

2011 Proposed Rule Text Changes to Remove the 45-Day Appeal Deadline and Extension Process

Changes to the 2011 Proposed Rule Text

Section 73.19 [renumbered Section 73.17 in the final rule], "Firearms background checks for armed security personnel."

(p) Appeals and resolution of ~~adverse firearms background check~~~~erroneous system information~~. (1) ~~Individuals who require a firearms background check under this section and who receive a "denied" or a "delayed" NICS response~~ Licensees may not be assigned security personnel who have received a "denied" or a "delayed" NICS response to any official duties requiring access to covered weapons ~~—, except as provided under paragraph (b) of this section,~~

~~(i) d~~During the pendency of an appeal ~~to the FBI of a "denied" NICS response; of the results of the check~~ or

~~(ii) d~~During the pendency of providing ~~to the FBI and evaluating~~ any necessary additional information to ~~the FBI to resolve~~ at the "delayed" response, ~~respectively.~~

~~(2) Licensees and certificate holders shall provide information on the FBI's procedures for appealing a "denied" response to the denied individual or on providing additional information to the FBI to resolve a "delayed" response.~~

~~—(23) An individual who receives a "denied" or "delayed" NICS response to a firearms background check under this section may request the reason for the response from the FBI. The licensee or certificate holder shall must provide the to the individual who has received the "denied" or "delayed" response the unique NICS transaction number (NTN) or NTNs associated with the adverse firearms background check to the affected individual their specific firearms background check. It is the affected individual's responsibility to initiate an appeal or resolution of a "delayed" or "denied" NICS response.~~

(3) Licensees may assign security personnel to official duties requiring access to covered weapons subsequent to the individual's satisfactorily resolving a "denied" or "delayed" NICS response. ~~(4)(i) These requests for the reason for a "denied" or "delayed" NICS response must be made in writing, and must include the NICS transaction number. The request must be~~

~~sent to the Federal Bureau of Investigation, NICS Section, Appeals Service Team, Module A-1;
PO Box 4278, Clarksburg, WV 26302-9922.~~

~~(ii) The FBI will provide the individual with the reasons for the "denied" response or "delayed" response. The FBI will also indicate whether additional information or documents are required to support an appeal or resolution, for example, where there is a claim that the record in question does not pertain to the individual who received the "denied" response.~~

~~———(5) If the individual wishes to challenge the accuracy of the record upon which the "denied" or "delayed" response is based, or if the individual wishes to assert that his or her rights to possess or receive a firearm have been restored by lawful process, he or she may first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.~~

~~———(i) The individual shall file any appeal of a "denied" response or file a request to resolve a "delayed" response within 45 calendar days of the date the NRC forwards the results of the firearms background check to the licensee or certificate holder.~~

~~———(ii) Individuals appealing a "denied" response or resolving a "delayed" response are responsible for providing the FBI any additional information the FBI requires to resolve the adverse response. These individuals must supply this information to the FBI within 45 calendar days after the FBI's response is issued.~~

~~(iii) Individuals may request extensions of the time to supply the additional information requested by the FBI in support of a timely appeal or resolution request. These extension requests shall be made directly to the FBI. The FBI may grant an extension request for good cause, as determined by the FBI.~~

~~(iv) The appeal or request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge. Any record or document of a court or other government entity or official furnished in support of an appeal must be certified by the court or other government entity or official as a true copy.~~

~~(v) The individual may supplement their initial appeal or request — subsequent to the 45-day filing deadline — with additional information as it becomes available, for example, where obtaining a true copy of a court transcript may take longer than 45 days. The individual should note in their appeal or request any information or records that are being obtained, but are not yet available.~~

~~(6) If the individual is notified that the FBI is unable to resolve the appeal, the individual may then apply for correction of the record directly to the agency from which the information forming the basis of the denial was originated. If the individual is notified by the originating agency that additional information or documents are required, the individual may provide them to the originating agency. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the FBI and submit written proof of the correction.~~

~~(7) The failure of an individual to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring of the individual or abandonment of the individual's appeal or resolution request.~~

~~—— (8) Appeals or resolution requests that are abandoned or result in debarment because of an individual's failure to comply with submission deadlines may only be pursued, at the sole discretion of a licensee or certificate holder, after the resubmission of a firearms background check request on the individual.~~

~~—— (9) An individual who has satisfactorily appealed a "denied" response or resolved a "delayed" response may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File (VAF) to be established by the FBI and checked by the NICS for the purpose of preventing the erroneous denial or extended delay by the NICS of any future or periodic firearms background checks.~~