

In this action the United States sought civil penalties and unrecovered response costs in connection with the Main Street Well Field Site in Elkhart, Indiana ("Site"). The proposed consent decree provides for the payment by defendants Joseph S. Beale and JSB Corporation d/b/a Adlake Enterprises, Inc. (collectively "JSB") of \$350,000 of the United States unrecovered response costs at the Site. The proposed consent decree also resolve the United States claims against JSB for its alleged failure to perform response activities at the Site pursuant to an administrative order issued by the United States Environmental Protection Agency ("EPA").

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Excel Corp.*, D.J. Ref. No. 90-11-3-799.

The proposed consent decree may be examined at the Office of the United States Attorney, 301 Federal Building, 204 South Main Street, South Bend, Indiana; at the Region 5 Office of EPA, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.*

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DEPARTMENT OF JUSTICE

[AAG/A Order 154-98]

Privacy Act of 1974; Notice of Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following system of records which was last published in the **Federal Register** on June 4, 1998 (63 FR 30514):

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI-018.

In the rules section of today's **Federal Register**, the Department of Justice is also providing a final rule exempting the NICS from certain provisions of the Privacy Act.

This notice addresses comments received by the Department of Justice following publication of the Notice of New System of Records for the NICS, published in the **Federal Register** on June 4, 1998 (63 FR 30514), in which, in accordance with 5 U.S.C. 552a(e)(4) and (11), the public, the Office of Management and Budget, and the Congress were invited to comment on the new routine uses. The Department of Justice/FBI accepted comments on the NICS system notice from the public dated on or before July 6, 1998.

Significant Comments

A number of comments raised matters that were more pertinent to other notices of proposed rulemaking relating to the NICS: The National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). Such comments have been addressed in the final NICS rule, the National Instant Criminal Background Check System Regulation, published in the **Federal Register** on October 30, 1998 (63 FR 58303). Other comments raised matters that were more pertinent to the proposed rule exempting the NICS from certain provisions of the Privacy Act, published in the **Federal Register** on June 4, 1998 (63 FR 30429). Such comments are addressed in a final rule, Exemption of System of Records Under the Privacy Act, published in the rules section of today's **Federal Register**.

A number of comments opposed retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. (For a more detailed discussion of this issue, see the final NICS rule, the National Instant Criminal Background Check System Regulation, published in the **Federal Register** on October 30, 1998 (63 FR 58303).) Although the Brady Handgun Violence Prevention Act (Brady Act) mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within

which records of approvals must be destroyed. At the same time, the Brady Act requires that the Department ensure the privacy and security of the NICS and the proper operation of the system. The Department has attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS. The original NICS records system notice indicated that records of firearm transaction approvals would be maintained for eighteen months. However, in recognition of the numerous comments objecting to this retention period as too long, the Department reexamined the time period needed to perform audits of the NICS. The Department determined that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months. The final NICS regulations reflect this (but also provide that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system). The Department further determined that the FBI shall work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS. By February 28, 1999, the Department will issue a notice of a proposed revision of the regulation setting forth a further reduced period of retention that will be observed by the system. The NICS system of records has been modified to reflect these changes.

Various comments expressed concern that the Audit Log would allow states acting as NICS Points of Contact (POCs) and law enforcement agencies access to records of approved transfers. This is not a well-founded concern because only the FBI will be able to directly access information in the transaction log. Section 25.9(b)(2) of the final rule was revised to provide explicitly that such information is directly available only to the FBI, and only for the purposes of conducting audits of the use and performance of the NICS or pursuing cases of misuse of the system.

In addition to several comments which objected to particular routine uses, one comment pointed out that the list of "routine uses" in the original NICS system notice appeared broader than the uses addressed in the regulations for both the National Crime Information Center (NCIC) (citing 28 CFR 20.20(c) and 20.21(b)) and for the NICS (citing 28 CFR 25.6(j)). Specifically, 28 CFR 25.6(j) limits the

access to the NICS Index for purposes that are unrelated to NICS background checks required by the Brady Act to providing information to criminal justice agencies in connection with the issuance of firearm-related and explosives-related permits or licenses or to the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53). The comment objected that the original NICS system notice provided no justification for any such apparent differences and expressed the opinion that a significant number of the uses are "inconsistent with Congress' intent."

The Department acknowledges that these apparent differences warrant clarification. The NICS regulations were issued to establish policies and procedures implementing the Brady Act. As explained in the final NICS rule (63 FR 58305), the purpose of the limitation on access to the NICS Index was to prevent checks of the NICS Index for general law enforcement purposes.

The NICS Index is a separate database within the NICS which contains records provided by Federal agencies to the FBI on persons prohibited from receiving firearms under Federal law and records provided voluntarily by some states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under federal law. Information in the NICS Index generally relates to individuals who fall within categories "C" through "G" of the categories of individuals covered by the system described in the NICS system notice below. For the most part, criminal history records are not pertinent to these categories; instead the NICS Index consists of data relating to such matters as mental incompetence, renunciations of citizenship, immigration matters, and dishonorable discharges. Largely due to privacy-related concerns expressed by the federal agencies supplying such sensitive records to the NICS Index, the Department will limit generalized non-Brady law enforcement disclosures of the NICS Index to those uses provided in 28 CFR 25.6(j) (which are embodied in this notice as routine uses "A" and "B").

However, the NICS Index is only one of several parts of the NICS, and the express language of the regulation clearly limits the scope of 25 CFR 25.6(j) to the contents of the NICS Index. The NICS Audit Log is separate from the NICS Index. In the course of conducting a NICS search, the NICS will query the NICS Index, and any "match" found in the NICS Index will be replicated in the NICS Audit Log. The limitations in 28

CFR 25.6(j) do not extend to information in the NICS Audit Log derived from individual "hits" in the NICS Index. (Nor, apart from the NICS Index, do these limitations extend to other components of the NICS.) Thus—as to these other NICS components—28 CFR 25.6(j) does not preclude the generalized law-enforcement disclosures established in routine use "C." Routine use "C" would not, however, apply to the NICS Index, and this routine use is being revised to make this clear.

Nor was 28 CFR 25.6(j) intended to limit certain other disclosures incident to management and administration of the NICS when properly authorized pursuant to the Privacy Act. Although this may not be readily apparent from the express terms of the NICS regulation, it is clearly evidenced by the Department's publication of the original NICS Privacy Act system notice—which included the routine uses—simultaneously with the publication of the proposed NICS regulations, in which the system notice was expressly referenced. The NICS regulations are to be read together with the NICS system notice. (Indeed, this same result is a mirror of the NCIC, in which disclosures addressed in the NCIC regulations are supplemented in NCIC's system notice (60 FR 19775).) Thus, for instance, the NICS regulations must be read together with routine use "D," which provides for disclosures to contractors, grantees, experts, consultants, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI. The need to utilize outside service providers, particularly in the creation, maintenance, and management of highly complex systems, is a fact of life for virtually every public and private entity. Further, when an agency provides by contract for the operation of a system of records to accomplish an agency function, the Privacy Act itself provides for considering the contractor and any employee of such contractor as an employee of the agency for purposes of Privacy Act sanctions (5 U.S.C. 552a(m)). The persons covered by this use are the functional equivalent of FBI employees, and this use confirms authority for disclosures to these persons to the same extent as if they were actual FBI employees.

All of the routine uses contained in the NICS system notice comport with Congress' intent and are fully

compatible with the Brady Act. As noted in House Report 103-344, the Brady Act was enacted in an effort to stem the appalling consequences of an epidemic of gun violence by preventing the acquisition of firearms by those prohibited under federal or state law. The routine uses further the Brady Act's preventive goals not only by preventing transfers of firearms to disqualified individuals, but also by enhancing the deterrent prospect of capture and prosecution of those who pursue unlawful transfers or otherwise seek to unlawfully subvert the Brady Act. Prevention is also furthered by routine uses which could permit prophylactic advisories to the public and/or potential victims. Finally, it is entirely compatible with the Brady Act to provide the FBI with the necessary flexibility to carry out its responsibilities, and to facilitate inquiries by Members of Congress to ensure their constituents have been treated appropriately under the Brady Act. Accordingly, except as noted below, this notice continues the routine uses as originally published.

Routine use "C" provides the necessary authority for further coordination among law enforcement agencies for the purposes of investigating, prosecuting, and/or enforcing violations of criminal or civil law or regulation that may come to light during the NICS operations. This provides a mechanism for pursuing criminal or civil sanctions against those attempting to thwart governing laws or regulations, which will strengthen and further the Brady Act's deterrence goal. One comment objected to this routine use's additional provision for disclosing violations of contract. Although this additional provision was modeled after other systems where such authority is useful and appropriate, it does appear not to be necessary in the NICS. We are modifying this routine use to delete the provision relating to disclosures of a violation or potential violation of a contract. (As previously discussed, we are also modifying this routine use to expressly provide that it does not apply to the NICS Index.)

Routine use "E" provides for appropriate disclosures to the public (including a victim or potential victim) in furtherance of a legitimate law enforcement or public safety function, or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest where disclosure would not constitute a clearly unwarranted invasion of personal privacy. As for all routine uses, such disclosures would only include those compatible with the purposes for

collecting the information under the Brady Act. Such disclosures might include local media announcements asking the public's assistance in locating a dangerous fugitive who attempted to purchase a firearm in the area, or alerting a protected spouse when the subject of a protective order attempts to purchase a firearm. Such disclosures would fully comport with the violence-prevention goals of Brady Act. As another example, providing the public examples of the NICS' effectiveness in particular cases could help deter disqualified persons who might otherwise be tempted to test the system. On further review, however, we conclude that it is unnecessary to also provide for public disseminations not related to law enforcement or FBI matters. We are modifying this routine use to delete the provision allowing disclosures to the news media or general public in situations not related to law enforcement or FBI matters. In addition, we are further modifying this routine use to expressly provide that it does not apply to information in the NICS Index.

Changes

This notice modifies the NICS system of records to reflect recent statutory and regulatory changes affecting the NICS, and to make various editorial and clarifying revisions. To the extent possible, the changes and additions are italicized throughout the attached system notice, and brief descriptions of the more noteworthy ones are provided below.

As discussed above, the system has been modified to reflect that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months, provided that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system.

Also as discussed above, routine use "C" has been modified to delete the provision for disclosing violations or potential violations of contracts, routine use "E" has been modified to delete provisions for public disclosures not related to law enforcement or FBI matters, and both of these routine uses have been modified to expressly provide that they do not apply to the NICS Index.

In consonance with other changes made in the final NICS rule, the NICS system notice has been modified to replace the term "password" with "code word"; replace words such as "purchase" and "purchaser" with words such as "transfer" and

"transferee"; change terminology relating to NICS denials from "reason to believe" to "information demonstrating"; and to clarify that allowable non-Brady Act uses of the NICS Index include responding to inquiries by criminal justice agencies in connection with licenses or permits to carry a concealed firearm or to import, manufacture, deal in, or purchase explosives, and to inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53).

The original NICS records system notice indicated that NICS' searches of the National Crime Information Center (NCIC) and the Interstate Identification Index (III) would be specifically directed towards locating information that an individual is within the system-notice categories A, B, H, and I of persons covered by the system. The NICS searches of NCIC and III will also be directed towards locating information that an individual is within the system-notice categories C (unlawful user of or addicted to any controlled substance), and D (adjudicated as a mental defective or has been committed to a mental institution). The NICS system notice has been modified to reflect this.

The original NICS records system notice indicated that the categories of individuals covered by the system included persons who were FFLs authorized by the FBI to request NICS checks. The system will also cover persons who claim on applications submitted to the FBI for NICS access to be FFLs even though they are not, and FFLs on record with the ATF that have not been granted authority to request NICS checks. In addition, the original notice may not have been clear that these FFL records are separate from the NICS Index and the NICS Audit Log. The NICS system notice has been modified to clarify this.

The NICS system notice has been modified to expressly confirm that in advising an FFL that a response will be "delayed," the NICS may apprise an FFL of an estimated time for completing the analysis.

Dated: November 19, 1998.

Stephen R. Colgate,
Assistant Attorney General for
Administration.

JUSTICE/FBI-018

SYSTEM NAME:

National Instant Criminal Background Check System (NICS).

SYSTEM LOCATION:

Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include any person who:

A. Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

B. Is a fugitive from justice;

C. Is an unlawful user of or addicted to any controlled substance;

D. Has been adjudicated as a mental defective or has been committed to a mental institution;

E. Is an alien who is illegally or unlawfully in the United States;

F. Has been discharged from the Armed Forces under dishonorable conditions;

G. Having been a citizen of the United States, has renounced such citizenship;

H. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner (issued after a hearing of which actual notice was received);

I. Has been convicted in any court of a misdemeanor crime of domestic violence (involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim);

J. Is otherwise disqualified from possessing a firearm under State law;

K. Is or claims to be a Federal firearms licensee (FFL), i.e., a person licensed by the Bureau of Alcohol, Tobacco and Firearms (ATF), United States Department of Treasury, as a manufacturer, dealer, or importer of firearms; or

L. Has applied for the *transfer* of a firearm or a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individual is maintained for system administration and security purposes only in the "NICS Audit Log," a system transaction log described below under the headings "CATEGORIES OF RECORDS IN THE SYSTEM" AND "RETENTION AND DISPOSAL." In cases where the NICS background check does not locate a disqualifying record, information about the individual will only be retained temporarily for the *minimum reasonable period necessary for performing audits on the system, but in*

no event more than six months or such shorter period of time that the Department establishes by regulation, provided that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. The system will not contain any details about the type of firearm which is the subject of the proposed transfer (other than the fact that it is a handgun or a long gun) or whether a sale or transfer of a firearm has actually taken place.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "NICS Index" is the only database maintained by the FBI which was created specifically for the NICS. The NICS Index contains records obtained by the Attorney General from Federal agencies or States on individuals who fall into the categories of individuals listed above under the heading "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM," C through G. These records contain an individual's name; sex; race; *other personal descriptive data (such as scars and tattoos)*; complete date of birth; state of residence; sometimes a unique identifying number, such as a Social Security number (but NICS does not require it to be furnished), a military number, or a number assigned by Federal, State, or local law enforcement authorities.

The "NICS Audit Log" is a chronological record of system (computer) activities that enables the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. With regard to a specific NICS transaction, the audit log will include: The name and other identifying information about the prospective *transferee*; the type of transaction (inquiry or response); line number; time; date of inquiry; header; message key; Originating Agency Identifier; and inquiry/response data, such as a NICS Transaction Number (a unique number assigned to each valid background request inquiry) and information found by the NICS search.

In addition, the NICS contains information on persons that are FFLs (or claim to be). This information includes the FFL name, address, phone numbers, ATF number, access code words, names of authorized representatives and contact persons, and similar information used by the NICS to identify, validate, and communicate with FFLs in the course of NICS operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 18 U.S.C. 922, as amended by the Brady Handgun Violence Prevention

Act (the "Brady Act") (Pub. L. 103-159, Nov. 30, 1993); (2) 28 U.S.C. 534, as amended (Pub. L. 103-322, Title IV, 4060(a), Sep. 13, 1994, 105 Stat. 1950).

PURPOSE(S):

The purpose of the NICS, which was established pursuant to the Brady Act, is to provide a means of checking available information to determine whether a person is disqualified from possessing a firearm under Federal or State law.

Prior to the transfer of a firearm, a prospective *transferee*, not licensed under 18 U.S.C. 923, must obtain a firearms transaction form from an FFL and provide the information required by the ATF. The firearms transaction form is returned to the FFL, who is required by the Brady Act to contact the NICS and furnish the name and certain other identifying data provided by the *transferee*. NICS conducts a search which compares the information about the *transferee* with information in or available to NICS.

State and local law enforcement agencies may serve as Points of Contact (POCs) for the NICS. Where there is no POC, the FBI's NICS Operations Center serves in its place. The POC (or the NICS Operations Center) receives inquiries from FFLs, initiates NICS background searches, may check available state and local record systems, determines whether matching records provide *information demonstrating* that an individual is disqualified from possessing a firearm under Federal or State law, and responds back to the FFLs.

In addition to a review of the NICS Index, a NICS search includes a review of the pre-existing, separately-managed FBI criminal history databases of the National Crime Information Center (NCIC)(JUSTICE/FBI-001), including the Interstate Identification Index (III), to the extent such searches are possible with the available information. NCIC and III are cooperative Federal-State programs for the exchange of criminal history record and other information among criminal justice agencies to locate wanted and missing persons and for other identification purposes. The search conducted of the NCIC and III, in conjunction with the search of the NICS Index, attempts to locate only information indicating that an individual firearm *transferee* is identical to an individual in one or more of categories A through J listed above under the heading CATEGORIES OF INDIVIDUALS IN THE SYSTEM, with the search of NCIC and III specifically directed towards locating information

that an individual is within categories A, B, C, D, H, and I.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Limited information may be provided by a POC or the NICS Operations Center to an FFL who has contacted the NICS concerning a prospective firearm *transferee*. If a matching record found by the NICS provides *information demonstrating* that the prospective *transferee* is disqualified from possessing a firearm under Federal or State law, the FFL will be notified only that the application is "denied," with none of the underlying information provided. If additional record analysis is required by the NICS representative (*e.g. to confirm that a record relates to the potential transferee or to pursue supplemental information to clarify whether the potential transferee is disqualified from receiving a firearm*), the response may read "delayed" and may include an *estimated time for completing the analysis*. If no disqualifying record is located by the NICS, the FFL will be told that it may "proceed." A unique identification number will be provided to the FFL for all responses received from the NICS, which number shall be recorded on the firearms transaction form.

B. Information in the NICS may be provided through the NCIC lines to Federal criminal justice agencies, criminal justice agencies in the fifty States, the District of Columbia, Puerto Rico, U.S. Possessions, and U.S. Territories, including POCs and contributors of information in the NICS Index, to enable them to determine whether the transfer of a firearm to any person not licensed under 18 U.S.C. 923 would be in violation of Federal or State law; whether the issuance of a license or permit for the possession or sale of a firearm or firearms, *or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives* would be in violation of Federal or State law or regulation; whether appeals from denials should be granted or denied; and whether to add to, delete from, revise, or update information previously provided by the contributor. *This includes responding to inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44), or the National Firearms Act (26 U.S.C. Chapter 53).*

C. If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR, part 25, subpart A), any record is found by the system which indicates,

either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, joint, or tribal) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law or regulation, e.g., disclosure of information from the system to the ATF, United States Department of Treasury, regarding violations or potential violations of 18 U.S.C. 922(a)(6). (*This routine use does not apply to the NICS Index.*)

D. System records may be disclosed to contractors, grantees, experts, consultants, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI.

E. System records may be disclosed to the news media or members of the general public or to a victim or potential victim in furtherance of a legitimate law enforcement or public safety function, e.g., to assist in locating fugitives; to provide notification of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest. (*The availability of information in pending criminal cases will be governed by the provisions of 28 CFR 50.2.*) (*This routine use does not apply to the NICS Index.*)

F. Where the disclosure of system records has been determined by the FBI to be reasonable and necessary to resolve a matter in litigation or in anticipation thereof, such records may be disclosed to a court or adjudicative body, before which the FBI is authorized to appear, when: (a) The FBI or any FBI employee in his or her official capacity; (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is or could be a party to the litigation, or has an official interest in the litigation.

G. System records may be made available to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the

information on behalf and at the written request of the individual who is the subject of the record.

H. System records may be disclosed to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically for use in a computer environment in areas safe from access by unauthorized persons or exposure to environmental hazards. In general, the security policy for the NCIC (JUSTICE/FBI-001) is followed.

RETRIEVABILITY:

Records are retrieved by name, sex, race, date of birth, state of residence, *other personal descriptive data*, the NICS Transaction Number, FFL number, and, in some instances, unique numeric identifier, e.g., a Social Security number or a military identification number. (A Social Security number is not required by the NICS.)

SAFEGUARDS:

Records searched by the NICS are located in secure government buildings with limited physical access. Access to the results of a NICS record search is further restricted to authorized employees of Federal, State, and local law enforcement agencies who make inquiries by use of identification numbers and *code words*.

When a Federal, State, or local agency places information in the NICS Index, it uses its agency identifier and a unique agency record identifier for each record provided to the NICS. Federal, State, or local agencies can modify or cancel only the data that they have provided to NICS Index.

RETENTION AND DISPOSAL:

Information provided by other Federal agencies or State or local governments will be maintained in the NICS Index unless updated or deleted by the agency/government which contributed the data.

The FBI will maintain an Audit Log of all NICS transactions. Firearms transaction approvals will be maintained for *the minimum reasonable period necessary for performing audits on the system, but in no event more than six months or such shorter period of time that the Department establishes by regulation (except that such information may be retained for a longer*

period if necessary to pursue identified cases of misuse of the system). The NICS Transaction Number (the unique number assigned to the NICS transaction) and the date on which it was assigned will be maintained indefinitely. Information related to firearms transfer denials will be retained for 10 years and then disposed of as directed by the National Archives and Record Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 935 Pennsylvania Avenue, NW, Washington, DC 20535-0001.

NOTIFICATION PROCEDURES:

This system of records has been exempted from the notification procedures of subsections (d) and (e)(4)(G), to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. Requests for notification should be addressed to the Systems Manager. Requirements for a request are the same as set forth below under the heading "RECORD ACCESS PROCEDURES."

RECORD ACCESS PROCEDURES:

This system of records has been exempted from the access procedures of subsections (d) and (e)(4)(H) to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. A request for access to a non-exempt record from the system should be addressed to the System Manager, shall be made in writing, and should have the envelope and the letter marked "Privacy Act Request." The request must include the full name, complete address, date of birth, and place of birth of the requester. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

Alternative procedures are available to a person who has been denied the *transfer* of, or permit for, a firearm or explosives because of information in the NICS. The procedures provide for an appeal of a denial and a method to seek the correction of erroneous data searched by or maintained in the system. The alternative procedures can be found at 28 CFR, part 25, subpart A.

CONTESTING RECORD PROCEDURES:

This system of records has been exempted from the contest and amendment procedures of subsections (d) and (e)(4)(H) to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of

the Privacy Act. Requests should be addressed to the System Manager and should clearly and concisely describe the precise information being contested, the reasons for contesting it, and the proposed amendment or correction proposed to the information. In addition, as described above under "RECORD ACCESS PROCEDURES," an alternative procedure is available to a person who has been denied the *transfer* of, or permit for, a firearm or explosives because of information in the NICS, by which the individual may seek the correction of erroneous data in the system. The procedures are further described at 28 CFR, part 25, subpart A.

RECORD SOURCE CATEGORIES:

Information contained in the NICS is obtained from local, State, Federal, and international records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1); (2), and (3) (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted his system from subsections (c)(3), (d), (e)(1), and (e)(4)(G) and (H) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e), and have been published in the **Federal Register**.

[FR Doc. 98-31503 Filed 11-24-98; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Omnipoint Corp.; United States v. 21st Century Bidding Corp.; United States v. Mercury PCS II, L.L.C.; Proposed Final Judgments and Competitive Impact Statements

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in each of the following civil actions: *United States v. Omnipoint Corporation*, Civil Action No. 1:98CV02750; *United States v. 21st Century Bidding Corp.*; Civil Action No. 1:98CV02752, and *United States v. Mercury PCS II, L.L.C.*, Civil Action No. 1:98CV02751. The proposed Final Judgments are subject to approval by the Court after expiration of the statutory

60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

On November 10, 1998, the United States filed separate Complaints against each defendant that allege that defendants used coded bids during a Federal Communications Commission auction of radio spectrum licenses for personal communications services. The Complaints further allege that, through the use of these coded bids, defendants reached agreements to stop bidding against one another in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposal Final Judgments, filed the same time as the Complaints, prohibit defendants from entering into anticompetitive agreements and from using coded bids in future FCC auctions.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307-6351).

Copies of the Complaint, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514-2481), and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings,

provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceedings.

5. The parties request that the Court acknowledge the terms of this stipulation by entering the Order in this Stipulation and Order.

Respectfully submitted,

For Plaintiff United States of America:

Jill A. Ptacek,

J. Richard Doidge,

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307-0468.

For Defendant Omnipoint Corporation:

Michael F. Brockmeyer, Esq.,

Piper & Marbury L.L.P. Charles Center South, 36 South Charles Street, Baltimore, MD 21201-3018, (410) 576-1890.

Order

It is so ordered, this _____ day of _____, 1998.

United States District Court Judge

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Complaint, Competitive Impact Statement and proposed Final Judgment to be served on counsel for the defendant in this matter in the manner set forth below:

By first class mail, postage prepaid, and by facsimile:

Michael F. Brockmeyer, Esquire, Piper & Marbury L.L.P., 36 South Charles Street, Baltimore, MD 21201-3018

Jill Ptacek,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307-6607, (202) 616-2441 (Fax).

Final Judgment

Plaintiff, United States of America, filed its Complaint on November 10,