

# **RULES AND REGULATIONS CONCERNING IMPLEMENTATION OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM WITH THE COLORADO BUREAU OF INVESTIGATION SERVING AS THE POINT OF CONTACT**

## **STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE**

Pertaining to the Colorado Bureau of Investigation's administration of a State Point of Contact, to the National Instant Criminal Background Check System.

Pursuant to the rule making procedure outlined in section 24-4-103, C.R.S. the following is a proposed statement of basis, a citation of specific statutory authority, and the purpose of the proposed rules pertaining to the Colorado Bureau of Investigation's administration of a State Point of Contact to the National Instant Criminal Background Check System.

The Colorado General Assembly, in February 2000, passed SB 125 concerning Implementation of the National Instant Criminal Background Check System with the Colorado Bureau of Investigation serving as the State Point of Contact. Specific Authority for rule-making is contained in sub-section 7 of section 24-33.5-424, C.R.S. (National Instant Criminal Background Check System - State Point of Contact - grounds for denial of firearm transfer - appeal - rule-making - unlawful acts - repeal), which reads as follows:

(7)(a) The Executive Director or his or her designee shall adopt such rules as are necessary to:

(I) Carry out the duties of the Bureau as the State Point of Contact, as those duties are set forth in Federal Law, and assist in implementing 18 U.S.C. sec. 922 (t). all Federal Regulations and applicable guidelines adopted pursuant thereto, and the NICS System; and

(II) Ensure the proper maintenance, confidentiality, and security of all records and data provided pursuant to this section.

(b) The rules adopted pursuant to paragraph (a) of this subsection (7) shall include, but need not be limited to:

(I) Procedures whereby a prospective transferee whose transfer is denied may request a review of the denial and of the instant criminal background check records that prompted the denial:

(II) Procedures regarding retention of records obtained or created for purposes of this section or for implementation of 18 U.S.C. sec. 922 (t): except that the bureau shall not retain a record for more than forty-eight hours after the day on which the bureau approve: the transfer:

(III) Procedures and forms adopted by the bureau that request information from and establish proper identification of a prospective transferee and that may correspond with any firearms transaction record required by 18 U.S.C. sec. 922 (t). Such procedures and forms shall not preclude any person from making a lawful firearm transfer under this section.

(IV) Procedures for carrying out the duties under this section, including at a minimum:

(A) That the Bureau shall be open for business at least twelve hours per day every calendar day, except Christmas Day and Thanksgiving Day, in order to transmit the requests for a background check to the NICS System and search other databases:

(B) That the Bureau shall provide a toll-free telephone number for any person calling from within the state that is operational every day that the office is open for business for the purpose of responding to requests from transferors in accordance with this section and

(C) That the Bureau shall employ and train personnel at levels that ensure prompt processing of the reasonably anticipated volume of inquiries received under this section. The purpose of the proposed rules is to specify the procedures, required by statute, for administering the National Instant Background Check System as a State Point of Contact.

\_\_\_\_\_ Robert C. Cantwell, Director Colorado Bureau of Investigation

\_\_\_\_\_ Date

## **CBI-IC-1**

### **Definitions**

The term **business day** means a 24-hour day (beginning at 12:01 a.m.) on which all state offices are open.

The term **the bureau** means the Colorado Bureau of Investigation.

The term **firearm** means (a) any weapon (including a starter gun) which will or is designed to or may readily be convened to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) any destructive device. Such term does not include an antique firearm.

The term **destructive device** means (a) any explosive, incendiary, or poison gas-

- (1) Bomb,
- (2) grenade,
- (3) rocket having a propellant charge of mote than four ounces,
- (4) missile having an explosive or incendiary charge of more than one-quarter ounce,
- (5) mine, or
- (6) device similar to any of the devices described.

(b) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable of sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter: and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph, (a) or (b) and from which a destructive device may be readily assembled. The term **destructive device** shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, or is an antique.

The term **antique firearm** means (a) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or (b) any replica of any firearm described in subparagraph (a) if such replica-

- (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
- (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade: or
- (c) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term **antique firearm** shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

## **CBI-IC-2**

### **Maintenance, Confidentiality, and Security of Records**

The Bureau shall ensure that the Insta-Check Unit has adequate security to protect against any unauthorized personnel gaining access to the computer equipment or to any stored data.

Personnel having access to data collected pursuant to background checks for firearm transfers shall be screened thoroughly by the Bureau. This screening shall apply to non-criminal justice maintenance or technical personnel. Employees accessing the NTCS will be kept to a minimum.

All visitors to the Insta-Check Unit must be accompanied by staff personnel at all times.

The Bureau shall maintain appropriate software to prevent data concerning background checks for firearm transfers from being accessible to any unauthorized terminals.

The Bureau shall maintain a central computer, through which each inquiry must pass for screening and verification.

Bureau personnel shall not release any information collected, created, or provided pursuant to a background check for a firearm transfer, except as provided by law.

## **CBI-IC-3**

### **Procedures for Appealing a Denial Decision**

Any individual who has received a denial may, within 30 days of the date of the issuance of the denial, request in writing the reason(s) for the denial.

The CBI shall respond within five business days of receipt of such written request with the reason(s) for the denial and instructions on how to appeal the decision.

If within 60 days of mailing the reason for denial the CBI receives information which proves that the individual is not prohibited from purchasing, possessing, or receiving a firearm, the CBI shall within 30 days of receipt of such information reverse the denial and issue an approval, and either update the records or forward the disposition information to the agency who holds such records, requesting that their records be updated.

The CBI shall when reversing a denied transaction, issue a new NICS transaction number, which is valid for 30 days after issuance.

Unless otherwise noted, the term "days" means "calendar days"

#### **CBI-IC-4**

##### **Destruction of Records**

Information pertaining to an approved individual which is collected or created pursuant to a background check for a firearm transfer shall be destroyed within 48 hours of the issuance of the approval. The Bureau shall maintain the transaction number, the date and time of its issuance, and the FFL to whom it was relayed. Nothing in this rule shall be interpreted so as to prohibit the updating of criminal history records to accurately reflect dispositions.

#### **CBI-IC-5**

##### **Forms to be Adopted/Identification of Transferee**

The Bureau shall adopt the Bureau of Alcohol, Tobacco and Firearms form 4473 to document the transaction and to avoid unnecessary duplication. Transferors shall ensure that the -473 form is completed by both transferor and transferee prior to contacting the Bureau for a background check. Form 4473 shall be maintained in accordance with Federal law and rule.

Transferors shall identify transferees with a valid government issued photo identification and shall verify the name, date of birth, and address given by the transferee. Additional documents may be required to establish residency.

#### **CBI-IC-6**

##### **Hours of Operation**

The Bureau shall be open to conduct background checks for firearm transfers from 9am to 9pm every calendar day except Christmas Day and Thanksgiving Day. Calls from Federal Firearms Licensees to the Bureau which originated prior to 9pm will be handled until the telephone queue is empty.

#### **CBI-IC-7**

##### **Access to the System/when Contact is Made**

The Bureau shall maintain a toll-free telephone number for Federal Firearms Licensees to contact the Bureau to request background checks prior to the transfer of firearms. Nothing in this rule shall preclude the Bureau from providing alternate means of contacting the Bureau for the purpose of conducting such checks. The toll-free number shall be operational every day that the Bureau is open for business.

Contact shall not be considered to have been made until information regarding the transferee has been transmitted to-and acknowledged by the Bureau.

#### **CBI-IC-8**

##### **Bureau Personnel and Training**

Within fiscal restraints established by legislation, the Bureau shall employ personnel at levels, which correspond to the reasonably anticipated volume of inquiries. The Bureau shall assign such personnel according to the anticipated demand load. The Bureau shall provide adequate training for personnel

commensurate with their duties, to include system usage, customer service, and reasons for approval and denial.

#### **CBI-IC-9**

##### **Forms, Publications, and Rules Incorporated by Reference**

All forms, publications, and rules adopted and/or incorporated by reference in these regulations are on file and available for public inspection by contacting the Agent in Charge: of the Insta- Check Program. Colorado Bureau of Investigation. Department of Public Safety. 690 Kipling Street, Denver. Colorado. This rule does not include later amendments to or editions of any materials incorporated by reference. All publications and rules adopted and incorporated by reference in these regulations may be examined at any state publications depository library.