

California
2020 National Instant Criminal Background Check System (NICS)
Audit Findings and Response

The National Instant Criminal Background Check System (NICS) audit resulted in three findings of noncompliance. Pursuant to applicable laws, regulations, rules, policies, and procedures, these findings are currently subject to the formal sanctions process.

1. Point of Contact (POC) Requirements - POC Agency: Ensure correct purpose identifications are programmed to ensure accurate reasons for searching the NICS.

During the audit, it was discovered that system programming for Purpose Identifications (IDs) had not been modified since 2010. Therefore, permit recheck (Purpose ID 34) and disposition of firearms (Purpose ID 22, 23, and 24) transactions were not processed for the accurate reason designation. This was discovered during the review of the audit sample where five permit transactions should have been conducted as disposition of firearms checks.

Jurisdiction-wide response: The California Department of Justice has updated necessary firearm systems to send correct Purpose Identifications as identified in CJIS Document Number: NICS-DOC-05903-5.0 (Appendix 19: NICS/FBI Message Field Code Glossary). The deployment of these necessary changes to production environment occurred the morning of January 14, 2021.

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

During the review of transactions on the California Firearms Application Reporting System and interviews conducted with the California Bureau of Firearms staff, several categories of applicants were discovered being processed through NICS for unauthorized uses. The scope of the authorized uses appears to have been expanded by the California Bureau of Firearms without prior vetting the uses through the Federal Bureau of Investigation (FBI). The list included the following unauthorized applicant categories or business types:

- Ammunition agent/employee/vendor
- Shooting range
- Collector (unless specific to the collector curio and relic handgun registration permit)
- Explosive permit (unless associated with the explosive industry license)
- Gunsmith
- Consultant/evaluator
- Importer
- Pawnbroker (unless associated with being a Federal Firearm Licensee (FFL))

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- Store manager
- Certified Instructor (unless associated with basic firearms safety instructors)
- Employee
- Judicial employee
- Custodial employee
- Reserve – Officer Reservist
- Personal Firearms Eligibility Checks
- FFL employee (conducting since November 2018)
- Other

Furthermore, this list is also associated with the California's Personal Firearms Eligibility Check. According to the California Attorney General's website, "a 'Certificate of Eligibility' (COE) certifies the Department of Justice (DOJ) has checked its records and determined the recipient is not prohibited from acquiring or possessing firearms at the time the firearms eligibility criminal background check was performed. A COE is a pre-requisite licensing/permit requirement for all prospective licensed firearms dealers, licensed ammunition vendors, manufacturers, certified instructors, gun show promoters, explosive permit holders, and other firearms related employment activities, including, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition. The initial COE application process includes a firearms eligibility criminal background check and issuance of a certificate, which is valid for one year. Thereafter, the COE must be renewed annually. A COE can be revoked, at anytime, if the COE holder becomes prohibited from owning/possessing firearms and ammunition." The FBI has conveyed in previous correspondence dated, April 24, 2006, that "Even though California law has authorized the California DOJ to conduct such checks, neither the Brady Handgun Violence Prevention Act of 1993 nor the NICS regulation provides authority for use of the NICS for a "pre-purchase" eligibility check. Because it is not in connection with a specific proposed firearm transaction or possession, we do not see how it can be regarded as a permit check. Such a check does not give the individual permission to receive or possess a firearm nor do you assert that the California DOJ considers such persons to be firearm 'permittees.'"

During the review of permit transactions, documentation displayed these transactions were for employees of FFLs. In addition, during the review of the NICS Indices records, a transaction for the sale of ammunition was performed, subsequently denied, and added into the NICS Indices. This is a documented misuse of the NICS.

In addition, the California Bureau of Firearms was unable to provide documentation or an explanation for 25 out of 100 firearm permit transactions. Therefore, it could not be determined if the use of the NICS was for authorized purposes.



State of California
Department of Justice
Bureau of Firearms

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PERSONAL FIREARMS ELIGIBILITY CHECK (PFEC) NOTIFICATION

(date check was completed)

**THIS NOTICE IS FOR INFORMATION PURPOSES ONLY
IT DOES NOT AUTHORIZE THE SALE OR TRANSFER OF ANY FIREARM**

- ☐ You are eligible to both possess and purchase firearms, ammunition, and firearm magazines as of the date the check was completed. This determination is based on a check of California records.
- ☐ You are ineligible to either possess or purchase firearms, ammunition, and firearm magazines as of the date the check was completed.
- ☐ You are eligible to possess firearms, ammunition, and firearm magazines as of the date the check was completed, but ineligible to purchase firearms as of the date the check was completed.
- ☐ A firearms eligibility determination could not be confirmed as of the date the check was completed. Please contact (916) 210-2300 for more information.

No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility pursuant to section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.

If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.

PLEASE BE AWARE OF THE FOLLOWING

If you are ELIGIBLE to purchase:

Federal law does not authorize a check of the National Instant Criminal History Background Check System (NICS) as part of a Personal Firearms Eligibility Check (PFEC). Therefore, although the results of the PFEC indicate you are eligible to possess and purchase firearms, you could still be prohibited based on information in a federal database that the California Department of Justice was not authorized to check.

Upon application to purchase a firearm another background check will be conducted and the waiting period will apply.

A valid California Driver License or Identification Card is required at the time of purchase of any firearm.

A valid Alien Registration Card or I-94 is required at the time of purchase of any firearm if applicant is a non-U.S. citizen. The non-U.S. citizen applicant must also meet certain federal requirements to purchase a firearm, unrelated to the firearms eligibility background check.

If you are INELIGIBLE to purchase:

And if you are also ineligible to possess, you must relinquish any firearms in your possession to your local law enforcement agency or complete and follow the directions stated on the enclosed 'General Notice of Firearm Prohibition and Power of Attorney for Firearms Relinquishment, Sale or Transfer for Storage.'

If you have questions regarding this notification, please contact DOJ at (916) 210-2300.

PFEC CONTROL #:

NICS Indices 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
California Mental Health Unit	175	0	0	0	0	0	IN	IN
California Bureau of Firearms	225	1	3	0	4	0	OUT	IN
California DOJ	400	1	3	0	4	0	OUT	IN

Note:

Integrity of NICS Indices: Due to the audit 10% threshold, the number of records reviewed and scored may have resulted in OUT of compliance at the local level, but did not reach or exceed an overall OUT of compliance for the state.

Completeness of NICS Indices Records (Best Practice): The NICS is a name based check and the more information is entered into a NICS Indices record, the greater likelihood of a hit on the record and identifying a positive match. Complete records include all information 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. which could be added to the record. This also includes all names/aliases used by the disqualified individual.

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
California Bureau of Firearms	40	OUT	IN	IN	IN	IN	IN	IN	IN
California DOJ	40	OUT	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
California Bureau of Firearms	100	0	OUT	IN
California DOJ	100	0	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
California Bureau of Firearms	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN
California DOJ	IN	IN	IN	IN	IN	IN	IN	IN	IN	IN

Alternate Permit Requirements

Compliance Summary

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



National Instant Criminal Background Check System Supplemental Audit Document

California

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