



PERSONNEL AND  
READINESS

UNDER SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

MAY 24 2013

The Honorable Eric H. Holder Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder:

I am pleased to provide the Department of Defense response to your "Guidance to Agencies Regarding Submission of Relevant Federal Records to the National Instant Background Check System (NICS)," published March 2013. The Department of Defense has been submitting its "prohibited persons" data to NICS since 1998. We have a Memorandum of Understanding with the Federal Bureau of Investigation's Criminal Justice Information Services on the provision and use of prohibited person's data. The enclosure provides the information requested in the Guidance.

I hope this fulfills the requirement of the published Department of Justice guidance and provides the information requested. For further information, my point of contact for NICS reporting is Mr. John Awtrey, Director, Law Enforcement Policy and Support, who may be reached at either 571.372.1989 or [john.awtrey@osd.pentagon.mil](mailto:john.awtrey@osd.pentagon.mil).

  
Jessica L. Wright  
Acting

Enclosure:  
As stated

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The law enforcement agencies of the Military Services perform the same functions for the DoD that civilian police and criminal investigative agencies perform for states, cities and towns in the United States. They maintain and use Criminal Justice Information (CJI) Record Management Systems (RMS) to collect, share and report CJI. They provide CJI to the various FBI criminal justice information systems, e.g., National Crime Information Center (NCIC), Integrated Automate Fingerprint Identification System (IAFIS)/Interstate Identification Index (III), Combined DNA Index System (CODIS), and NICS, in the same manner as their civilian counterparts. In addition, the Department of Defense's (DoD) military judicial system, under the Uniform Code of Military Justice (UCMJ), provides disposition information to the same systems through DoD law enforcement agencies.

DoD's ability to report to NICS is due in large part to the established system of reporting qualifying information to NCIC and III, for NICS to search and retrieve, as a part of normal criminal justice business. This reporting takes place from the myriad of law enforcement agencies in DoD directly to those systems; not from a central DoD CJI RMS. While this enhances DoD's ability to make all pertinent records available to NICS in a timely fashion, it prevents the Department from providing a count of the number of records provided.

DoD's NICS reporting can be broken down into the following three areas:

1. Federal prohibitors for which DoD creates records and reports to NICS, with the means of reporting by the Department's law enforcement agencies:

<b><u>§ 18 USC</u></b>	<b><u>PROHIBITOR</u></b>	<b><u>REPORTING</u></b>
922(g)(1)	PERSONS WHO HAVE BEEN CONVICTED CURRENTLY REPORTING IN ANY COURT OF A CRIME PUNISHABLE BY IMPRISONMENT FOR TERM EXCEEDING ONE YEAR	(b)(7)(E)
922(g)(2)	PERSONS WHO ARE FUGITIVES FROM JUSTICE (Deserters)	(b)(7)(E)
922(g)(3)	PERSONS WHO ARE UNLAWFUL USERS OF OR ADDICTED TO ANY CONTROLLED SUBSTANCE	(b)(7)(E)
922(g)(4)	PERSONS WHO HAVE BEEN ADJUDICATED AS MENTAL DEFECTIVES OR HAVE BEEN COMMITTED TO A MENTAL INSTITUTION	(b)(7)(E)
922(g)(6)	PERSONS WHO HAVE BEEN DISCHARGED FROM THE U.S. ARMED FORCES UNDER DISHONORABLE CONDITIONS	(b)(7)(E)
922(g)(9)	PERSONS CONVICTED IN ANY COURT OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE	(b)(7)(E)

2. Federal prohibitors for which DoD does not create records and thus does not report to NICS:

**§ 18 USC**      **PROHIBITOR**

- 922(g)(5)      PERSONS WHO ARE ALIENS AND ARE ILLEGALLY OR UNLAWFULLY IN THE UNITED STATES
- 922(g)(7)      PERSONS WHO, HAVING BEEN CITIZENS OF THE UNITED STATES, HAVE RENOUNCED THEIR U.S. CITIZENSHIP
- 922(g)(8)      PERSONS SUBJECT TO A COURT ORDER THAT RESTRAINS THEM FROM HARASSING, STALKING, OR THREATENING AN INTIMATE PARTNER OR CHILD OF SUCH INTIMATE PARTNER, OR FROM ENGAGING IN OTHER CONDUCT THAT WOULD PLACE THE PARTNER OR CHILD IN REASONABLE FEAR OF BODILY INJURY

3. Federal prohibitor for which DoD has no exact equivalent, thus does not report to NICS, is listed as follows:

**§ 18 USC**      **PROHIBITOR**

- 922(n)(10)      PERSONS WHO ARE UNDER INDICTMENT OR INFORMATION FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR

922(n)(10) rational: The UCMJ includes neither 'Indictment,' nor 'Information.'

The Department finds no legal obstacles to providing records to NICS. We have however, experienced obstacles to determining which nonjudicial boards within DoD adjudicate mental defectives that would qualify for NICS reporting under 922(g)(4). We are working to clarify this situation.

The Department has made two reporting changes to increase the number of relevant records being reported to NICS. The changes support reporting under sections 922(g) (2) and (3).

922(g) (2): Deserter Arrest Warrants Under Exceptional Circumstances - classification of a Military Service member as a deserter is based on intent and not the time the member has been absent from his or her unit. Military Service members who: are determined to be high risk due to the existence of aggravating circumstances; fled to avoid prosecution; are believed likely to commit violent acts, or may harm themselves or the general public, are declared deserters and the local installation law enforcement agency enters an arrest warrant in NCIC for those individuals.

922(g) (3): Failed command drug tests - relevant Service member data is entered into the Federal Bureau of Investigation's NCIC database as an "abuser of drugs" when a positive urinalysis test for a controlled substance is received. The local installation law enforcement agency enters the appropriate information into NCIC.

As described in this report, DoD is providing all relevant information it creates to NICS. The one area of reporting of non-judicial adjudications of 'mental defectives,' under 922(g)(4), is under review. The review and subsequent departmental regulation writing process, to effect that reporting, will require a minimum of ten months to accomplish.