

DEPARTMENT OF JUSTICE**28 CFR Part 20**

[Docket No. FBI-157; AG Order No. 5949-2024]

RIN 1110-AA34

**Bipartisan Safer Communities Act—
Access to Records of Stolen Firearms
in the National Crime Information
Center**

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The United States Department of Justice (“Department”) is publishing an interim final rule that amends the regulations pertaining to criminal justice information systems of the Federal Bureau of Investigation (“FBI”), specifically the National Crime Information Center (“NCIC”). This rule implements parts of the Bipartisan Safer Communities Act (“BSCA” or “Act”) and will allow a person who is licensed as an importer, manufacturer, or dealer of firearms (“licensee”) to access records of stolen firearms in the NCIC, subject to appropriate controls, for the purpose of voluntarily verifying whether firearms offered for sale to such a licensee have been reported as stolen.

DATES:

Effective Date: This rule is effective on July 1, 2024.

Comment Date: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before July 31, 2024. Written comments postmarked on or before that date will be considered timely. The Federal eRulemaking portal at <https://www.regulations.gov> will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: You may submit written comments, identified by RIN 1110-AA34 or Docket No. FBI-157, by one of the following methods:

(1) *Federal eRulemaking Portal:* <https://www.regulations.gov> (recommended). Follow the instructions for submitting comments; or

(2) *Mail:* Theodore K. Yoneda, Attorney-Advisor, Federal Bureau of Investigation, Office of the General Counsel, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0110.

FOR FURTHER INFORMATION CONTACT: Scott E. Schubert, Chief, Federal Bureau of Investigation, Law Enforcement Engagement and Data Sharing Section.

Telephone: (304) 625-2000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Posting of Public Comments**

The Department welcomes public comments from any interested person on any aspect of the changes made by this interim final rule. Please refer to the **ADDRESSES** section above. The Department will consider all public comments in the drafting of the final rule.

Please note that all comments received are considered part of the public record and made available for public inspection online at <https://www.regulations.gov>. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) that you voluntarily submit as part of your comment.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on <https://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

II. Background

Stolen firearms create risks to public safety. These weapons are often placed into illegal markets, where they can be purchased, sold, and traded without any restrictions. As a result, individuals who are legally prohibited from possessing firearms can obtain and use

these weapons to commit violent crimes. Stolen firearms may also be offered for sale or pawn to a licensee. A licensee could then unknowingly promote illicit weapons trafficking by accepting a stolen firearm into their inventory and selling it to a purchaser.

The FBI manages many systems for the exchange of criminal justice information. This interim final rule implements changes to the regulations related to records maintained in the NCIC Gun File, which is one of 22 files in the NCIC. Seven of these files (including the Gun File) contain information related to property, and the remaining 15 files (including the Wanted Persons File) contain information related to persons. Pursuant to 28 U.S.C. 534, the Attorney General shall exchange identification, criminal identification, crime, and other records for the official use of “authorized officials of the Federal Government, . . . the States, . . . Indian tribes, cities, and penal and other institutions.” This statute also provides that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies, except for dissemination authorized under 28 U.S.C. 534(a)(5). See 28 U.S.C. 534(b).

The BSCA, Public Law 117-159, 136 Stat. 1313, 1331 (2022), requires the Attorney General to provide licensees with information necessary to verify whether firearms offered for sale to such licensees have been stolen. Public Law 117-159, sec. 12004(h)(2) (codified at 28 U.S.C. 534(a)(5)). The Act further requires that the Attorney General “promulgate regulations allowing a person licensed as an importer, manufacturer, or dealer of firearms under chapter 44 of title 18, United States Code, to receive access to records of stolen firearms maintained by the [NCIC] operated by the [FBI], solely for the purpose of voluntarily verifying whether firearms offered for sale to such licensees have been stolen.” Public Law 117-159, sec. 12004(h)(3). The law provides that such regulations shall be promulgated “without regard to chapter 5 of title 5, United States Code.” *Id.*

Accordingly, the FBI is amending title 28 of the Code of Federal Regulations to authorize access to FBI-maintained criminal justice information systems to implement parts of the BSCA related to stolen firearms. This interim final rule will help reduce the number of stolen firearms that licensees inadvertently place into their inventories by allowing licensees to obtain information from the NCIC Gun File to determine if a firearm offered for sale to the licensee has been reported as stolen. In addition, when a

licensee learns from the NCIC Gun File information indicating a weapon has been stolen, the licensee might report that information to a criminal justice agency. For these reasons, this interim final rule will assist criminal justice agencies in investigating reports of stolen firearms by providing potential investigative leads and will help to deter or halt the sale of stolen firearms through seemingly legitimate business transactions.

To help advance the purpose of section 12004(h) of the BSCA, the FBI is establishing three methods for licensees to access NCIC Gun File information. The first method involves partnering with a criminal justice agency. Among other things, NCIC policy authorizes criminal justice agencies to query the NCIC Gun File and provide a determination to the licensee regarding a firearm's status (*e.g.*, reported stolen). Prior to the BSCA's enactment in June 2022, dissemination of actual NCIC information was not authorized; an inquiring licensee could receive information that confirmed only the existence of an NCIC Gun File record (a "hit" or "no hit"). This "hit" or "no hit" information did not definitively indicate whether a gun was stolen. Under the Act and this rule, criminal justice agencies may now provide more information from the NCIC Gun File directly to licensees. In particular, they may provide the information that is "necessary to verify whether firearms offered for sale to such licensees have been stolen." Public Law 117–159, sec. 12004(h)(2); 28 U.S.C. 534(a)(5). Such information may include, among other information, the type and numeric identifiers of the firearm offered for sale. This partnering between the licensee and the criminal justice agency will allow the licensee to obtain the information needed to determine whether a firearm has been stolen.

Next, in connection with this rulemaking, the FBI is establishing a second method for accessing Gun File information. Specifically, the FBI is creating an extract of the NCIC Gun File and will make this data available to Criminal Justice Information Services ("CJIS") Systems Agencies for download into State systems that licensees can access. To ensure licensees receive only the information necessary to implement 28 U.S.C. 534(a), the extract's contents will be limited to NCIC Gun File information that, as previously indicated, relates only to whether the firearm may have been stolen. However, the specific method that a licensee uses to access the extract will depend upon the manner in which the State provides

the information. When this rule becomes effective, the FBI will furnish a notice to all CJIS Systems Officers to ensure licensees are notified of the new information that is available.

In developing this rule, the FBI sought advice and endorsement from its CJIS Advisory Policy Board ("APB"), which operates under the Federal Advisory Committee Act; doing so led to the identification of a third method for disseminating information from the NCIC Gun File concerning stolen gun records to licensees. In particular, in March 2023, the FBI submitted to the CJIS Working Groups,¹ which provide proposals to the CJIS APB and its Subcommittees, a proposal to authorize licensees to use the E-Check Portal of the National Instant Criminal Background Check System ("NICS") to access the NCIC Gun File.

All five Working Groups recommended pursuing all three methods described above: partnering with a criminal justice agency, the creation of the NCIC Gun File extract, and the NICS E-Check Portal method. In April 2023, the FBI submitted this same proposal to the NICS, Security and Access, and NCIC Subcommittees.² All three Subcommittees similarly recommended pursuing all three methods. In June 2023, this proposal was presented to the CJIS APB, which recommended to the FBI Director that all three methods be pursued. On December 5, 2023, the FBI Director approved the APB recommendations. FBI Director approval authorizes the FBI CJIS Division to create the necessary policies for implementing the APB recommendations.

In addition to information specific to a stolen firearm itself (such as type and numeric identifiers), licensees using any of the three methods will be provided information relating to the criminal justice agency that entered the record into the NCIC for purposes of law enforcement follow-up. Provision of this information is intended to ensure that all licensees can perform a direct search

¹ There are four Regional Working Groups, each of which includes State, Tribal, and local law enforcement representatives who review operational, policy, and technical issues related to CJIS programs and policies. See FBI, The CJIS Advisory Process, <https://le.fbi.gov/cjis-division/the-cjis-advisory-process> (last visited May 29, 2024). A Federal Working Group composed of representatives of Federal agencies and one Tribal representative chosen by the Department of the Interior also provides advice on CJIS programs and policies. *Id.*

² Subcommittees review proposed policy changes that may require specialized review or for some reason be controversial and consider possible alternatives to those policy changes. See FBI, The Advisory Process, <https://le.fbi.gov/cjis-division/the-cjis-advisory-process> (last visited May 29, 2024).

of stolen gun information using technologies existing between the NICS and NCIC. Doing so will enable a licensee, for example, to ensure the gun offered for sale to the licensee is the exact same gun for which information exists in the Gun File and to confirm with the relevant criminal justice agency that the Gun File information is still accurate. Through these methods, licensees will be able to receive a previously unavailable subset of NCIC Gun File information to ascertain the firearm's status while ensuring the appropriate privacy and information dissemination restrictions are observed.

III. Regulatory Certifications

A. Administrative Procedure Act

Pursuant to section 12004(h)(3) of the BSCA, the Department is not required to comply with chapter 5 of title 5 of the United States Code. However, the Department is, in its discretion, seeking post-promulgation public comment on this rulemaking.

B. Regulatory Flexibility Act

This interim final rule amends the Department's regulations, under 28 U.S.C. 534, to incorporate certain changes made by the BSCA. The FBI will be developing electronic solutions to disseminate NCIC records to the licensees. The FBI will provide these solutions to licensees at no cost, and the FBI will not charge a fee for this service. Because the Department is not required to publish a notice of proposed rulemaking for this interim final rule, a Regulatory Flexibility Analysis is not required. See 5 U.S.C. 603(a).

C. Executive Orders 12866, 13563, and 14094—Regulatory Review

This interim final rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), and Executive Order 14094, "Modernizing Regulatory Review," section 2(a).

The Office of Management and Budget ("OMB") has determined that this interim final rule is a "significant regulatory action" under Executive Order 12866, section 3(f), as amended by Executive Order 14094. Accordingly, this interim final rule has been reviewed by OMB. Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

As explained above, the five Working Groups, as well as the NICS, Security and Access, and NCIC Subcommittees, considered these regulations and the manner in which they will be implemented and concluded they represent an effective way for licensees to obtain the information encompassed by 28 U.S.C. 534(a)(5). In addition, the Department anticipates that providing this information will result in safety benefits that cannot be quantified but that are nonetheless significant. In light of these considerations, and after further assessment of the costs and benefits of this regulation, the Department believes that the regulatory approach it has selected maximizes net benefits.

D. Executive Order 13132—Federalism

This interim final rule will not have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988—Civil Justice Reform

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b) (2) of Executive Order 12988, “Civil Justice Reform.”

F. Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48; see also 2 U.S.C. 1532(a), 1533.

G. Congressional Review Act

This interim final rule is not a major rule as defined by section 804 of the legislation commonly known as the Congressional Review Act, Public Law

104–121, sec. 251, 110 Stat. 847, 868 (1996) (codified in relevant part at 5 U.S.C. 804). This action pertains to agency management or personnel, and agency organization, procedure, or practice, in that it specifies the circumstances in which the Department’s own personnel, in managing the NCIC, will make available certain information from the NCIC Gun File. Further, because licensees have discretion to choose whether to request such information, this rule does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” as that term is used by the Congressional Review Act, see 5 U.S.C. 804(3)(B), (C), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act

This interim final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects in 28 CFR Part 20

Crime, Intergovernmental relations, Law enforcement, Privacy.

Accordingly, for the reasons set forth in the preamble, part 20 of title 28 of the Code of Federal Regulations is amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711 et seq.; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–515, as amended by Pub. L. 104–99, set out in the notes to 28 U.S.C. 534.; Pub. L. 117–159, 136 Stat. 1313, 1331.

■ 2. Revise § 20.2 to read as follows:

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Public Law 93–83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, Public Law 92–544, 86 Stat. 1115, and Public Law 117–159, 136 Stat. 1331

■ 3. In § 20.3:

a. Redesignate paragraphs (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), and (s), respectively, as paragraphs (i), (j), (k), (l), (m), (p), (r), (s), (t), (u), (w), and (x); and

■ b. Add paragraphs (h), (n), (o), (q), and (v).

The additions read as follows:

§ 20.3 Definitions.

* * * * *

(h) Dealer has the meaning set forth for that term in section 921(a)(11) of title 18, United States Code.

* * * * *

(n) Firearm has the meaning set forth for that term in section 921(a)(3) of title 18, United States Code.

(o) Importer has the meaning set forth for that term in section 921(a)(9) of title 18, United States Code.

* * * * *

(q) Manufacturer has the meaning set forth for that term in section 921(a)(10) of title 18, United States Code.

* * * * *

(v) For purposes of 28 CFR 20.33(e), person has the meaning set forth for that term in section 921(a)(1) of title 18, United States Code.

* * * * *

■ 4. Amend § 20.33 by adding paragraph (e), to read as follows:

§ 20.33 Dissemination of criminal history record information.

* * * * *

(e) NCIC Gun File records that are necessary to verify whether a firearm offered for sale to a licensed firearms importer, manufacturer, or dealer has been stolen may be made available to a person licensed as an importer, manufacturer, or dealer of firearms. Information disseminated to such licensees shall be limited solely to the purpose of verifying whether firearms offered for sale to licensees have been stolen.

■ 5. In the Appendix to part 20, subpart C, add an entry for § 20.33(e) to read as follows:

APPENDIX TO PART 20— COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

* * * * *

§ 20.33(e). The dissemination of NCIC records, pursuant to this paragraph, is limited solely to the purpose of verifying whether firearms offered for sale to licensees have been stolen. The dissemination of such NCIC records for other purposes is not authorized.

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Dated: June 24, 2024.

Merrick B. Garland, Attorney General.

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