



BILLING CODE 6355-01-C

Dated: February 5, 1999.

Sadye E. Dunn,Secretary, Consumer Product Safety
Commission.

[FR Doc. 99-3304 Filed 3-2-99; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-104072-97]

RIN 1545-AV07

**Recharacterizing Financing
Arrangements Involving Fast-Pay
Stock; Correction****AGENCY:** Internal Revenue Service (IRS),
Treasury.**ACTION:** Correction to notice of proposed
rulemaking.**SUMMARY:** This document contains a
correction to REG-104072-97, which
was published in the **Federal Register**
on Wednesday, January 6, 1999 (64 FR
805), relating to financing arrangements
involving fast-pay stock.**FOR FURTHER INFORMATION CONTACT:**
Jonathan Zelnik, (202) 622-3940 (not a
toll-free number).**SUPPLEMENTARY INFORMATION:****Background**The notice of proposed rulemaking
that is the subject of this correction is
under section 7701 of the Internal
Revenue Code.**Need for Correction**As published, REG-104072-97
contains errors which may prove to be
misleading and are in need of
clarification.**Correction of Publication**Accordingly, the publication of the
notice of proposed rulemaking (REG-
104072-97), which is the subject of FR
Doc. 99-178, is corrected as follows:**§ 1.1441-7 [Corrected]**1. On page 810, column 1, § 1.1441-
7(g)(4) *Example 2*, line 4, the language
“that A entered the arrangement with a”
is corrected to read “that A entered into
the arrangement with a”.**§ 1.7701(l)-3 [Corrected]**2. On page 810, column 3, § 1.7701(l)-
3(c)(3)(iv)(A), line 3, the language
“attributable to financing instruments”is corrected to read “attributable to the
financing instruments”.3. On page 811, column 3, § 1.7701(l)-
3(e) *Example 5*, (i), line 3 from the
bottom of the paragraph, the language
“Y’s 1996 deduction attributable to
financing” is corrected to read “Y’s
1996 deduction attributable to the
financing”.**Cynthia E. Grigsby,**Chief, Regulations Unit, Assistant Chief
Counsel (Corporate).

[FR Doc. 99-5128 Filed 3-2-99; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF JUSTICE**28 CFR Part 25**

[AG Order No. 2209-99]

RIN 1105-AA51

**National Instant Criminal Background
Check System Regulation****AGENCY:** Federal Bureau of
Investigation, Department of Justice.**ACTION:** Proposed rule.**SUMMARY:** The United States Department
of Justice (“DOJ”) proposes to amend
the DOJ regulation implementing the

National Instant Criminal Background Check System ("NICS") pursuant to the Brady Handgun Violence Prevention Act ("Brady Act"), to establish a retention period of 90 days for information relating to allowed firearm transfers in the system transaction log of background check transactions ("NICS Audit Log"). Audits of the use of the NICS are considered essential to safeguard the privacy of the sensitive information checked by the system and to ensure that the system is operating in the manner required by the Brady Act. Audits will help prevent invasions of privacy that result from misuse of the system. For example, audits will enable the detection of felons who assume the identity of a qualified person to buy guns illegally and persons who misuse the system to perform background checks unrelated to gun purchases (such as employment checks). In addition, the proposed rule clarifies that the retention period begins to run on the day after the request for a NICS check is received. The proposed rule also clarifies that only the FBI has *direct* access to the NICS Audit Log and that, in furtherance of the purpose of auditing the use and performance of the NICS, the FBI may extract and provide information from the NICS Audit Log to the Bureau of Alcohol, Tobacco and Firearms ("ATF") for use in ATF's inspections of Federal Firearms Licensee ("FFL") records, provided that ATF destroys NICS Audit Log information about allowed firearm transfers within the applicable retention period and maintains a written record certifying the destruction. By using the preexisting ATF inspection system to audit use of the NICS by FFLs, it will be unnecessary to propose a system under which the FBI would perform recurring audits of FFLs. Such a system could lead to duplication of effort and expense resulting from FBI auditors traveling to FFL premises to review the same records that ATF reviews during its routine inspections of FFLs.

DATES: Written comments must be received on or before June 1, 1999.

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

FOR FURTHER INFORMATION CONTACT: Mr. Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, telephone number (304) 625-2000.

SUPPLEMENTARY INFORMATION: This proposal would amend the National Instant Criminal Background Check System Regulation (28 CFR, Part 25, Subpart A), published in the **Federal**

Register on October 30, 1998 (63 FR 58303). The proposed amendments are to the portions of the NICS regulation providing for the retention and use of information in the NICS Audit Log pertaining to allowed firearm transfers, 28 CFR 25.9(b)(1) and (2) (63 FR 58311).

Record Retention Period

The Brady Act requires the Attorney General to ensure the privacy and security of information in the NICS and the proper operation of the system. The purpose of maintaining the NICS Audit Log is to help carry out this function by facilitating audits of the use and operation of the NICS. At the same time, to prevent the establishment of a national firearms registry, the Brady Act requires the destruction of NICS records (other than the NICS Transaction Number ("NTN") and the date the NTN was assigned) relating to allowed firearm transfers. Although an eighteen-month retention period for information about allowed firearm transfers was initially proposed in the notice of proposed rulemaking for the NICS regulation, the final NICS rule took into account the comments on this subject and balanced the competing interests by reducing the retention period to no more than six months.

The preamble to the final NICS regulation described the question of the period of record retention as follows: "In light of the statutory requirement that records for allowed transfers be destroyed, and the countervailing statutory requirement to provide for system privacy and security, 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. Section 25.9(b) in the final rule was revised to reflect this and to 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." (63 FR 58304.) The purpose of this notice is to propose a period of retention less than six months that will be observed by the system.

Audits of the NICS will include (1) quality control audits of NICS examiners and call center operators to

ensure the accuracy of the responses given to FFLs; (2) audits of the system's data processing to aid in the resolution of technical system problems; (3) audits of the use of the NICS by state agencies serving as points of contact ("POCs") for the NICS and/or using the NICS in connection with issuing firearms licenses or permits, to ensure that such agencies are accessing the NICS only for authorized purposes; and (4) audits of the use of the NICS by FFLs to ensure that FFLs are accessing the NICS only for authorized purposes and are not sending the NICS false data to evade the system.

Auditing the users (FFLs and POCs) of the NICS is essential to safeguard the security and privacy of personal information in the system. The NICS will perform background checks that access a tremendous amount of criminal history, mental health, military background, and other information about individuals. Access to such sensitive information for background checks on individuals should only be available for purposes authorized by law. Misuse of that information could lead to significant invasions of privacy. The Brady Act recognized the sensitivity of system information by requiring the Attorney General to issue regulations "to ensure the security and privacy of the information of the system." The Brady Act also provides that disclosures of information from the NICS are subject to the restrictions of the Privacy Act. Without the capacity to audit the use of the system, there will be no way of determining whether FFLs are requesting checks for purposes other than checking on the background of a prospective gun purchaser. Many businesses and individuals would be very interested in having easy access to these government databases through FFLs to do employment or other unauthorized checks on persons. While it is true that a NICS check will not disclose what record was the reason for a denial, the mere fact that the system response is "denied" (indicating that at least one disqualifying record exists) may be enough to cause employers or others to take adverse action against the person checked. A "delayed" response might also have a detrimental impact on the subject of the check if a person misusing the system does not wait to see if a "proceed" follows or concludes, unfairly, that the response means the individual checked has some kind of stigmatizing "record." The FBI must take appropriate steps to identify and guard against such invasions of privacy.

In addition, the Brady Act requires the Attorney General to establish a system that will inform FFLs whether

available information demonstrates that a person seeking to acquire a firearm is disqualified by law from possessing firearms. The background check system established to perform this function is based upon names and other personally identifying information that can be falsified. Therefore, it is equally important to be able to audit NICS transactions to ensure that FFLs are not misusing the NICS by deliberately submitting false information to the system. The ability to audit the background checks requested by FFLs, by comparing the information submitted to the NICS with information retained by the FFL, will deter attempts to evade the system. In other words, audits will help ensure that the system is operating in the manner required by the Brady Act.

There is no formula for determining with precision what retention period is the minimum necessary to allow adequate audits of the NICS, and because the NICS is a new system, there is no historical data regarding the use of the NICS from which any definite conclusion about retention periods can be drawn. What can be said with certainty is that, at six months, the NICS retention period is already less than half of the retention period established for auditing the users of the Interstate Identification Index ("III"), the information system managed by the FBI that makes up the vast majority of the records checked by the NICS. It is also undeniable that, the shorter the period, the less likely it is that even random audits will uncover or deter system misuse.

In determining the period of retention that will allow for a minimal opportunity to detect misuse of the system by FFLs and POCs, the Department recognizes the need for both: (1) a sufficient period of system activity to be audited; and (2) time to administer the audits. A time period for administering the audits is necessary to: identify those system records that will be used in the audit; conduct the audit; and review the results of the audit to determine whether there are any identified cases of misuse of the system. Accordingly, the Department has concluded that the shortest practicable period of time for retaining records of allowed transfers that would permit the performance of basic security audits of the NICS is 90 days.

Under the proposed rule, therefore, section 25.9(b)(1) provides that in cases of allowed transfers, all information in the NICS Audit Log relating to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be

destroyed not more than 90 days after the date the request for the NICS check was received. The proposed rule also changes section 25.9(b)(1) to provide that the retention period begins to run on the day after "the date the request for the NICS check was received," instead of the date the "transfer was allowed." This change provides a uniform date from which to begin the retention period.

Accomplishing the Audits

Quality control, data processing, and POC audits can all be accomplished by FBI employees or contractors without the need for outside assistance. In order to audit the use of the NICS by FFLs, however, the FBI is developing a plan, in coordination with ATF, under which information from the NICS Audit Log will be provided to ATF for use in conjunction with its compliance inspections of FFL records. FFLs are subject to inspections by ATF pursuant to the provisions of the Gun Control Act ("GCA"), 18 U.S.C. 923(g)(1)(B)(ii). By using the preexisting ATF inspection system to audit use of the NICS by FFLs, it will be unnecessary to propose a system under which the FBI would perform recurring audits of FFLs. Such a system could lead to duplication of effort and expense resulting from FBI auditors traveling to FFL premises to review the same records that ATF reviews during its routine inspections of FFLs. It is least intrusive and most efficient to have regular review of FFL NICS records performed by ATF as part of its inspection program.

The information comparisons by ATF of NICS Audit Log data with FFL records of NICS checks will detect and deter misuse of the NICS by FFLs and ensure FFL compliance with the Brady Act and the GCA. Under this plan, ATF will not have direct access to the information in the NICS Audit Log. The information will be extracted from the NICS Audit Log by the FBI and provided to ATF for the FFLs to be inspected. Irregularities relating to the use of the NICS by an FFL discovered during an ATF inspection will be referred to the FBI. Under this plan, ATF will destroy the NICS Audit Log information about allowed firearm transfers within the applicable retention period and maintain a written record certifying destruction of the records. The information provided to ATF from the NICS Audit Log will be the same information that ATF is already authorized to review when inspecting FFL records under the GCA.

The proposed rule, therefore, amends paragraph 25.9(b)(2) to clarify that while only the FBI has *direct* access to the

NICS Audit Log, the FBI, in furtherance of the purpose of conducting audits of the use and performance of the NICS, may extract and provide information from the NICS Audit Log to ATF for use in ATF's inspections of FFL records, provided that ATF destroys information about allowed firearm transfers within the retention period for such information set forth in paragraph 25.9(b)(1) and maintains a written record certifying the destruction.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

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

Executive Order 12866

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

Executive Order 12612

This proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 25

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

Accordingly, § 25.9 of part 25 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS**Subpart A—The National Instant Criminal Background Check System**

1. The authority section for Subpart A continues to read as follows:

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

§ 25.9 [Amended]

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

* * * * *

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

(1) The NICS Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed not more than 90 days after the date the request for the NICS check is received. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms,

firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922 (g) or (n) or by state law.

(2) The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the NICS Audit Log by time frame, i.e., by day or month, by FFL, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may only be directly accessed by the FBI for the purpose of conducting audits of the use and performance of the NICS. Permissible uses include extracting and providing information from the NICS Audit Log to ATF in connection with ATF's inspections of FFL records, provided that ATF destroys the information about allowed transfers within the retention period for such information set forth in § 25.9(b)(1) and maintains a written record certifying the destruction. Such information, however, may be retained and used as long as needed to pursue cases of identified misuse of the system. The NICS, including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

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Dated: February 27, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–5343 Filed 3–1–99; 2:36 pm]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL–6306–7]

Public Hearing for Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, Technical Correction, and Notice of Availability of Additional Technical Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking; announcement of public hearing.

SUMMARY: The EPA is announcing that it will hold a public hearing on March 12, 1999, if a hearing is requested, on a supplemental notice of proposed rulemaking (SNPR) on petitions submitted under section 126 of the Clean Air Act. The EPA will not hold a public hearing if one is not requested by March 9, 1999. The SNPR was signed on the same day as this notice, made immediately available to the public on EPA's website at <http://www.epa.gov/airlinks>, and will be published shortly in the **Federal Register**.

In the SNPR, EPA is proposing action on recent requests from Maine and New Hampshire which ask EPA to now make findings of significant contribution under the 8-hour ozone standard regarding sources named in their August 1997 section 126 petitions. The EPA has previously proposed action on the petitions from these States with respect to the 1-hour ozone standard as part of a proposal on eight petitions that were submitted individually by eight Northeastern States (63 FR 52213, September 30, 1998; and 63 FR 56292, October 21, 1998). The SNPR supplements that proposal.

DATES: A public hearing on the section 126 SNPR will be held on March 12, 1999 in Washington, DC, if requested by March 9. The comment period on the SNPR ends on April 11, 1999.

Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and public hearing.

ADDRESSES: The public hearing, if there is one, will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.