FBI Criminal Justice Information Services (CJIS) Division
National Instant Criminal Background Check System (NICS) Section
GUIDANCE DOCUMENT

Guidelines for Domestic Violence Protection Orders, Extreme Risk Protection Orders (ERPO), and Other Court-Ordered Firearm Restrictions: Employing the National Crime Information Center (NCIC) and the NICS Indices to Enhance Public Safety

The Brady Handgun Violence Prevention Act of 1993 requires the use of the NICS by federally licensed firearms dealers to determine whether prospective firearm transfers to individuals applying to receive or possess firearms would violate federal or state law. NICS is a computerized system designed to immediately provide information to make such determinations by conducting a search of available records. A NICS check searches by name and descriptive data for matching records in three databases: NCIC, which contains records of wanted persons, subjects of protection orders, and other persons who pose a threat to officer and public safety; the Interstate Identification Index, which provides access to criminal history records; and the NICS Indices, which contain information on prohibited persons as defined in Title 18, United States Code (U.S.C.), Section 922(g) or (n), as well as state law, and court-ordered firearm restrictions. Records contributed to these national databases are modified, cancelled, and added daily.

Domestic Violence Protection Orders and the NCIC Protection Order File (POF)

The NCIC's POF was established in accordance with the Violence Against Women Act (VAWA), which authorizes federal, state, and tribal criminal justice agencies to enter information into the NCIC POF for the purpose of preventing acts of domestic violence, or to prevent a person from stalking, intimidating, or harassing another person. In addition, the VAWA amended the Gun Control Act of 1968, making it unlawful for any person who is subject to a qualifying protection order to ship, transport, receive, or possess any firearm.

The NCIC POF has two immediate indicators to identify if a protection order respondent is prohibited from the receipt or possession of a firearm. These indicators assist all NICS users in making an expeditious interpretation of firearm eligibility. They are the Brady Indicator (BRD) field and the entry of code 07 into the Protection Order Conditions (PCO) field. The BRD is used when the subject is prohibited from receiving or possessing a firearm under federal law, while the PCO code 07 should be applied when the subject is state-prohibited.

The NCIC POF BRD Field

The BRD field was established to aid users in determining whether an active protection order would prohibit the receipt or possession of a firearm under 18 U.S.C. § 922(g)(8); therefore, to qualify under this code, the order must meet the following criteria of 18 U.S.C. § 922(g)(8):

1. The order was issued after a hearing, of which the subject received actual notice, and at which such person had an opportunity to participate;
2. The protected person is either an intimate partner of the respondent, child of the intimate

partner, or the child of the respondent;

3. The order restrains respondent 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

4. The order 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.

The BRD is an optional field for an NCIC entry; however, the NICS Section strongly encourages entering agencies to use the BRD field. If all four of the 18 U.S.C. § 922(g)(8) criteria are present, then the BRD field should be set to "Y," indicating the respondent is prohibited under 18 U.S.C. § 922(g)(8) from receiving or possessing a firearm in all states and territories. During a NICS check, a descriptive match to an NCIC POF record with a BRD/Y is an immediate indication that the respondent is federally prohibited. Based on requirements of NCIC participation, the user must contact the entering agency to confirm the protection order is active.

If the protection order does not contain the above criteria, the respondent is not *federally* prohibited under 18 U.S.C. § 922(g)(8), and the BRD is set to "N." The BRD code "U" is used when a determination cannot be made regarding the federal prohibition. Only a final protection order record can contain a Brady indicator of "Y" or "U" (unknown). Emergency or temporary orders issued ex parte do not meet the criteria specified by law, and, therefore, "N" must be entered in the field. During a NICS check processed by the NICS Section, a descriptive match to an NCIC POF record with a BRD/N or BRD/U requires the NICS Section employee to obtain a copy of the order to determine if the order meets federal or state firearm prohibitions. All NICS users are encouraged to follow the same practice to definitively establish or eliminate firearm prohibitions when processing NICS checks.

The NCIC POF PCO Code 07

The second indicator available in the NCIC POF is the use of the PCO code 07. Entry of the PCO code 07 generates a caveat in the NCIC POF response stating the "subject is prohibited from possessing and/or purchasing a firearm or other weapon", and viewed as a state prohibition for firearm receipt/possession. The PCO field is mandatory for an NCIC POF entry, and is used to indicate specific terms and conditions of the protection order entry. The PCO code 07 should be used by the entering agency when either of the following two conditions are present:

1. A judge indicates on an order that the subject/respondent is prohibited from receiving/possessing a firearm, or any prohibition to receive/possess a firearm is

included in the order.

2. If under state statute or local ordinance, the existence or the circumstances of the protection order would prohibit the subject from receiving/possessing a firearm or other weapon.

A respondent of an active full or temporary/ex parte protection order meeting the PCO 07 criteria is disqualified from receiving/possessing firearms when his/her state of residence (SOR) *or* state of purchase/transfer (SOP) is the same as the state issuing the protection order. The firearm restrictions associated with state-prohibiting protection orders may be disqualifying nationally when additional criteria is established—see the next two sections for more details.

Full Protection Orders, PCO 07, and Full Faith and Credit

As stated above, an active full protection order in the NCIC POF populated with PCO code 07 is considered a state prohibition. In addition, an active full protection order not identified with a PCO code 07 but meeting either of the two PCO code 07 conditions is also viewed as being a state prohibition. For example, if the respondent of an active full protection order with PCO code 07 attempts to receive a firearm and his/her SOR *or* SOP is the same as the state that issued the order, the respondent is prohibited from receiving/possessing the firearm.

As described in the above example, in most instances, state firearm prohibitions only apply when the prohibited individual's SOR *or* SOP is the same as the state of prohibition. However, pursuant to the United States Constitution, Article IV, Section I, full faith and credit will be applied to all active court-ordered firearm restrictions regardless of the state of restriction, SOR, or SOP when due process is met. Therefore, the firearm restriction associated with active full protection orders may be honored on a national level. For example, if the respondent of an active full protection order attempts to receive a firearm and his/her SOR *and* SOP are *not* the same as the state that issued the order, the firearm restrictions of the order will be honored by all states and territories when:

1. The order is active; and

2. The firearm restriction is "court-ordered"—established through either the language of the order, or by a judge's notation.

NOTE: Full faith and credit will not apply when the firearm restrictions are established from a statute alone, and not court-ordered.

Based on requirements of NCIC participation, the user must contact the entering agency to confirm the protection order is active. In instances when the respondent's SOR *and* SOP are not the same as the issuing state, the NICS Section also establishes if the order has been served and

if the firearm restrictions were court-ordered when calling to verify the order as active. Full protection orders not located in the NCIC POF, or those listed in the NCIC POF without the PCO code 07, are also similarly disqualifying when the described conditions are established.

Temporary Protection Orders, PCO 07, and Full Faith and Credit

An active temporary/ex parte order in the NCIC POF populated with PCO code 07 is considered a state prohibition. In addition, an active temporary/ex parte order not identified with a PCO code 07 but meeting either of the two PCO code 07 conditions is also viewed as being a state prohibition. Temporary/ex parte protection orders are disqualifying for firearm transfers when the respondent's SOR *or* SOP are the same as the state issuing the order.

Unlike full protection orders, temporary/ex parte orders require one additional verification to establish the firearm prohibition when the respondent's SOR *and* SOP are *not* the same as the issuing state. If the respondent of a temporary protection order attempts to receive a firearm and his/her SOR *and* SOP are *not* the same as the state that issued the order, the firearm restrictions of the order may be honored by all states and territories when:

1. The order is active;

2. The firearm restriction is "court-ordered"—established through either the language of the order, or by a judge's notation; and

3. Notice and opportunity to be heard (for the permanent order) must be provided within a reasonable time sufficient to protect the respondent's due process rights.

NOTE: Full faith and credit will not apply when the firearm restrictions are established from a statute alone, and not court-ordered.

Generally, the NICS Section is able to establish these criteria by contacting the originating agency telephonically and actual review of the order may not be necessary.

ERPOs

Many states have proposed or passed legislation for ERPOs or "red flag laws"—allowing family members, household members, law enforcement, etc., to petition a court to temporarily prohibit an individual from possessing firearms. ERPOs generally do not involve a *protected person*; therefore, the orders would not meet the requirements for the federal prohibition, 18 U.S.C. § 922(g)(8). However, the firearm restriction associated with any active and valid ERPO (full or temporary orders) will be honored on a national level, regardless of the SOR or the SOP. Therefore, the NICS user should honor the firearm restriction of an active and valid ERPO when

the respondent is a valid descriptive match to a subject of a NICS check, even if the NICS subject's SOR and SOP are not the same as the state issuing the ERPO.

Sharing ERPO Information to NCIC Files

ERPOs meeting NCIC criteria should be entered into the NCIC ERPO File to ensure the information is available to law enforcement for officer and public safety; in addition to being accessible for NICS purposes. Entering agencies are encouraged to include the date the ERPO was served in the "SERVED SVD" field of the NCIC ERPO File notice, as appropriate, to assist NICS users in making timely firearm eligibility determinations. Complete information regarding requirements for entry into the NCIC ERPO File is currently available in *NCIC Technical and Operational Update 21-4*. Entry requirements may also be found in the ERPO File chapter of the *NCIC Operating Manual*.

ERPO and the NICS Indices

When an active and valid ERPO does not meet the criteria for entry into NCIC, the descriptors of the respondent may be entered into the NICS Indices so the information is available to assist in the determination of firearm eligibility during a NICS check. A valid match determination of a NICS Indices entry to a prospective firearm transferee allows the NICS user to render an immediate denial determination. The descriptive information of the respondent of an active and valid ERPO may be entered in the NICS Indices "State Prohibitor File" using the Prohibited Category Code (PCA) of J.

Due to the complexity of determining state prohibitions, the NICS Indices "State Prohibitor File" (J file) has processing functionality allowing for the following three factors to always be considered during a potential hit to a J file entry: (1) valid descriptive match based on algorithm, (2) the SOR or SOP of the NICS transaction matches the state(s) of prohibition of the NICS Indices entry, and (3) the purpose type of the NICS transaction corresponds to what is prohibited (i.e., if a NICS Indices entry is made for a state prohibition specific to handguns, the entry will not respond during a NICS transaction initiated for a long gun transfer). An individual Special Processing Code (SPC) is created to identify the different state prohibitions, and used with each entry to the J file to recognize the specific factors associated with the state prohibitions; thus, determining when a NICS Indices entry may respond during a NICS check.

In most instances, the NICS Indices entries made to the J file identify individuals with state firearm prohibitions only applicable to the state of prohibition. In these instances, the corresponding SPC is state-specific, and programmed to return the NICS Indices entry when the potential transferee's SOR or SOP is the same as the state of prohibition. Based on the determination that the firearm restrictions of all active and valid ERPOs are to be honored by *all* states and territories, a *universal* ERPO SPC, "**ERPOAV**," is now available when making a

NICS Indices entry for the respondent of an active and valid ERPO. The SPC ERPOAV is programmed to potentially respond during a NICS check regardless of the prospective transferee's SOR or SOP (unless both the SOR and SOP are states with a law prohibiting the issuance or enforcement of ERPOs).

Note: It is the entering agency's responsibility to recognize when an ERPO is "valid"—meaning due process, as established by the state, has occurred.

Other Court-Ordered Firearm Restrictions and the NICS Indices

Other court-ordered firearm restrictions not supported by an ERPO statute, such as orders of probation, bond, or parole may also be honored by all states, when the order is active. Therefore, another *universal* SPC, "**CRTORD**," is available for use to identify such orders. The SPC CRTORD may be used when the entering agency has determined the court-ordered firearm restrictions associated with probation, bond, or parole, are active. The SPC CRTORD is programmed to potentially return to a NICS query with any SOR or SOP.

Statute-Based Firearm Restrictions and the NICS Indices

If a firearm restriction is based only on a statute, the firearm restriction associated with the probation, bond, or parole will only apply when the respondent's SOR or SOP is the same as the state issuing the order. In these instances, the entering agency should use the state-specific SPC representing statute-based firearm restriction. The NICS Indices entries made using these state-specific SPCs will only potentially respond when the SOR *or* SOP is the same as the state issuing the firearm restriction. A spreadsheet with a current listing of *all* state prohibitions and firearm restrictions, and their corresponding SPCs is available on the NICS Special Interest Group via the Law Enforcement Enterprise Portal.

Expiration Dates with NICS Indices Entries

The majority of court orders prohibiting firearm receipt/possession, or statute-based firearm restrictions are assigned an expiration date through the issuing court or by statute; therefore, SPC ERPOAV, SPC CRTORD, and most of the states' statute-based SPCs will require an expiration date upon entry. The NICS Indices entries with expiration dates automatically purge from the NICS when the expiration date is reached. If at any time, an order represented in the NICS Indices is terminated early, or an order is extended, the entering agency should either cancel the entry or adjust the expiration date accordingly.

If you have any questions regarding this information, you may contact the NICS Section's Business Relations Team at <NICSLiaison@fbi.gov> or 844-265-6716.