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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 421

[Docket No. SSA-2016-0011]

RIN 0960-AH95

Implementation of the NICS Improvement Amendments Act of 2007

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules implement provisions of the NICS Improvement Amendments Act of 2007 (NIAA) that require Federal agencies to provide relevant records to the Attorney General for inclusion in the National Instant Criminal Background Check System (NICS). Under these final rules, we will identify, on a prospective basis, individuals who receive Disability Insurance benefits under title II of the Social Security Act (Act) or Supplemental Security Income (SSI) payments under title XVI of the Act and who also meet certain other criteria, including an award of benefits based on a finding that the individual's mental impairment meets or medically equals the requirements of section 12.00 of the Listing of Impairments (Listings) and receipt of benefits through a representative payee. We will provide pertinent information about these individuals to the Attorney General on not less than a quarterly basis. As required by the NIAA, at the commencement of the adjudication process we will also notify individuals, both orally and in writing, of their possible Federal prohibition on possessing or receiving firearms, the consequences of such prohibition, the criminal penalties for violating the Gun Control Act, and the availability of relief from the prohibition on the receipt or possession of firearms imposed by Federal law. Finally, we also establish a program that permits

individuals to request relief from the Federal firearms prohibitions based on our adjudication. These changes will allow us to fulfill responsibilities that we have under the NIAA.

DATES: This final rule will be effective on [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, compliance is not required until December 19, 2017.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 2016, we published a notice of proposed rulemaking (NPRM) in the Federal Register (81 FR 27059) in which we proposed adding part 421 to our regulations in order to implement our obligations under the NIAA. We proposed rules under which we would identify and report to the Attorney General, on a prospective basis, information about any title II or title XVI beneficiary whom we are required to report for inclusion in the NICS because that person is subject to the Federal mental health prohibitor as a result of our adjudication.[1] Under our proposed rules, we would: (1) identify relevant records and report pertinent information to the NICS, (2) provide oral and written notification to our title II and title XVI beneficiaries who meet the requisite criteria, and (3) permit our beneficiaries who meet the requisite criteria to apply to us for relief from the firearms prohibition imposed by 18 U.S.C. 922(d)(4) or (g)(4) by

[1] As part of our responsibilities under the NIAA, we will also provide the Attorney General with copies of court orders that we receive, beginning on or after the compliance date of these final rules, regarding adult title II and title XVI disability claimants and beneficiaries who have been declared legally incompetent by a State or Federal court. The FBI will identify those court orders that meet the requirements of the Federal mental health prohibitor.

virtue of our adjudication. We provided additional information and discussion of the reasons we issued our proposed rules in the preamble to those rules at 81 FR 27059.

We adopt the proposed rules as final rules, with several changes outlined in the discussion of the public comments and our responses. The final rules allow a person to apply for relief any time after our adjudication that the person meets the requirements of the Federal mental health prohibitor has become final. The final rules also set out several circumstances in which we will notify the Attorney General to remove a person's name from the NICS. We also made minor changes to the definition of the term "affected individual" in section 421.105 and to section 421.110(b)(2). The changes in both of these sections are for clarity, and do not substantively change the rules.

Public Comments and Discussion

In our NPRM, we provided a 62-day comment period, which ended July 5, 2016. As we stated in our proposed rules, the NIAA, the President's January 2013 Memorandum to Federal agencies, and the Department of Justice's (DOJ) March 2013 guidance require Federal agencies with any record demonstrating that a person falls within one of the categories in 18 U.S.C. 922(g) or (n) to provide the pertinent information contained in the record to the Attorney General, not less frequently than quarterly, for inclusion in the NICS.[2] Because our proposed

[2] NIAA, sec. 101(a)(4), 121 Stat. at 2161; Memorandum for the Heads of Executive Departments and Agencies, Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System, 78 FR 4297 (2013); Department of Justice, Guidance to Agencies Regarding Submission of Relevant Records to the NICS (March 2013) ("DOJ Guidance"). We included the relevant portion of the DOJ Guidance in the preamble to our proposed rules (81 FR at 27060-27061).

rules were limited to our process for satisfying our mandated reporting and relief requirements, comments about issues that do not pertain to our proposed rules are outside of the scope of our rulemaking authority. We have not responded here to comments outside of the scope of our proposed rules.

We received 91,243 timely submitted comments that addressed issues within the scope of our proposed rules. We carefully considered the concerns expressed in these comments. Due to the high volume of the comments submitted, we summarized and grouped them by main issue expressed. We present the views received, and address the relevant and significant issues raised by the commenters. Of the timely-submitted comments, 86,860 were identical letters from different members of one advocacy group, and 324 were signatures on one comment letter. These letters urged us to withdraw the proposed rules, which the commenters thought would adversely affect individuals' Second Amendment rights. We address that comment below.

Various advocacy groups and individuals submitted the remaining 4,059 comments. Many of these commenters questioned our legal authority to provide the names of Social Security beneficiaries to DOJ for inclusion in the NICS. The majority of these comments focused on how DOJ would use the information we provide – i.e., what the effect would be on the Second Amendment rights of individuals whose names would be included in the NICS. Other legal issues raised included due process and equal protection concerns. Many commenters questioned the criteria we proposed to use to identify names for inclusion in the NICS. Some of these comments were based on an incorrect understanding of the information we provided in the

NPRM. We also address those misunderstandings below. Several commenters appeared to misunderstand the process we would need to follow to revise these criteria in the future.

Some commenters cautioned about the potential for stigmatization of those with mental health disorders, and questioned why we did not provide evidence demonstrating the correlation between mental health and gun-related violence. Commenters also expressed apprehension about the potential violation of privacy rights, including rights under the Health Insurance Portability and Accountability Act (HIPAA). Commenters also questioned our existing processes for determining the presence of a disability based on a mental impairment and our process for appointing representative payees. Multiple commenters asked about our process for seeking relief and the removal of names from the NICS. Several commenters expressed that the policy we proposed was an unnecessary expenditure of Federal Government funds.

We also received multiple comments in support of the rules. These individuals and advocacy group commenters spoke as appointed representatives of Social Security beneficiaries with mental illness or as proponents of greater gun control efforts.

We respond in greater detail below to the relevant comments submitted in response to the proposed rule. We organize the comments and our responses by category for ease of review.

Legal Authority

Comment: Multiple individuals questioned our authority to report any information to the NICS database. Some commenters opined that NIAA section 101(c)(1)(C) prohibited us from reporting information to DOJ that is "based solely on a medical finding of disability. . . ." Another commenter suggested that we should not be able to submit any medical information to the NICS without a court order.

Response: Our authority to report the information we include in these final rules stems from section 101(a)(4) of the NIAA, which requires that we provide to the Attorney General for inclusion in the NICS pertinent information included in any record demonstrating that a person falls within one of the categories in 18 U.S.C. 922(g) or (n).[3] NIAA section 101(c)(1)(C) does not prohibit us from reporting this information to the NICS. The commenters who relied on section 101(c)(1)(C) only cited part of the section in their comments. In its entirety, section 101(c)(1)(C) of the NIAA states: "No department or agency of the Federal Government may provide to the Attorney General any record of an adjudication related to the mental health of a person or any commitment of a person to a mental institution if . . . (C) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code, except that nothing in this section or any other provision of law shall prevent a Federal department or agency from providing to the Attorney General any record demonstrating that a person was adjudicated to be not guilty by reason of insanity, or based on

[3] NIAA 101(a)(4), 121 Stat. at 2161.

lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice."

We are not reporting information in records based solely on a medical finding of disability without the person being adjudicated as subject to the Federal mental health prohibitor "consistent with 18 USC 922(g)(4)." The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has clarified through regulations that this prohibition covers individuals who have been determined by a court, board, commission or other lawful authority as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease to be a danger to himself or to others, or who lacks the mental capacity to contract or manage his or her own affairs.[4]

The DOJ Guidance specifically indicates that records relevant to the NICS include "agency records of adjudications of an individual's inability to manage his or her own affairs if such adjudication is based on marked subnormal intelligence or mental illness, incompetency, condition or disease." The DOJ further indicated that this category of records "includes certain agency designations of representative or alternate payees for program beneficiaries.[5]"

As we explained in the NPRM, our adjudication is an adjudication by a lawful authority, by virtue of the authority granted to the Commissioner of Social Security under the Social Security Act. We also are not basing our reporting of records to the NICS solely on a medical finding of disability. Rather, consistent with section 101(a)(4) of the NIAA and the ATF's

[4] 27 CFR 478.11(a)(1)-(2).
[5] 81 FR at 27061.

implementing regulation, we are basing our report on the individual's inability to manage his or her affairs as a result of his or her mental impairment. However, we will not include medical information in our reports to the NICS – we will report only the beneficiary's name, full date of birth, sex, and Social Security number. In addition, we will only inform the FBI of the fact that the individual meets the criteria for inclusion in the NICS under the NIAA due to a mental health prohibitor, but we will not provide any details on the individual's specific diagnosis.

Comment: Multiple commenters questioned our authority to declare an individual to be subject to the Federal mental health prohibitor, and argued that only a court can make that decision.

Response: By these rules, we are complying with the requirements of the NIAA by identifying individuals in our records who meet the criteria of the mental health prohibitor in 18 U.S.C. 922(g). As we noted previously, our authority to do so derives from section 101(a)(4) of the NIAA. DOJ's guidance indicates that relevant records under the mental health prohibitor category include not only court adjudications but also agency records of adjudications of an individual's inability to manage his or her own affairs, including the agency's designation of a representative payee because of his or her mental impairment. As we noted above and in the proposed rules, the ATF's regulations require that the individual be found to be subject to the Federal mental health prohibitor "by a court, board, commission or other lawful authority. . . ."[6] Consequently, neither the NIAA nor the ATF's implementing regulations require an agency to

[6] 27 CFR 478.11(a).

report information to the NICS based only on a court order, as some of the commenters suggested.

Comment: One commenter asked if the determinations would be secret or open, and if there are safeguards in place to ensure that the people making the designations are free of bias or prejudice.

Response: We will use our regular program rules to determine whether an individual is disabled due to a mental impairment that is severe enough to meet the requirements of our mental disorder listings, and to determine if that person also requires a representative payee because of his or her mental impairment. We apply our program rules to all claimants equally, regardless of whether or not one meets the NICS criteria. We expect all of our adjudicators to fulfill their duties with fairness and impartiality, and we have existing procedures in place that allow us to address claims of bias or prejudice in our administrative process.

By "open" we assume that the commenter's concern was over the privacy of the information that we would report to the NICS. A determination regarding inclusion in the NICS would be open to the individual affected, and we will apply the safeguards set out in these rules, such as oral and written notification to the individual at the commencement of the adjudication, to ensure that the individual who may be subject to reporting has adequate information about the reporting process, the effect of our reporting, and options for relief.

In addition, we will apply the protections against unauthorized disclosure in the Privacy Act of 1974, 5 U.S.C. 552a; our regulations, 20 CFR part 401; and the Social Security Act, 42

U.S.C. 1306(a). Thus, we may only disclose information in accordance with these laws and regulations. We also provide claim information to individuals upon request of the claimant. Under the Privacy Act of 1974 and our regulations, an individual may request access to his or her records maintained in agency Privacy Act systems of records, including those under which we maintain diagnosis information.[7]

Constitutional Issues: Second Amendment and Equal Protection

Comment: Many commenters expressed concern that these rules would violate the affected individuals' rights under the Second Amendment to the Constitution, and would also violate their equal protection rights under the Constitution. Most of these comments were provided in largely identical letters, and they asserted that our rules would take firearms away from elderly recipients of Social Security retirement benefits.

Response: With these rules, we are seeking to satisfy our obligations under the NIAA, which requires Federal agencies to provide relevant records to the Attorney General for inclusion in the NICS. While the rule addresses reporting requirements, it is the Federal Gun Control Act, not the Social Security Act, that governs when a person can possess a firearm. The criteria we will use under these rules do not focus on one age group, such as the elderly or recipients of Social Security retirement benefits, nor do they categorize and treat individuals who are similarly situated differently. Consequently, these final rules do not violate principles of equal protection. In addition, as we stated in the preamble to our NPRM and in the requirements listed in section

[7] 5 U.S.C. 552a(d); 20 CFR 401.35-401.40.

421.110(b)(4) of our rules, we will identify certain individuals who have attained age 18, but have not yet attained full retirement age. We do not intend under these rules to report to the NICS any individual for whom we appoint a representative payee based solely on the individual's application for and receipt of Social Security retirement benefits.

With regard to the broader point the commenters raised about the constitutionality of our actions under the Second Amendment, we note that the Supreme Court recognized in District of Columbia v. Heller, 554 U.S. 570, 595 (2008), "that the Second Amendment conferred an individual right to keep and bear arms." The Court emphasized, however, that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited," *id.*, at 626, and that "nothing in [the Court's] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* Our actions, taken in accordance with the Congress' directives in the NIAA, the President's January 2013 memorandum to Executive agencies, and DOJ's March 2013 guidance, are fully consistent with the Supreme Court's recognition in Heller of the validity "of longstanding prohibitions on the possession of firearms by . . . the mentally ill." Nothing in the rules we are issuing today is inconsistent with the scope of the Second Amendment as interpreted in Heller. Accordingly, we have not made any changes to the rule in response to comments asserting that our actions were inconsistent with an individual's Second Amendment right.

Due Process

Comment: Multiple commenters also stated that the rules as written would violate beneficiaries' right to due process, particularly because they do not allow affected individuals to

appeal the inclusion of their names in the NICS before we submit them to the DOJ. One commenter suggested that we should obtain a beneficiary's written permission before submitting information to the DOJ.

Response: Affected individuals will have the opportunity to apply for relief from the Federal firearms prohibitions imposed by 18 U.S.C. 922(g)(4) at any time after our adjudication has become final. We have clarified our rules to make that point. We will follow the requirements of the NIAA and apply principles of due process in determining applicants' entitlement to relief from the burdens imposed by inclusion in the NICS. Under these rules, we will provide individuals with advance notice at the commencement of the adjudication that we may report their information to NICS if we find they meet the criteria for reporting when the adjudication is final. An individual can request relief any time after the adjudication is final but we cannot delay fulfilling our obligations under the NIAA to provide relevant records to the Attorney General while the person decides whether to request relief.

When an individual requests relief, we provide an opportunity for the individual to submit evidence in support of the request, which will be reviewed by an impartial decisionmaker who was not involved in making the finding that the applicant's benefit payments be made through a representative payee. We will notify the applicant in writing of our action regarding the request for relief and explain the reasons for our action. We will also inform the applicant that if he or she is dissatisfied with our action, he or she has 60 days from the date he or she receives the notice of our action to file a petition seeking judicial review in Federal district court. And, of course, judicial review of our action denying an applicant's request for relief is available in accordance with the standards prescribed in 18 U.S.C. 925(c). These procedures provide a

beneficiary with ample due process protections. In response to the other commenter's concern, we note that nothing in the NIAA or any other provision of law requires us to obtain a beneficiary's written permission to disclose information to the DOJ for the NICS. We will publish a system of records notice (SORN) that will explain the purposes for which information will be maintained and disclosed, and the public will have an opportunity to comment on the SORN.

Comment: Several commenters questioned whether individuals who meet our criteria would receive adequate notice or be given the opportunity to appeal before we share their information with the DOJ. One commenter expressed concern that, "[m]any people will not be informed of the action." Other commenters asked whether "an existing beneficiary with a representative payee [would] be notified and given the opportunity to appeal before they are reported to NICS" or if we would "allow the person a reasonable amount of time to appeal that action."

Response: Consistent with the NIAA, we will provide oral and written notice to the beneficiary at the commencement of the adjudication, which we define as after we have determined that he or she meets the medical requirements for disability based on a finding that his or her impairment(s) meets or medically equals the requirements of the mental disorders listings, but before we find that he or she requires a representative payee. Under these final rules, we will provide individuals with the opportunity to apply for relief from the Federal firearms prohibitions once the adjudication becomes final and those prohibitions are imposed.

Because we will only identify individuals for reporting on a prospective basis, existing beneficiaries with representative payees will not be affected by these final rules. Individuals who currently receive benefits but who would not qualify for reporting to the NICS because they do not currently satisfy all five requirements will be reported should a continuing disability review or other disability review, such as an age-18 redetermination, demonstrate a change in status that would satisfy all five requirements. In that circumstance, we would provide the beneficiary oral and written notice of his or her potential reporting to the NICS under the regular notice requirements established by these rules before we take any action to determine capability. In addition, under our regulations, our determination to appoint a representative payee for a beneficiary is subject to our administrative review process and, ultimately, to judicial review after the individual receives our final decision.

Comment: Several commenters expressed the belief that pursuing relief would be a highly expensive process for beneficiaries, and thus beneficiaries who could not afford what might be prohibitively expensive activities, would effectively be denied due process.

Response: We will not impose a fee in connection with the filing of a request for relief. We anticipate that the cost for acquiring the evidence that we require and providing it to us directly will be reasonable. In addition to providing us with a completed relief application form, consistent with the requirements set forth in section 421.151(b) of this final rule, an applicant for relief will only be required to provide us with: (1) a current statement from his or her primary mental health provider that assesses the applicant's current mental health status and mental status for the 5 years preceding the date of the relief request; and (2) written statements and any other

evidence regarding the applicant's reputation. We will obtain the applicant's criminal history report.

The requirement that the individual provide us with medical evidence, in the form of a current statement from the applicant's primary mental health provider assessing the applicant's current mental health status and mental health status for the 5 years preceding the date of the request for relief, stems from the requirements of the NIAA. Section 101(c)(2)(A)(iii) of the NIAA[8] provides that "[r]elief and judicial review with respect to" an agency's relief program "shall be available according to the standards prescribed in" 18 U.S.C. 925(c). Section 925(c), in turn, provides that relief may be granted "if it is established to [an agency's] satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." In order for us to determine whether "the applicant will not be likely to act in a manner dangerous to public safety," we must necessarily have evidence assessing the individual's mental status. The evidentiary requirements we are including in final section 421.151(c) will allow us to make the determination the NIAA and section 925(c) require us to make.

Reporting Criteria

Comment: Multiple individuals commented on the criteria we proposed for identifying individuals whose names we would report to the DOJ. Many questioned how we selected these

[8] 121 Stat. at 2563.

criteria for inclusion. One commenter suggested that, "there should be a more specific review of these criteria." Another individual asked why we did not propose to send information on individuals who, among other things, are felons, domestic abusers, or unlawful users of controlled substances. Another commenter suggested that we conduct a criminal background history as an additional step prior to reporting an individual's information to the DOJ. One commenter suggested that we include an additional factor to consider an individual's propensity for violence, aggressive behavior, or self-destructive behavior[9].

Response: As we explained in the NPRM, in choosing the criteria we sought to find the best fit between our adjudication regarding a claimant's entitlement to benefits and the decision to designate a representative payee and the regulatory definition of an individual who is subject to the Federal mental health prohibitor. For the reasons we discussed in the NPRM,[10] we believe that there is a reasonable and appropriate fit between the criteria we use to decide whether some of our beneficiaries are disabled (e.g., a primary diagnosis of a mental impairment and meeting or equaling the requirements of one of the Mental Disorders Listing of Impairments (Listings) and requiring a representative payee because of that mental impairment) and the Federal mental health prohibitor.

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[9] One commenter raised the issue of our reporting felons to the NICS database. This issue is outside the scope of this final rule. However, we note that our Office of the Inspector General (OIG) has independent statutory obligations under the Inspector General Act of 1978 (Public Law 95-452; 92 Stat. 1101), as amended. Our OIG reports that it provides records to the NICS for individuals on whom it has opened an investigation and who are subsequently prosecuted in a State or local court. The OIG provides information on individuals who fall into the following categories: (1) certain felons (with judgment and conviction orders from a court); certain fugitive felons; and (3) certain persons under indictment. The OIG does not provide information from their investigations prosecuted in Federal courts, because this information is already provided to NICS.

[10] 81 FR at 27062.

We have not adopted the comment that we conduct a criminal background history in advance, because it does not comport with the criteria we are using to identify individuals for referral to NICS and, within that framework, a criminal background check is unnecessary. To reiterate, we will report an individual's record to the NICS based on his or her inability to manage his or her affairs due to a disabling mental impairment that meets or equals the criteria found in one of the Mental Disorders Listings. A criminal background check is not necessary for us to make a determination on that issue. However, we will obtain a criminal background check as part of the relief process. The relief inquiry focuses on whether the applicant will be likely to act in a manner dangerous to public safety, and whether the granting of the relief would be contrary to the public interest. The distinction we have made in these rules, under which we will obtain a criminal background check as part of the relief process, but not as part of the referral process, is consistent with the NIAA.

With respect to the commenters' questions about other categories of individuals, such as domestic abusers or unlawful users of controlled substances, we note that we do not have records regarding individuals who are domestic abusers. In addition, in adjudicating disability claims, we do not determine whether a claimant has "lost the power of self-control with reference to the use of a controlled substance," as contemplated by the ATF regulation. 27 CFR 478.11. Rather, our focus is on whether the claimant is capable of engaging in substantial gainful activity despite his or her impairments. Even where our records identify a claim as involving either drugs only or both drugs and alcohol, our electronic records do not include structured data on the type of drug use, the extent of the use, or on how recently the controlled substance was used.

Consequently, we have determined that we do not have records that meet DOJ's criteria for reporting individuals in this category to the NICS.

Regarding the suggestion that we consider an individual's propensity for violence, aggressive behavior or self-destructive behavior before we refer an individual's record to the NICS, the relevant Federal law and implementing regulation do not require us to find that a beneficiary has a propensity for violence, aggressive behavior, or self-destructive behavior before we report his or her name to the NICS. The governing ATF regulation defines the Federal mental health prohibitor as involving a determination by a court, board, commission or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease, is a danger to himself or to others; or lacks the mental capacity to contract or manage his own affairs.[11]

The regulation distinguishes between (1) the requirements of being a danger to one's self or others; and (2) the lacking of mental capacity to contract or manage one's affairs. The DOJ Guidance specifically notes that records relevant to the Federal mental health prohibitor include agency adjudications of an individual's inability to manage his or her own affairs, if the adjudication is based on marked subnormal intelligence or mental illness, incompetency, condition or disease, and it includes certain agency designations of representative or alternate payees for program beneficiaries.[12] Accordingly, in light of the ATF regulation and DOJ Guidance, we believe that we are required to find that an individual meets the requirements for

[11] 27 CFR 478.11(a)(1)-(2).
[12] 81 FR at 27061.

the Federal mental health prohibitor if he or she meets either of the two factors set out in the ATF regulation.

Comment: Several commenters protested against what they thought would be our evaluation of all Social Security beneficiaries for potential inclusion in the NICS.

Response: The comment reflects a misunderstanding of our proposed rules. We will not evaluate all Social Security beneficiaries for potential inclusion in the NICS. As we indicate in section 421.110(b) of our rules, the beneficiaries whose names we would submit to the NICS must meet five well-defined criteria. The criteria are that the individual must have: (1) filed a claim based on disability; (2) been determined by us to be disabled based on a finding at step three of our sequential evaluation process that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listings; (3) a primary diagnosis code in our records that is based on a mental impairment; (4) attained age 18, but have not yet attained full retirement age; and (5) benefit payments made through a representative payee because we have found him or her incapable of managing benefit payments. We will not include any beneficiary who does not meet all of those criteria in our reporting to the NICS.

Comment: We received a significant number of comments expressing the view that we should not report certain categories of people to the DOJ for inclusion in the NICS based solely on one qualifier. Commenters erroneously expressed the belief that we would report names to the NICS if they belonged to any one of the following categories: (1) Recipients of any type of Social Security benefits; (2) recipients of Supplemental Security Income (SSI) payments or

Disability Insurance (DI) beneficiaries under the Social Security Act; (3) senior citizens; (4) DI beneficiaries for other physical, non-mental disabilities; (5) DI beneficiaries based on a mental impairment, but who do not have a representative payee; (6) have a representative payee for retirement benefits but do not receive DI benefits; (7) have a representative payee but do not receive DI benefits because of a listing-level mental impairment; or (8) no longer receive any type of Social Security benefits.

Response: As we noted in our response to the previous comment, this comment reflects a misunderstanding of our rules. As we indicate in section 421.110(b) of our rules, the beneficiaries whose names we would submit to the NICS must meet all five well-defined criteria. We will not report any beneficiary who does not satisfy all five criteria to the NICS.

Comment: One commenter stated that, because we do not make medical determinations about Social Security retirement beneficiaries' health, we do not have the right to make decisions concerning their mental status.

Response: We agree that we do not make a medical determination when an individual files a claim for Social Security retirement benefits. For that reason, our proposed rules and these final rules provide that in order for us to refer an individual's record to the NICS, he or she must, among other things, have filed a claim for disability insurance benefits under title II of the Act or supplemental security income payments based on disability under title XVI of the Act. We do not and will not review the medical records of individuals simply because they file a claim for retirement benefits. Our authority to make a determination regarding an individual's

capacity and the appointment of a representative payee is in accordance with the authority granted to the Commissioner under the Act.[13]

When we appoint a representative payee, we base our determination on available medical or other evidence, such as statements from relatives, friends, or people in positions to observe the beneficiary.[14] This process includes gathering medical evidence from the disability folder or a treating physician, obtaining information from family members or friends about the person's ability to manage finances, and asking the individual how he or she handles monthly expenses and financial decisions.[15]

Comment: Multiple commenters expressed the belief that we would report beneficiaries to the NICS solely based on their having a representative payee. Further, commenters opined that having an alternate payee, or requiring some help with financial arrangements such as receipt of Social Security benefits, does not demonstrate mental incompetence.

Response: As noted in our responses to previous comments, this comment reflects a misunderstanding of our rules. As we indicate in section 421.110(b) of our rules, the beneficiaries whose names we would submit to the NICS must meet all five well-defined criteria. We will not report to the NICS any beneficiary who does not satisfy all five of those criteria. We will not report a person to the NICS simply because the person has a representative payee if they do not meet all of the other criteria.

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[13] 42 U.S.C. 405(b)(1), and (j).
[14] 20 CFR 404.2015(b) and (c); 416.615(b) and (c).
[15] Id.

The DOJ Guidance, with which we are complying, specifically indicates that records relevant to the NICS include "agency records of adjudications of an individual's inability to manage his or her own affairs if such adjudication is based on marked subnormal intelligence or mental illness, incompetency, condition or disease." The DOJ further indicated that this category of records includes certain agency designations of representative or alternate payees for program beneficiaries.[16]

Comment: Several individuals expressed concern that we would decide to expand the categories of names to submit to the NICS beyond the scope of the current rules without justification or prior notice.

Response: Prior to making any changes that would revise or otherwise substantively change the scope of the current rules, we would follow the Administrative Procedure Act's procedures of notice and comment rulemaking, similar to the process we followed in publishing these rules.

Mental Illness

Connection to Violence, Potential for Stigmatization

[16] 81 FR at 27061.

Comment: Commenters questioned the decision to add beneficiaries' names to the NICS based on mental illness, stating we had not provided data indicating that mental illness was a precursor for violence (particularly gun violence).

Response: We are not attempting to imply a connection between mental illness and a propensity for violence, particularly gun violence. Rather, we are complying with our obligations under the NIAA, which require us to provide information from our records when an individual falls within one of the categories identified in 18 U.S.C. 922(g). As we have noted previously, the ATF has clarified through regulation that the prohibitor referenced in 18 U.S.C. 922(g)(4) covers an individual determined by a court, board, commission or other lawful authority to be a danger to himself or others or to lack the mental capacity to contract or manage his or her own affairs as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease.[17] A finding regarding an individual's ability to manage his or her own affairs does not require us to find that an individual has a propensity for violence before we report his or her name to the NICS. For that reason, the studies that the commenters cited regarding the relationship between mental illness and gun violence do not require us to make any changes to these rules.

Comment: Multiple commenters opined that these rules would unfairly stigmatize those with mental illness.

[17] 27 CFR 478.11(a)(1)-(2).

Response: We are committed to treating all beneficiaries with dignity and respect. To that end, we regularly collaborate and consult with mental health and other advocacy groups and organizations to stay informed and responsive to the needs of beneficiaries with mental health issues. Our collaboration with these organizations includes, among other activities, hosting regular meetings, soliciting input on agency initiatives, and participating in national and regional conferences. We are not attempting to stigmatize individuals who have a mental illness, but are simply following the requirements imposed by Congress in the NIAA.

We would also like to highlight that when we report a beneficiary for inclusion in the NICS, we will disclose directly to the FBI a beneficiary's name, full date of birth, sex, and Social Security number. We will not include specific medical information with our report. We will inform the FBI only of the fact that the individual meets the criteria for inclusion in the NICS due to a mental health prohibitor, but we will not provide any details on the individual's specific diagnosis. The information will not be made public, and will be used solely for the purposes of the NICS program. Moreover, a Federal Firearms Licensee (FFL) who submits a NICS request when an individual attempts to purchase a firearm from the FFL would not know the reason for the individual's inclusion, or even which Federal agency had reported the individual's name to NICS. FFLs only receive a transaction number and a status of Delay, Deny, or Proceed (for the firearm purchase), which will avoid embarrassment or stigmatization for Social Security beneficiaries whose names we refer for inclusion in NICS.

Comment: Some commenters expressed concern that individuals might choose not to seek mental health treatment or apply for Social Security benefits out of fear that we would submit their information to the DOJ for inclusion in the NICS. One commenter stated that, "[t]he

end result of this will be many will be very reluctant to seek help, and will refuse the help of a payee, if that is to be automatically reported in this way." Another commenter suggested that, "[o]ne unintended consequence of the proposed action will be to introduce a tremendous disincentive to those who would seek medical assistance."

Response: It is not our intent to discourage individuals from seeking disability benefits or appropriate mental health services. While the outcome of our decision may mean that some beneficiaries will meet the criteria for inclusion in the NICS as detailed in section 421.110(b)(1) – (5) of our rules, our disability process will remain the same. It is also important to note that an FFL who submits a NICS request when an individual attempts to purchase a firearm from the FFL would not know the reason for the individual's inclusion, or even which Federal agency had reported the individual's name to NICS. FFLs only receive a transaction number and a status of Delay, Deny, or Proceed (for the firearm purchase), avoiding embarrassment or stigmatization for Social Security beneficiaries whose names we refer for inclusion in NICS.

Mental Illness Determination

Comment: We received several comments questioning how we determine whether individuals are disabled based on their diagnosed mental disorders. One commenter stated that, "[t]he parameters established within this rule are entirely too vague." The commenter went on to opine that the proposed rules rely on factors that are "severely error-prone," suggesting that our system "'red flags' too many claims based simply on the mentioning of certain terms (i.e. 'red flagging' claims as 'suicidal' based solely on the term 'suicide' within a person's records. . . even

if the actual reference is 'claimant states he does not have any suicidal ideations.'") Another commenter stated that we do not explain the severity required to satisfy a mental disability listing.

Response: The Act and our implementing regulations set out the rules we apply for deciding whether an individual is disabled. The Act defines “disability” as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A medically determinable physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities, which are demonstrated by medically acceptable clinical and laboratory diagnostic techniques. The medical evidence must establish a physical or mental impairment consisting of signs, symptoms, and laboratory findings. An individual's statement of symptoms is not sufficient basis for a determination of disability.

Our rules for evaluating mental disorders can be found in 20 CFR 404.1520a and 416.920a. We consider the medical severity of mental disorder(s) using the mental disorders listings in appendix 1 of 20 CFR part 404, subpart P. We describe the severity required to satisfy a mental disorders listing in sections 404.1525 and 416.925 of our rules. For adults, the Listings describe impairments that we consider severe enough to prevent an individual from doing any gainful activity, regardless of his or her age, education, or work experience. Most of the listed impairments are permanent or expected to result in death, or the listing includes a specific statement of duration. For all other listings, the evidence must show that the impairment has

lasted or is expected to last for a continuous period of at least 12 months. Our criteria for deciding disability may differ from the criteria applied in other government and private disability programs.

When we make an initial determination whether an individual has a severe medical impairment or an impairment that meets or equals the severity of an impairment in the Listings, a team consisting of a doctor and disability examiner reviews the claimant's statements and the relevant evidence together. We base a determination on a thorough review and evaluation of an individual's record and not solely on the use of one term or "flag." The criteria that we use to determine disability for individuals with mental impairments is well-known and is published in the Act, our regulations, and our sub-regulatory instructions, all of which are available to the public on our Internet site.

Comment: Multiple commenters stated that, because our adjudication of an individual as disabled under our mental disorders listings causes the individual's name to be included in the NICS, commenters' perceived flaws in the adjudication process could lead to unfair inclusion in the NICS. Concerns were raised about the ability of our employees to participate in what seems to be a medical decision. Commenters also discussed the possible lack of input by medical professionals during the determination process. Multiple commenters raised the idea that it is difficult to properly diagnose mental illness at all.

Response: Our disability determination process for adults includes making medical determinations and evaluating claimants' mental impairments based on medical and other

evidence. We follow a required sequential evaluation process in order and stop as soon as we can make a determination or decision. The steps are:

1. Is the individual working, and is the work substantial gainful activity? If the answer is yes, we will find him or her not disabled. If the answer is no, we will move on to step 2.

2. Does the individual have a severe impairment? If the individual does not have an impairment or combination of impairments that significantly limits his or her physical or mental ability to do basic work activities, we will find him or her not disabled. If the individual does, we will go on to step 3.

3. Does the individual have an impairment(s) that meets or medically equals the severity of an impairment in the Listings? The Listings are examples of impairments that we consider severe enough to prevent an adult from doing any gainful activity. If the individual has an impairment(s) that meets or medically equals the severity of an impairment in the Listings, and the impairment(s) meets the duration requirement, we will find him or her disabled.[18]

When we evaluate whether an individual has a severe medical impairment or whether an impairment meets or equals the severity of an impairment in the Listings at the third step of our sequential evaluation, a team consisting of a doctor and disability examiner reviews the claimant's statements and the relevant evidence together. Our team will ask the claimant's

[18] We will not report to the NICS individuals whom we find disabled at step 5 of the sequential evaluation process.

doctors about the claimant's medical impairments, when the impairments began, how the impairments limit the claimant's activities, what the results of medical tests were, and what treatment the claimant received. They will also ask the claimant's doctors for information about the claimant's ability to perform work-related activities, such as walking, lifting, carrying, and remembering instructions.

Although mental impairments are qualitatively different from impairments that affect physical body systems, such as the cardiovascular or musculoskeletal body systems, mental impairments can and do prevent people from working. Our mental disorders listing criteria, which we recently updated effective January 17, 2017, accurately and reliably identify the mental impairments that prevent claimants from engaging in any gainful activity. Additionally, section 221(h)(1) of the Act requires us to make reasonable efforts to ensure that a qualified psychiatrist or psychologist completes the medical review of cases involving mental impairments before we make a determination on a claim for benefits.[19]

Comment: Multiple commenters focused on our classification and diagnosis of mental disorders in general. One commenter asked which mental disorders would be included in the criteria under section 421.110 of our rules. One commenter stated that the term "mental impairment" itself is unclear and asked "[h]ow and who will define this impairment and to what degree will be considered worthy to report? If I have a panic attack is that worthy?" Another wondered if, "[f]or purposes of this rule, anxiety, abnormal sleep/appetite, inflated self-esteem, or decreased energy, combined with alleged difficulty in managing money, are sufficiently

[19] 42 U.S.C. 421(h)(1), as amended by section 832(a) of the Bipartisan Budget Act of 2015, Pub. L. 114-74, 129 Stat. 584, 613.

disabling to disqualify a person from possessing firearms." Hundreds of commenters asked if Post Traumatic Stress Disorder (PTSD) was an included impairment. Multiple commenters expressed concern that the disorders included in section 12.00 of the Listings are too broad, and equate "severe mental issues the same as other issues" such as “eating and anxiety disorders."

Response: As we explained in the NPRM, we will report an individual’s record only if we have determined the individual to be disabled based on a finding that his or her impairment(s) meets or medically equals the requirements of one of the mental disorder listings and if he or she meets all the other four criteria. If any of these criteria are not met, we will not submit the individual’s name to the NICS.

For an impairment to meet or medically equal a listing, an individual's symptoms must establish that he or she has a medically determinable mental impairment. A medically determinable mental impairment results from anatomical, physiological, or psychological abnormalities demonstrated by medically acceptable clinical and laboratory diagnostic techniques. The impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant’s statement of symptoms alone.[20] Specific signs or symptoms of a mental impairment combined with an alleged difficulty in managing money, alone, will not meet or equal one of the mental disorders listings. The claimant’s mental impairment must also result in limitations in the claimant’s ability to function to the degree required by the listing criteria.

[20] 20 CFR 404.1508 and 416.908.

The Listings cover many categories of mental impairments to ensure that we can evaluate the types of impairments with which claimants are diagnosed. The Listings include criteria that, when satisfied, indicate that a person has a mental impairment that is disabling under our rules. PTSD is an example of an impairment that could meet or equal one of the Listings, if the claimant's signs, symptoms, and functional limitations rise to the level of severity required in the listing for PTSD.

On September 26, 2016, we published a comprehensive update to our mental disorders Listings, ensuring that the criteria we use to determine the presence of disability based on a mental impairment- and, by extension, the criteria that underlie our referrals to NICS- reflect the most modern medical standards in this area.[21]

Privacy and Confidentiality

Comment: Several commenters stated that our sending information to the NICS would violate beneficiaries' right to privacy, both generally and with regard to their medical information.

Response: We have stringent privacy and disclosure policies that protect our beneficiaries' right to privacy. We will not report any specific medical information when we report to the NICS. To meet the NIAA's requirement to report relevant records to the NICS, we

[21] 81 FR 66138. The revised mental impairment listings will become effective on January 17, 2017. Id. at 66138. We based this revision to our mental impairment listings on the American Psychiatric Association's latest revision to the Diagnostic and Statistical Manual of Mental Disorders, the fifth edition, published in May 2013. Id., at 66139.

will report only the name, full date of birth, sex, and Social Security number for each beneficiary who meets the criteria for inclusion in the NICS. The FBI will only be informed of the fact that the individual meets the criteria for inclusion in the NICS due to a mental health prohibitor, but we will not provide any details on the individual's specific diagnosis. Moreover, FFLs submitting a NICS request when an individual attempts to purchase a firearm from the FFL would not know the reason for the individual's inclusion, or even which Federal agency had reported the individual's name to NICS. FFLs only receive a transaction number and a status of Delay, Deny, or Proceed (for the firearm purchase), further protecting the privacy of Social Security beneficiaries whose names we refer for inclusion in NICS.

Our disclosure of individual information to the DOJ for the NICS complies with the Privacy Act of 1974, 5 U.S.C. 552a; our privacy regulations, 20 CFR part 401; and all other applicable Federal law. We are publishing a new Privacy Act systems of records notice and, as appropriate, we will amend existing systems of records notices to cover the maintenance and disclosure of information for reporting individuals to the NICS.[22] The systems of records notices will describe how we will report data to the NICS and the permitted uses of the data. Any systems of records from which we disclose information to the DOJ for the NICS will contain routine uses authorizing the disclosure of the information, without the consent of the individuals to whom the information pertains.[23]

Comment: We received multiple comments from individuals stating that our proposed rules conflicted with HIPAA privacy rights or doctor-patient confidentiality.

[22] 5 U.S.C. 552a(e)(4).
[23] 5 U.S.C. 552a(b)(3).

Response: Our rules do not conflict with HIPAA because we will not share any specific medical information with the NICS. When we report an individual's record to the NICS, we will provide only his or her name, full date of birth, sex, and Social Security number. Moreover, HIPAA and any laws governing doctor-patient confidentiality do not apply to our disclosure of information from information maintained in agency systems of records to the DOJ for the NICS.

Representative Payee Appointment

Comment: We received many comments expressing concern about the manner in which we appoint representative payees. Some comments expressed the belief that we may force the appointment of representative payees for certain beneficiaries who do not require their services. Other commenters conveyed that perceived flaws in the representative payee appointment process would result in the unnecessary appointment of a representative payee and, consequently, unfair inclusion of names in the NICS. Multiple commenters questioned the manner in which we appoint representative payees. One individual questioned the thoroughness of our representative payee evaluation process, while others suggested that we should require direct medical evidence to support the need for a representative payee.

Response: Congress first authorized us to direct the payment of an individual's benefits to a representative payee as part of the Social Security Act Amendments of 1939, so we have over 75 years of experience making capability findings and appointing payees for individuals. Under our policy, we presume that a legally competent adult beneficiary can manage or direct

the management of his or her benefits unless there are indicators to the contrary. We will appoint a representative payee for a beneficiary who is under age 18 or a beneficiary who is age 18 or older and is legally incompetent or unable to manage or direct management of his or her benefits due to a physical or mental condition.[24] When we appoint a representative payee because a beneficiary is legally incompetent, we base our determination to do so on a court order.[25]

We do not appoint a payee for an individual unless we determine this is necessary because the individual's interests would be better served by the appointment of a payee. We do not, and under these rules we will not, appoint a payee for any individual who does not need one. When we appoint a representative payee for reasons other than the beneficiary's legal incompetency, we base our determination on the available medical or other evidence, such as statements from relatives, friends, or people in positions to observe the beneficiary.[26] This process includes gathering medical evidence from the disability folder or a treating medical source, obtaining information from family members or friends about the person's ability to manage finances, and asking the individual how they handle monthly expenses and financial decisions.[27] We then identify an individual or organization to serve as representative payee.

When we propose to appoint a representative payee because of incapability, we provide the beneficiary with the right to protest and appeal the capability determination prior to the appointment. The beneficiary can also protest our choice of payee.[28]

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[24] We will not appoint a representative payee for a beneficiary who is age 15 to 17 and is emancipated under State law, unless we determine the beneficiary is incapable.
[25] 20 CFR 404.2015(a) and 416.615(a).
[26] 20 CFR 404.2015(b) and (c); 416.615(b) and (c).
[27] Id.
[28] 20 CFR 404.902 and 416.1402.

We are committed to continuous improvement of the representative payee program. Our goal is to ensure that beneficiaries who cannot manage or direct the management of their benefits have representative payees who will serve their best interests. When selecting payees, we look for any factors that could disqualify a person from serving as a payee. For example, a person who has committed Social Security fraud may not be a payee. In addition, we conduct criminal background checks on certain representative payee applicants. We also bar representative payee applicants who have been convicted of serious felonies from serving as a representative payee.

The Social Security Protection Act of 2004 (SSPA) expanded our monitoring program by requiring us to conduct periodic reviews for any organizational payee that serves 50 or more beneficiaries, and individual payees serving 15 or more beneficiaries. In addition to these required reviews, we also conduct additional reviews of organizational and individual payees.

The SSPA provided us with additional methods to penalize representative payees found to have misused benefits, including: making payees forfeit fee for service monies; enhancing our ability to hold payees liable for misused benefits; and granting us authority to impose civil monetary penalties when a payee misuses benefits.

In response to the SSPA, we developed an online misuse tracking system that we use to store and track all allegations of misuse of benefits. To help prevent misuse, we improved our training materials for individual and organizational representative payees. We also published revised instructions for our technicians, providing them with clarified and streamlined policies and procedures for processing misuse cases.

We also have sought recommendations for representative payee program improvement from external entities such as the National Academy of Sciences and National Academy of Medicine.

Comment: Several commenters questioned beneficiaries' ability to remove a representative payee once we appoint one. One commenter asked how we determine if an individual no longer needs a representative payee, and another opined that it is much more difficult to remove a representative payee than it is to obtain one.

Response: Our general policy starts with a presumption that every beneficiary has the right to direct payment.[29] At any time, a beneficiary whom we have determined to be incapable may request a capability determination. We may also conduct a capability determination if we have reason to believe that an incapable beneficiary may have become capable of managing or directing management of his or her own benefits. We apply the same standards for the appointment or removal of a representative payee—ability or inability to manage or direct the management of benefits due to a physical or mental condition. If the beneficiary proves that he or she is capable, he or she will receive direct payment.[30] However, in response to these comments, we have clarified in these final rules that we will notify the Attorney General, or his or her designate, that an individual's record should be removed from the NICS when we find that an individual whom we previously required to have benefit payments made through a representative payee is now capable of managing his or her benefit payments without the need

[29] 20 CFR 404.2001 and 416.601.
[30] 20 CFR 404.2055 and 416.655.

for a representative payee. We also have clarified several other situations in which we will notify the Attorney General to remove an individual's name from the NICS.

Comment: One commenter stated, "Presumably, a current recipient who can manage his/her own financial affairs and is in fact receiving benefits directly (e.g., direct deposit to bank account) would not fall under the above-mentioned phrase, and would retain the right to own, possess, etc., firearms. If this is true, I would recommend making that clearer in the [final] Rule." Another asked, "If disability benefits under Title II or Title XVI of the Social Security Act are NOT received through a representative payee (i.e., a third party), does the proposed rule to the NIAA still apply?" Many commenters expressed concern that an individual who assigns a representative payee for a temporary period or for convenience would be unfairly reported for inclusion in the NICS. A common scenario described by commenters was that of retired individuals who asked their children to pay their bills during an extended vacation. Another scenario described was that of a mentally capable individual with a physical disability who, due to an inability to write checks or drive, was assigned a representative payee.

Response: We clearly state in section 421.110(b) of our rules that the beneficiaries whose names we will submit to the NICS must meet all five well-defined criteria. We will not include any beneficiary who does not meet all of these criteria. We will not report a person to the NICS simply because the person has a representative payee if he or she does not meet all of the other criteria. Conversely, we will not report information regarding an individual who has a mental

impairment if we have not appointed a representative payee for the individual, because that individual would not meet all of the criteria for NICS reporting in our rules.

Beneficiaries cannot appoint a representative payee, nor can we name a representative payee without evidence indicating that the individual is legally incompetent or unable to manage or direct management of his or her benefits due to a physical or mental condition.[31] We presume that a legally competent adult beneficiary can manage or direct the management of his benefits unless there are indicators to the contrary. Therefore, we do not appoint a representative payee for beneficiaries solely because they require assistance with financial matters or as a matter of convenience for the beneficiary.

Relief Process

Comment: Multiple commenters asked for specific information about the relief process, including when and at what points in the NICS inclusion decision process a request for relief could be submitted and reviewed, what documentation and evidence would be required to request relief, and who would review the evidence and make relief decisions.

Response: As we explained in the NPRM, consistent with section 101(a)(2)(A) of the NIAA, we will allow a person who is subject to the Federal mental health prohibitor to apply for relief from the Federal firearms prohibitions as a result of our adjudication. In section 421.150(a)

[31] 20 CFR 404.2001; 416.601

of our rules, we indicate that an individual may apply for relief once our adjudication has become final.

In addition to providing us with a completed relief application form, consistent with the requirements set forth in section 421.151(b) of this final rule, we require the individual who requests relief to provide us with evidence from his or her primary mental health provider regarding his or her current mental health status and mental health status for the past 5 years, including a statement addressing whether the applicant has ever been a danger to himself or others and whether the applicant would pose a danger to himself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm and ammunition. We also require an applicant for relief to submit written statements and any other evidence regarding the applicant's reputation including a statement addressing whether the applicant would pose a danger to himself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm and ammunition. We will obtain and consider a relief applicant's criminal history report as part of the relief process. We specify the details of the evidentiary requirements in section 421.151 of our rules.

We have not yet determined the details regarding who in our agency would review the evidence and issue relief decisions. We will publish this information in the Federal Register as part of the Paperwork Reduction Act process once we have finalized our business process, and the public will have an opportunity to review and respond to more relief details, including what information will be required and who will review the request.

Comment: Commenters suggested that we simplify the relief process for beneficiaries and representatives. Many expressed their disapproval that affected individuals would be required to request that their names be removed from the list and to provide evidence to our satisfaction to be removed from the list. Many highlighted the fact that the burden of proof for non-inclusion would lie with the individual. Other commenters found it problematic that our relief process does not make provision for a formal hearing before an adjudicative authority or allow the examination of witnesses. Several others suggested that we should provide legal counsel to those individuals whom we report to the DOJ.

Response: We have established a simple and direct process that satisfies the requirements of the NIAA. In addition to providing us with a completed relief application form, consistent with the requirements set forth in section 421.151(b) of this final rule, an applicant for relief will only be required to provide us with: (1) a current statement from his or her primary mental health provider assessing the applicant's current mental health status and mental status for the 5 years preceding the date of the relief request; and (2) written statements and any other evidence regarding the applicant's reputation. We will not impose a fee in connection with the filing of a request for relief. We anticipate that the cost for acquiring the evidence that we require and providing it to us directly will be reasonable. Moreover, the required evidence is more easily attained by the applicant directly. We will obtain the applicant's criminal history report on his or her behalf.

Section 101(a)(2)(A) of the NIAA provides that relief shall be available according to the standards prescribed in 18 U.S.C. 925(c). Section 925(c) states that relief may be granted if it

is established that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest. It is generally appropriate under the law to place the burden of production and proof on the proponent of an order. In this case, that means the person who applies for relief must demonstrate his or her entitlement to relief, and there is no indication in the NIAA or any other provision of law that Congress intended to alter that normal rule. Similarly, the NIAA does not provide for the appointment of legal counsel for those seeking relief, nor is the appointment of counsel generally required under civil law.

Finally, in addition to the successful pursuit of relief from the NICS prohibitions, in new section 421.130 of the final rules, we have added three additional bases for removal of an individual's information from the NICS database. These bases apply when: (1) We find that an individual whom we previously required to have benefit payments made through a representative payee is now capable of managing his or her benefit payments without the need for a representative payee; (2) We are notified that the individual has died; or (3) We receive information that we reported an individual's record to the NICS in error (e.g., we reported to the NICS the record of an individual who does not have a primary diagnosis code in our records that is based on a mental impairment, or we reported the record of an individual who does not have a representative payee).

Comment: Multiple commenters sought clarification about what evidence we would consider when we review a request for relief. One commenter specifically asked about issues relating to documents attesting to a person's character and 5 years of mental health records, such as the availability of these records and who would be required or allowed to provide them. The commenter questioned whether a "clean" criminal record or State background check would qualify as documentation attesting to a person's character. Another commenter questioned the specifics of how we would propose that relief "may" be granted if an individual could establish to our "satisfaction" that the applicant will not be likely to act in a manner dangerous to public safety.

Response: The relief process that we outlined in the NPRM is based on the NIAA, which indicates that relief and judicial review “shall be available according to the standards prescribed in section 925(c) of title 18, United States Code.” That section of the law states that relief may be granted “if it is established to [an agency’s] satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”

Section 421.151 of our rules specifies the evidence we will consider when we decide whether to grant an application for relief. It indicates that we will consider the applicant’s record, which must include the applicant’s mental health records and a criminal history report, and written statements regarding the applicant’s character. We will obtain a criminal history report on the applicant's behalf. The rule states that the applicant must provide evidence from his or her

primary mental health provider and written statements regarding the applicant's character. This evidence must include statements addressing 1) whether the applicant would pose a danger to himself or others if we granted the applicant's request for relief, and the applicant then purchased and possessed a firearm and ammunition, and 2) whether the applicant has a reputation for violence in the community.

We will provide other procedural details of our relief process in sub-regulatory guidance, as well as in the Federal Register as part of the Paperwork Reduction Act process, once we have finalized our business process. The public will have an opportunity to review and respond to additional details about the relief process, including what information will be required, in response to the Paperwork Reduction Act process.

Comment: One commenter questioned how beneficiaries could find out what their specific primary diagnosis was in order to best seek relief from inclusion in the NICS. The commenter also asked about the possibility of disputing the diagnosis, particularly when a secondary diagnosis is also involved in the adjudication of being disabled.

Response: We provide claim information to individuals upon their request. Under the Privacy Act of 1974 and our regulations, an individual may request access to his or her records maintained in agency Privacy Act systems of records, including those under which we maintain diagnosis information.[32] Our regulations require individuals to verify their identity when making

[32] 5 U.S.C. 552a(d); 20 CFR 401.35-401.40.

an access request.[33] A beneficiary who proves his or her identity has the right to access his or her disability file in accordance with our rules.[34] The medical records include information about the beneficiary's primary and secondary diagnosis, if applicable.

Criteria for inclusion in the NICS include that an individual is disabled based on a finding at step three of our sequential evaluation process that the individual's impairment(s) meets or medically equals the requirements of one of the mental disorders listings.[35] These listings consist of medical conditions that we consider severe enough to prevent a person from doing any gainful activity, regardless of age, education, or work experience. Individuals whose impairments meet a listing are the most severely disabled individuals we serve. If we find an individual to be disabled based on a listing-level mental impairment, and he or she satisfies all of the remaining four requirements, we are required to report them to the NICS. If we do not find an individual to be disabled based on a mental impairment, he or she has not met the reporting requirements and we will not report them to the NICS.

Our administrative review process and the request for relief process are two different processes. If an individual wishes to appeal our disability determination or decision they may do so within the appeal period, which is generally 60 days after being notified of our determination or decision.

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[33] 20 CFR 401.45.
[34] 20 CFR 401.50, 401.55.
[35] See 20 CFR 404.1520(a)(4)(iii); 404.1520(d); 404.1525; 404.1526; 416.920(a)(4)(iii); 416.920(d); 416.925; 416.926. The Listings are found in 20 CFR part 404, subpart P, appendix 1.

However, appealing a disability decision is not part of the NICS relief process. It is important to note that the qualifications for inclusion in the NICS are not the same as the qualifications for relief prescribed by 18 U.S.C. 925(c); that is, proof that he or she is not likely to act in a manner dangerous to public safety and that granting relief from the prohibitions will not be contrary to the public interest.

Comment: Several individuals expressed concern over the anticipated length of time for the processing of a request for relief, stating that 30 days was insufficient time to gather and submit all of the required information, particularly as it involved actions by other government agencies or individuals. One individual expressed concern about the 30-day deadline for the submission of evidence supporting a beneficiary's request for relief in contrast to our 365-day response time. Several other commenters also questioned our ability to respond within the 365-day period, given current delays in the NICS-related relief programs run by other Federal agencies.

Response: In response to the comments we received expressing concerns about the 30-day deadline, we have revised the rules to eliminate this timeframe. Under the final rules, an individual may request relief at any time after our adjudication that the individual is subject to the Federal mental health prohibitor has become final. We will accept an individual's request for relief once he or she has compiled all of the evidence that we require, as set forth in section 421.151 of this final rule. We believe that this revised process for requiring that the applicant submit his or her evidence along with a request for relief comports with due process and allows us to process the application for relief no later than 365 days after receipt of the complete

application and all required supporting documentation and evidence, as required under the NIAA. We will work in good faith to respond to all requests for relief promptly and within the 365-day period. Finally, there is no limit to the number of times a person can apply for relief.

Comment: One commenter suggested that we should not report to the DOJ individuals awaiting a response to their petition for relief unless a judge deems it appropriate.

Response: This suggestion is contrary to the language of the NIAA, which permits a person to apply for relief from the firearms prohibitions imposed by 18 U.S.C. 922(g)(4) and does not require judicial review prior to reporting. Further, as noted under section 421.170 of our rules, if we deny the applicant's request for relief, he or she may then seek judicial review of our action.

Comment: Multiple commenters asked if we would develop a procedure other than seeking relief to request the removal of individuals' names from the NICS for individuals who no longer meet the criteria that were the cause of their original inclusion in the NICS.

Response: As we noted in response to a prior comment, in addition to the successful pursuit of relief from the NICS prohibitions, in section 421.130 to the final rules, we have added three additional bases for removal of an individual's information from the NICS database. Specifically, we will notify the Attorney General to remove an individual's name from the NICS when: (1) We find that an individual whom we previously required to have benefit payments made through a representative payee is now capable of managing his or her benefit payments

without the need for a representative payee; (2) We are notified that the individual has died; or (3) We receive information that we reported an individual's record to the NICS in error (e.g., we reported to the NICS the record of an individual who does not have a primary diagnosis code in our records that is based on a mental impairment, or we reported the record of an individual who does not have a representative payee).

Comment: One commenter stated that, "there is no guarantee that the same prejudices that the rule creates in the first place won't reassert themselves" in the relief process.

Response: We use the same process to determine disability and to determine whether the individual needs a representative payee for each individual who applies for disability benefits. We determine whether a beneficiary is eligible for inclusion in the NICS after the disability process is complete. Therefore, there will be no opportunity for prejudice or bias concerning whether a beneficiary should be included in the NICS, because it is not a consideration during the disability determination process.

In addition, there will be no opportunity for bias or prejudice when we process a request for relief because, under 20 CFR 421.165, a different decision maker who was not involved in the beneficiary's disability or capability determinations, will review the evidence and act on the request for relief. We will follow the requirements of the NIAA and apply principles of due process in determining applicants' entitlement to relief from the Federal firearms prohibitions imposed as a result of our adjudication. Judicial review of our action denying an applicant's request for relief is available according to the standards set forth in 18 U.S.C. 925(c).

Resources Concerns

Comment: Several commenters expressed that this policy would be an unnecessary waste of the Government's time and resources. One commenter opined that implementing the proposed rules would add to the workload of SSI cases and risk additional backlogs, without any offsetting improvement to public safety.

Response: While we note the commenters' concerns, in issuing these rules we are satisfying our legal obligations under the NIAA that require Federal agencies to provide relevant records to the Attorney General for inclusion in the NICS.

Comments in Support of the Rule

Multiple commenters expressed support for the rule. Several individual commenters were in favor of our reporting certain individuals to the NICS database based on their expressed belief that some persons with mental illness should not be allowed to own firearms, because they could pose a danger to themselves or others. Some commenters spoke in their capacity as relatives and representative payees for Social Security beneficiaries with mental illness. One such commenter stated that if "someone does not have enough mental capacity to handle personal finances, he certainly does not have enough mental capacity to have access to guns." Another commenter opined that medical professionals should support the rules, because clinicians would not want to authorize anyone to possess a firearm for legal liability reasons.

Several advocacy groups also articulated support for the rules. One group supported the rules as written. One group suggested we should expand the criteria used to identify names for inclusion in the NICS, stating that, "One issue not addressed by the proposed rule is the NICS status of future applicants for benefits who are dangerous due to severe mental illness, but who do not have third party representatives who receive payments on their behalf." This commenter encouraged us to consider ways to expand the rule to include those beneficiaries who pose a danger to themselves or others, regardless of whether their payments are made to a representative payee.

REGULATORY PROCEDURES

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866 and were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules would not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These final rules contain new public reporting burdens in sections §421.150(b), 421.151(b)(1) and (2), 421.151(c)(1), (2) and (3), 421.152, and 421.165(b) that require OMB approval under the Paperwork Reduction Act of 1995 (PRA). Since we will create new forms for these requirements, we will solicit public comment for them in a separate future notice in the *Federal Register* as part of the PRA process, and we will submit a separate information collection request to OMB. We will not collect the information referenced in these burden sections until we receive OMB approval.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security--Disability Insurance; 96.002, Social Security--Retirement Insurance; 96.004, Social Security--Survivors Insurance, and 96.006, Supplemental Security Income)

List of Subjects 20 CFR Part 421

Administrative practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements.

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Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we add part 421 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 421—NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

Sec.
421.100 What is this part about?
421.105 Definitions of terms used in this part.
421.110 Identifying records relevant to the NICS.
421.120 NICS reporting requirements.
421.130 Removal of an individual's record from the NICS.
421.140 Notice requirements for an affected individual.
421.150 Requesting relief from the Federal firearms prohibitions.
421.151 Evidentiary requirements and processing a request for relief.
421.152 Timing of processing a request for relief.
421.155 Burden of proof in requests for relief.
421.160 Granting a request for relief.
421.165 Actions on a request for relief.
421.170 Judicial review following a denial of a request for relief.

Authority: 42 U.S.C. 902(a)(5); sec. 101, Pub. L. 110-180, 121 Stat. 2559, 2561 (18 U.S.C. 922 note).

§ 421.100 What is this part about?

The rules in this part relate to the Brady Handgun Violence Prevention Act (Brady Act), as amended by the NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 110-180). The Brady Act required the Attorney General to establish the National Instant Criminal Background Check System (NICS), which allows a Federal firearms licensee to determine whether the law prohibits a potential buyer from possessing or receiving a firearm. Among other things, the NIAA requires a Federal agency that has any records demonstrating that a person falls within one of the categories in 18 U.S.C. 922(g) or (n) to report the pertinent information contained in the record to the Attorney General for inclusion in the NICS. The rules in this part define key terms and explain which records we will report to the NICS. They also explain how we will provide oral and written notification to our title II and title XVI beneficiaries who meet the requisite criteria. Finally, the rules in this part explain how

beneficiaries who meet the requisite criteria may apply for relief from the Federal firearms prohibitions, and how we will process a request for relief.

§ 421.105 Definitions of terms used in this part.

For the purposes of this part:

Adjudicated as a mental defective, in accordance with 18 U.S.C. 922(g)(4), as amended, means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: is a danger to himself or others; or lacks the mental capacity to contract or manage his own affairs.

Affected individual means an individual:

(1) Who has been found disabled based on a finding that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments (section 12.00 of appendix 1 to subpart P of part 404 of this chapter) under the rules in part 404, subpart P, of this chapter, or under the rules in part 416, subpart I, of this chapter; and

(2) For whom we need to make a capability finding under the rules in part 404, subpart U, of this chapter, or under the rules in part 416, subpart F, of this chapter, as a result of a mental impairment.

Commencement of the adjudication process means, with respect to an affected individual, the beginning of the process we use to determine whether, as a result of a mental impairment:

(1) An individual is capable of managing his or her own benefits; or

(2) Whether his or her interests would be better served if we certified benefit payments to

another person as a representative payee, under the rules in part 404, subpart U, of this chapter, or the rules in part 416, subpart F, of this chapter.

Full retirement age has the meaning used in § 404.409 of this chapter.

NICS means the National Instant Criminal Background Check System established by the Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat. 1536 (codified at 18 U.S.C. 922 note), as amended.

Primary diagnosis code means the code we use to identify an individual's primary medical diagnosis in our records. The primary diagnosis refers to the basic condition that renders an individual disabled under the rules in part 404, subpart P, of this chapter, or under the rules in part 416, subpart I, of this chapter.

Us or We means the Social Security Administration.

§ 421.110 Identifying records relevant to the NICS.

(a) In accordance with the requirements of the NIAA, we will identify the records of individuals whom we have "adjudicated as a mental defective." For purposes of the Social Security programs established under titles II and XVI of the Social Security Act, we have "adjudicated as a mental defective" any individual who meets the criteria in paragraphs (b)(1) through (5) of this section.

(b) During our claim development and adjudication process, or when we take certain post-entitlement or post-eligibility actions, we will identify any individual who:

(1) Has filed a claim based on disability;

(2) Has been determined to be disabled based on a finding that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing

of Impairments (section 12.00 of appendix 1 to subpart P of part 404 of this chapter) under the rules in part 404, subpart P, of this chapter, or under the rules in part 416, subpart I, of this chapter;

(3) Has a primary diagnosis code in our records based on a mental impairment;

(4) Has attained age 18, but has not attained full retirement age; and

(5) Requires that his or her benefit payments be made through a representative payee because we have determined, under the rules in part 404, subpart U, of this chapter, or the rules in part 416, subpart F, of this chapter, that he or she is mentally incapable of managing benefit payments.

(c) We will apply the provisions of this section to:

(1) Capability findings that we make in connection with initial claims on or after December 19, 2017 under the rules in part 404, subpart U, of this chapter or the rules in part 416, subpart F, of this chapter; or

(2) Capability findings that we make in connection with continuing disability reviews (including age-18 disability redeterminations under § 416.987 of this chapter) on or after December 19, 2017 under the rules in part 404, subpart U, of this chapter, or the rules in part 416, subpart F, of this chapter. We will apply the provisions of this paragraph (c)(2) only with respect to capability findings in which we appoint a representative payee for an individual in connection with a continuing disability review.

§ 421.120 NICS reporting requirements.

On not less than a quarterly calendar basis, we will provide information about any individual who meets the criteria in § 421.110 to the Attorney General, or his or her designate,

for inclusion in the NICS. The information we will report includes the name of the individual, his or her full date of birth, his or her sex, and his or her Social Security number. We will also report any other information that the Attorney General determines Federal agencies should report to the NICS.

§ 421.130 Removal of an individual's record from the NICS.

(a) *General*. We will identify when the record of an individual that we previously identified for submission to the NICS under § 421.110 should be removed from the NICS database. We will notify the Attorney General, or his or her designate, that an individual's record should be removed from the NICS database only in the circumstances in paragraphs (b)(1) through (4) of this section.

(b) We will notify the Attorney General, or his or her designate, that an individual's record should be removed from the NICS when:

(1) We find that an individual whom we previously required to have benefit payments made through a representative payee is now capable of managing his or her benefit payments without the need for a representative payee;

(2) We are notified that the individual has died;

(3) We receive information that we reported an individual's record to the NICS in error (e.g., we reported to the NICS the record of an individual who does not have a primary diagnosis

code in our records that is based on a mental impairment , or we reported the record of an individual who does not have a representative payee); or

(4) We grant the individual's request for relief under the rules in §§ 421.150 through 421.165, or a Federal court grants the individual's request for relief under the rules in § 421.170.

§ 421.140 Notice requirements for an affected individual.

At the commencement of the adjudication process, we will provide both oral and written notice to an affected individual that:

(a) A finding that he or she meets the criteria in § 421.110(b)(1) through (5), when final, will prohibit the individual from purchasing, possessing, receiving, shipping, or transporting firearms and ammunition, pursuant to 18 U.S.C. 922(d)(4) and (g)(4);

(b) Any person who knowingly violates the prohibitions in 18 U.S.C. 922(d)(4) or (g)(4) may be imprisoned for up to 10 years or fined up to $250,000, or both, pursuant to 18 U.S.C. 924(a)(2); and

(c) Relief from the Federal firearms prohibitions imposed by 18 U.S.C. 922(d)(4) and (g)(4) by virtue of our adjudication is available under the NIAA.

§ 421.150 Requesting relief from the Federal firearms prohibitions.

(a) When our adjudication that an individual meets the criteria in § 421.110(b)(1) through (5) becomes final, he or she may apply for relief from the Federal firearms prohibitions imposed by Federal law as a result of our adjudication. If such an individual requests relief from us, we will apply the rules in §§ 421.150 through 421.165.

(b) An application for relief filed under this section must be in writing and include the information required by § 421.151. It may also include any other supporting data that we or the applicant deem appropriate. When an individual requests relief under this section, we will also obtain a criminal history report on the individual before deciding whether to grant the request for relief.

§ 421.151 Evidentiary requirements and processing a request for relief.

(a) When we decide whether to grant an application for relief, we will consider:

(1) The circumstances regarding the firearms prohibitions imposed;

(2) The applicant's record, which must include the applicant's mental health records and a criminal history report; and

(3) The applicant's reputation, developed through witness statements or other evidence.

(b) Evidence. The applicant must provide the following evidence to us in support of a request for relief:

(1) A current statement from the applicant's primary mental health provider assessing the applicant's current mental health status and mental health status for the 5 years preceding the date of the request for relief; and

(2) Written statements and any other evidence regarding the applicant's reputation.

(c) Evidentiary requirements—(1) A current statement from the applicant's primary mental health provider submitted under paragraph (b)(1) of this section. We will consider a statement from the applicant's primary mental health provider to be current if it is based on a complete mental health assessment that was conducted during the 90-day period immediately

preceding the date we received the applicant's request for relief under paragraph (b)(1) of this section. The statement must specifically address:

(i) Whether the applicant has ever been a danger to himself or herself or others; and

(ii) Whether the applicant would pose a danger to himself or herself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm or ammunition.

(2) Written statements regarding the applicant's character submitted under paragraph (b)(2) of this section. The statements must specifically:

(i) Identify the person supplying the information;

(ii) Provide the person's current address and telephone number;

(iii) Describe the person's relationship with and frequency of contact with the applicant;

(iv) Indicate whether the applicant has a reputation for violence in the community; and

(v) Indicate whether the applicant would pose a danger to himself or herself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm or ammunition.

(3) The applicant may obtain written statements from anyone who knows the applicant, including but not limited to clergy, law enforcement officials, employers, friends, and family members, as long as the person providing the statement has known the applicant for a sufficient period, has had recent and frequent contact with the beneficiary, and can attest to the beneficiary's good reputation. The individual submitting the written statement must describe his or her relationship with the applicant and provide information concerning the length of time he or she has known the applicant and the frequency of his or her contact with the applicant. The

applicant must submit at least one statement from an individual who is not related to the applicant by blood or marriage.

§ 421.152 Timing of processing a request for relief.

(a) An individual may request relief at any time after our adjudication that results in that person becoming prohibited by 18 U.S.C. 922(d)(4) or (g)(4) becomes final.

(b) We will process an application for relief under § 421.150 when the applicant has provided us with all the necessary evidence required under § 421.151(b)(1) through (3).

§ 421.155 Burden of proof in requests for relief.

An applicant who requests relief under § 421.150 must prove that he or she is not likely to act in a manner dangerous to public safety and that granting relief from the prohibitions imposed by 18 U.S.C. 922(d)(4) and (g)(4) will not be contrary to the public interest.

§ 421.160 Granting a request for relief.

(a) We may grant an applicant’s request for relief if the applicant establishes, to our satisfaction, that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(b) We will not grant an applicant’s request for relief if the applicant is prohibited from possessing firearms by the law of the State in which the applicant resides.

§ 421.165 Actions on a request for relief.

(a) After the applicant submits the evidence required under § 421.151 and any other evidence he or she wants us to consider, we will review the evidence, which will include any evidence from our records that we determine is appropriate. A decision maker who was not involved in making the finding that the applicant's benefit payments be made through a representative payee will review the evidence and act on the request for relief. We will notify the applicant in writing of our action regarding the request for relief.

(b) If we deny an applicant's request for relief, we will send the applicant a written notice that explains the reasons for our action. We will also inform the applicant that if he or she is dissatisfied with our action, he or she has 60 days from the date he or she receives the notice of our action to file a petition seeking judicial review in Federal district court.

(c) If we grant an applicant's request for relief, we will send the applicant a written notice that explains the reasons for our action. We will inform the applicant that we will notify the Attorney General, or his or her delegate, that the individual's record should be removed from the NICS database. We will also notify the applicant that he or she is no longer prohibited under 18 U.S.C. 922(g)(4) from purchasing, possessing, receiving, shipping, or transporting firearms or ammunition based on the prohibition that we granted the applicant relief from. We will notify the Attorney General, or his or her delegate, that the applicant's record should be removed from the NICS database after we grant the applicant's request for relief.

(d)(1) The NIAA requires us to process each application for relief not later than 365 days after the date we receive it. We consider the application date for the request for relief to be the date on which all evidence required under § 421.151(a) is submitted.

(2) If we fail to resolve an application for relief within that period for any reason, including a lack of appropriated funds, we will be deemed to have denied the relief request

without cause. In accordance with the NIAA, judicial review of any petition brought under this paragraph (d) shall be de novo.

§ 421.170 Judicial review following a denial of a request for relief.

(a) Judicial review of our action denying an applicant's request for review is available according to the standards contained in 18 U.S.C. 925(c). An individual for whom we have denied an application for relief may file a petition for judicial review with the United States district court for the district in which he or she resides.

(b) If, on judicial review, a Federal court grants an applicant's request for relief, we will notify the Attorney General that the individual's record should be removed from the NICS database.

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