

Federal Bureau of Investigation

National Instant Criminal Background Check System (NICS) Section



Extreme Risk Protection Orders (ERPOs): Sharing information via the National Crime Information Center (NCIC) and the NICS Indices

Many states have passed ERPO laws (known also as “red flag laws”). The type of ERPO, criteria for petition and approval, and the information contained in them vary from state to state, but ERPOs generally permit individuals such as law enforcement, family members, household members, or others named in state law, to petition a court for a civil order to temporarily prohibit an individual from possessing firearms. Generally, an ERPO can be issued based on the court finding that a respondent is a danger to themselves or others by having a firearm (or other related item named in state law). This document will highlight the importance of sharing information on ERPO respondents to NCIC and the NICS Indices.

ERPOs do not involve a *protected person* or other criteria needed to meet the requirements for the federal firearm prohibition, Title 18, United States Code, section 922(g)(8). Although ERPOs do not qualify as a federal firearm prohibition, the firearm restriction associated with ERPOs may be honored on a national level, unless a state law exists prohibiting the issuance/enforcement of ERPOs. Active *temporary/ex parte* ERPOs will be applied on a national level, regardless of the respondent’s state of residence (SOR) or state of purchase (SOP)—unless state law exists prohibiting the issuance or enforcement of ERPOs. *Full* ERPOs are also recognized nationwide, regardless of the respondent’s SOR or SOP when the full order is active and served—unless state law exists prohibiting the issuance or enforcement of ERPOs.

Sharing ERPO information to NCIC allows for the information to be available for consideration during a NICS check with the increased benefits of being available for broader law enforcement purposes, whereas sharing ERPO information to the NICS Indices only allows for use by NICS but results in an immediate determination of disqualification for firearms if the individual attempts to acquire a firearm from a federal firearms licensee. Based on the advantages experienced by both databases, if the ERPO sufficiently meets entry criteria, agencies may consider sharing the information to both NCIC and the NICS Indices to inform law enforcement and make accurate and prompt firearm eligibility determinations.

Additional Details

Sharing ERPO Information to NCIC Files

ERPOs meeting NCIC criteria should be entered into the NCIC ERPO File to ensure the information is available to law enforcement for officer and public safety; in addition to being accessible for NICS purposes. Entering agencies are encouraged to include the date the ERPO was served in the “SERVED SVD” field of the NCIC ERPO File notice, as appropriate, to assist NICS users in making timely firearm

Federal Bureau of Investigation

National Instant Criminal Background Check System (NICS) Section



eligibility determinations. Complete information regarding requirements for entry into the NCIC ERPO File is currently available in *NCIC Technical and Operational Update 21-4*. Entry requirements may also be found in the ERPO File chapter of the *NCIC Operating Manual*.

Sharing ERPO Information to the NICS Indices

Although NCIC is the preferred location for information on ERPO respondents, agencies may also consider entering the descriptors of an ERPO respondent into the NICS Indices as outlined below so the information is available to assist in the determination of firearm eligibility during a NICS check. A valid match determination of a NICS Indices entry to a prospective firearm transferee allows the NICS user to render an *immediate* denial determination.

The descriptive information of the respondent of an active and served full ERPO (or an active temporary ERPO) may be entered in the NICS Indices State Prohibitor and Court-Ordered Firearm Restriction File using the Prohibited Category Code of J. Due to the complexity of determining state prohibitions, the NICS Indices' State Prohibitor File or Court-Ordered Firearm Restriction File (J file) has processing functionality allowing for the multiple factors, such as SOR and SOP, to be considered during a potential hit to a J file entry. Unique special processing codes (SPCs) are available to identify the different state prohibitions and to be used with J file entries to recognize the specific factors associated with the state prohibitions; thus, determining when a NICS Indices entry may respond during a NICS check.

For ERPO purposes, there are state-specific SPCs and one universal SPC available when making NICS Indices entries. Each state has a state-specific SPC assigned for any court-ordered firearm restriction which would include ERPOS meeting *only* the state prohibitor. If an entering agency has determined that a full ERPO has *not* been served, the court-ordered firearm restriction SPC assigned to their state should be used when making the NICS Indices entry. When making NICS Indices entries for respondents of active temporary/*ex parte* ERPOs or active and served full ERPOs, the *universal* ERPO SPC “**ERPOAV**” is available and should be used. The SPC ERPOAV is programmed to respond during a NICS check regardless of the prospective transferee's SOR or SOP (unless both the SOR *and* SOP are states with a law prohibiting the issuance or enforcement of ERPOs). When making a NICS Indices entry, the entering agency is responsible to recognize when a full ERPO is active and served and to use the universal SPC ERPOAV, to maximize effectiveness. The NICS Interface Control Document has complete information regarding NICS Indices entries.

Questions regarding this correspondence may be sent to the NICS Section's Business Relations Team at NICSLiaison@fbi.gov, or by calling 844-265-6716. Questions specific to the NCIC ERPO File may be directed to Marcus D. Bramer at mdbramer@fbi.gov or 304-625-4316.