, passport number, additional dates of birth, military number, alien registration number, etc. that could be added to the record. This also includes all names/aliases used by the disqualified individual.