

The employees of the National Instant Criminal Background Check System (NICS) Section wish to express their sorrow and condolences to all persons who lost loved ones in the terrorist attacks of September 11, 2001. Although this tragedy was the worst disaster on American soil since Pearl Harbor, it gave rise to an unparalleled display of the qualities that make this Nation great. Since that infamous day, Americans everywhere have reaffirmed their patriotism, loyalty to country, and unique ability to care for a friend, neighbor, or stranger in need. We as a Nation have, held hands and stood united for our country. May the patriotism felt today be upheld in the years to come!

*"In the long history of the world, only a few generations have been granted the role of defending freedom in its hour of maximum danger. I do not shrink from this responsibility--I welcome it."*

*John F. Kennedy*

**GOD BLESS AMERICA!**

# National Instant Criminal Background Check System (NICS)



## 2001/2002 Operational Report

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## EXECUTIVE SUMMARY

The year 2003 marks the 10th anniversary of the Brady Handgun Violence Prevention Act (Brady Act) and creation of the National Instant Criminal Background Check System (NICS).

The NICS Section is committed to its mission to ensure the timely transfer of firearms to law-abiding citizens while denying those transfers to persons who are prohibited under the Brady Act from receiving firearms. This report depicts NICS Operations for the last 2 years, during which the NICS Section improved its performance and consistently provided its users with high quality service. Highlights of the NICS accomplishments include the following:

- Between November 1998, when the NICS was implemented, and December 31, 2002, the NICS has processed a total of 35,938,513 background checks.
- As of December 31, 2002, the NICS Section has denied a total of 281,883 firearm transfers to prohibited individuals and estimates that the Point of Contact (POC) states <sup>1</sup> have denied approximately the same number of gun transfers. The approximate total number of denials is in excess of 563,000 since the inception of the NICS.
- In September 2001, the implementation of the final phase of the National Crime Information Center (NCIC) Filtering system increased the NICS Immediate Proceed Rate (NICS checks yielding no records and resulting in an immediate “Proceed” response to the gun dealer) from 71 percent to 77 percent.
- The Transfer Process, implemented July 23, 2002, in response to directives by the Attorney General issued in June 2001 and February 2002, enabled the NICS Section to increase its Immediate Determination Rate (NICS checks on which dealers receive an immediate determination on the buyer’s eligibility, whether “Proceed” or “Denied”) to an astounding average of 91 percent, up 20 percentage points from the 71 percent average at the beginning of 2001.
- In 2002, the NICS Section implemented both temporary and permanent procedures to fulfill the Attorney General’s directive issued in February 2002 that the NICS check records on the immigration status of non-immigrant aliens seeking to buy guns to enhance the enforcement of the prohibition on the receipt or possession of firearms by such aliens.
- Although the NICS processed 12 percent more transactions during its 2001 peak season than in 2000, the NICS increased its level of system availability from 97 percent in 2000

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<sup>1</sup> Those states that have elected to establish and maintain their own Brady NICS Program.

to 99 percent in 2001. System availability was also maintained at the 99 percent level in 2002.

- Service outages during the 2001 peak season decreased by 21 percent when compared to the 2000 peak season, and decreased by 70 percent when compared to the 1999 peak season. In 2002, service outages decreased by 28 percent compared to 2001.
- The NICS E-Check system officially became operational on August 19, 2002 and, as of December 31, 2002, a total of 2,396 Federal Firearms Licensees (FFLs) were enrolled and actively utilizing the NICS electronic access option.
- In 2001, in an effort to improve system efficiency, the NICS Section created a NICS Index Liaison position to focus solely upon the population and maintenance of the NICS Index. As of December 31, 2002, the NICS Index contained a total of 2,876,192 prohibitive records, a more than 170 percent increase over the 1,043,667 records that were in the NICS Index as of December 31, 2000.
- The NICS Section, in a coordinated effort with the National Association of Arms Shows, implemented a method to aid NICS users in the recovery of lost sales during gun shows during extended system outages.
- The NICS Section remains proactive in its efforts to improve the availability of final judicial actions within our Nation's criminal history records.
  - < As of December 31, 2002, the NICS Section has facilitated the posting of over 300,000 final dispositions.
  - < The NICS Section forwards any final disposition information obtained during the background check process to state repositories whenever the information is absent from the state-held record.
  - < The NICS Section provides assistance regarding additional types of information and record-clarifying services such as the posting of expungements, documenting the receipt of Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) relief of disabilities, and setting Identification for Firearms Sales (IFFS) status flags in connection with criminal records that prohibit firearm possession under the Brady Act.
- In an effort to share more internal, operative information with its peers, the NICS Section has expanded the amount and type of information readily available on its Law Enforcement Online (LEO) web-site.

- The NICS Section implemented a Fax-On-Demand service in 2002 that allows users to select NICS information to be provided to them automatically without any human intervention.

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## PART 1: THE NICS 2001/2002 OPERATIONS

### Number of National Instant Criminal Background Check System (NICS) Transactions

In 49 months of operations, from November 1998 through December 31, 2002, the NICS conducted a total of 35,938,513 background transactions. Of these transactions, 18,092,850 were processed through Point of Contact (POC) states, while 17,845,663 were processed through the NICS Section, located within the FBI's Criminal Justice Information Services (CJIS) Division in Clarksburg, West Virginia.

TABLE 1  
The NICS Monthly Transaction Levels—Tri-Annual Comparison

	<b>2000</b>		<b>2001</b>		<b>2002</b>	
	<i>State</i>	<i>Federal</i>	<i>State</i>	<i>Federal</i>	<i>State</i>	<i>Federal</i>
January	340,478	299,494	347,049	293,479	357,415	308,388
February	358,773	348,297	347,165	327,991	355,223	339,445
March	393,275	343,268	391,406	338,126	376,864	337,801
April	326,216	291,473	331,181	263,542	339,567	288,178
May	295,239	243,409	310,560	232,941	315,613	253,634
June	298,132	252,429	303,608	236,883	282,513	235,838
July	293,245	249,275	303,090	236,408	294,653	240,941
August	346,118	336,383	361,194	346,094	340,803	352,336
September	354,833	427,254	420,612	443,426	332,559	391,564
October	386,664	459,222	516,696	512,995	383,721	465,560
November	410,338	488,260	473,921	509,265	390,892	496,755
December	479,456	521,506	511,783	550,776	435,606	538,453
<b>Annual Total</b>	<b>4,282,767</b>	<b>4,260,270</b>	<b>4,618,265</b>	<b>4,291,926</b>	<b>4,205,429</b>	<b>4,248,893</b>
<b>Cumulative Totals</b>	<b>9,269,156</b>	<b>9,304,844</b>	<b>13,887,421</b>	<b>13,596,770</b>	<b>18,092,850</b>	<b>17,845,663</b>
<b>Project-To-Date Total</b>						<b>35,938,513</b>



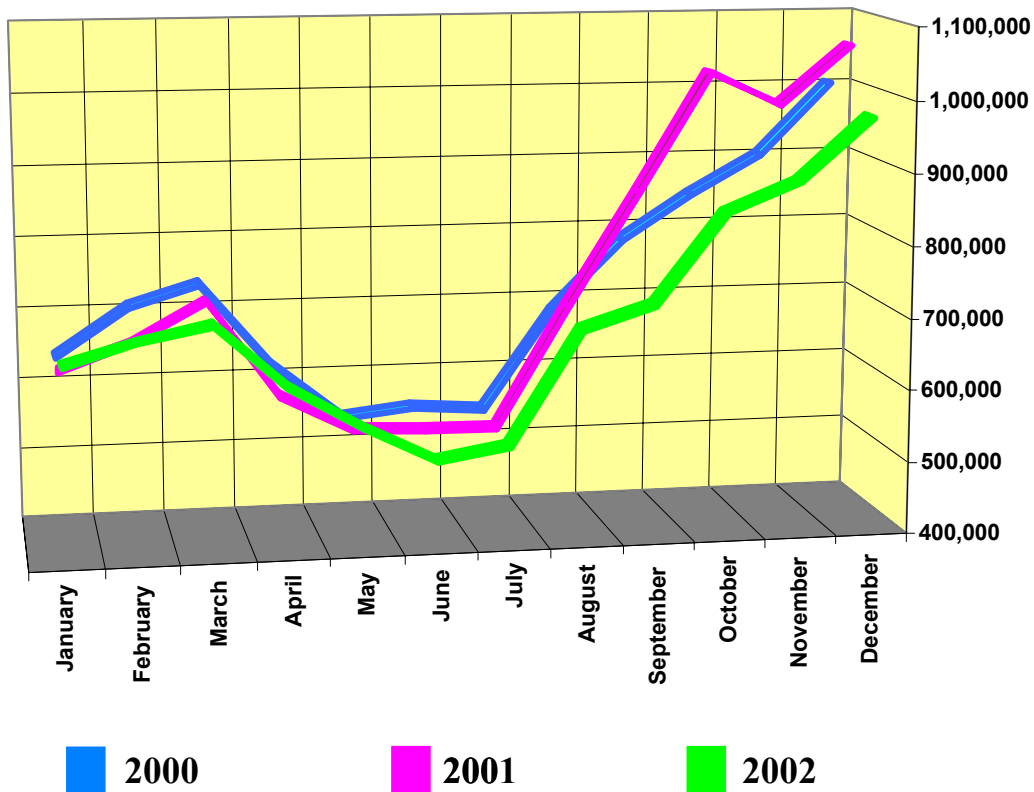
The NICS Section provides full service to Federal Firearms Licensees (FFLs) in 31 states and territories. Fourteen states have agencies acting on behalf of the NICS in a full POC capacity, conducting their own state background checks on FFL gun transactions by electronically accessing the NICS. Ten states are currently sharing responsibility with the NICS by acting as partial POCs. Partial-POC states have agencies designated to conduct checks for handguns and/or handgun permits, while the NICS Section handles the processing of the state transactions for long gun purchases.

The NICS Participation Map depicts each state's current participation status with the NICS (see Appendix A). No changes in state participation levels occurred during 2001. However, during 2002, the following states ceased acting as full POC states – Vermont in February 2002 and Arizona in August 2002 – and requested that the NICS Section provide full service for FFLs conducting firearm background checks in their states.

### The NICS Demand

With over 4 years of operational experience, the NICS Section has experienced a predictable and consistent demand curve (see Table 1 and Figure 1). Because gun sales are part of the retail industry, the NICS can expect substantial increases in activity with the arrival of its peak season (September through December) as firearm sales rise with the onset of hunting and holiday seasons. During the 2001 peak season, however, the NICS' transaction counts were approximately 12 percent higher than in 2000.

The customary operating hours for the NICS are 8 a.m. to 1 a.m., Eastern Time (ET), 7 days a week, 364 days a year. To accommodate the peak season, the NICS Section normally extends its operating hours. While this internal operational extension is not offered to FFLs, it is made available to POCs and state agencies. This additional processing time is offered to deter operational "bottlenecking," which is typical of the demand and activity levels associated with peak season and is most commonly experienced during the early morning operational hours.



*(Based on NICS Section Statistics only)*

Figure 1  
Annual Comparison of NICS Activity—2000-2002

NICS Denials

From November 30, 1998, the inception of the NICS, through December 31, 2002, a total of 281,883 illegal firearm transfers have been denied by the NICS Section. At this time, state POC agencies are not required to report final eligibility determinations to the NICS Section. However, the NICS Section estimates that the POC states have denied approximately the same number of firearm transfers making the total number of denials since the NICS began operations approximately 563,000. In 2001, the NICS Section provided a total number of 64,500 denial responses to FFLs and a total of 60,739 in 2002. The number of denials in both years is consistent with the system's historical 2 percent denial rate.

## Identification for Firearms Sales (IFFS) Flags

As illustrated in Figure 2, the predominant reason for the denials is the presence of a felony conviction in the purchaser's criminal history record. However, a new denial category was incorporated within the NICS and has been monitored since July 2001. This new category allows the NICS Section to collect information regarding the number of denials based upon the existence of IFFS Flags in records matched to the potential purchaser.

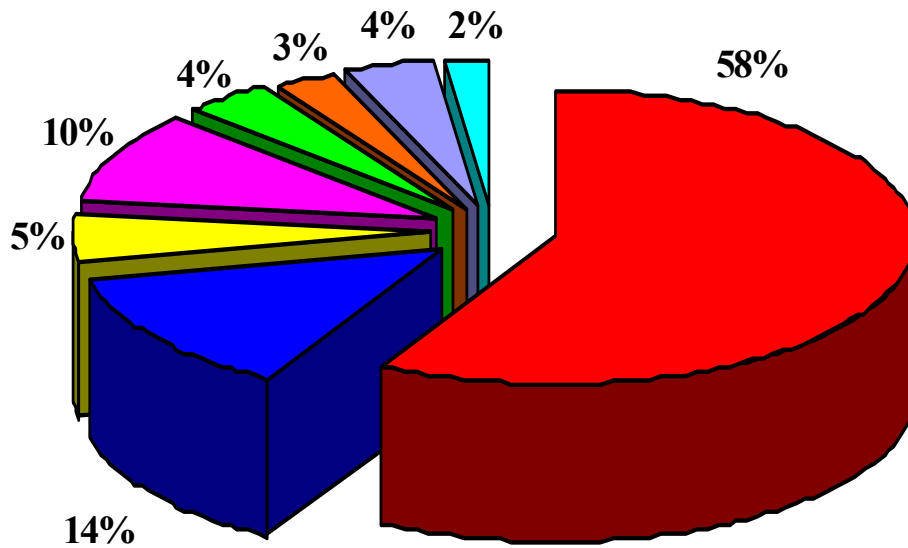
On September 30, 1996, the Omnibus Consolidated Appropriations Act was signed into law. The Act included an amendment (known as the Lautenberg Amendment) to the Gun Control Act, which extended the ban on the transfer or possession of a firearm to any person who has been convicted of a *misdemeanor* crime of domestic violence. The passage of this law required modifications to the old the Felon Identification in Firearms Sales (FIFS) Program, which included changing the program name to Identification for Firearm Sales (IFFS), because the flags would no longer exclusively indicated felony convictions. Other modifications included redefining status flags, their meaning, and any required actions associated with status flags.

The IFFS Program was designed specifically for the NICS to designate convictions (and other applicable record information) that qualify as a firearm prohibitions under the Brady Act. These status flags are attached to criminal history records contained within the Interstate Identification Index (III) database. As of December 31, 2002, there were 10,739 denials attributed to the presence of IFFS Flags.

IFFS Flags, for the most part, are set by state bureaus and/or state repositories. However, the state must request to become a participant in the IFFS Program before IFFS Flags can be set in association with their state's records.<sup>2</sup> Currently, 19 states are actively participating in the IFFS Flag Program. The NICS Section supports state participation in the IFFS Program because the presence of IFFS flags serves as an immediate notification to the reviewer that a prohibition exists regarding the potential purchaser. Such notification facilitates the prompt resolution of pending transactions as well as ensures that transactions involving individuals specifically prohibited from purchasing and/or possessing a firearm are denied.

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<sup>2</sup> For questions relating to the IFFS Program and its relation to the federally prohibitive criteria pursuant to the Brady Act contact the NICS Customer Service at 1-877-444-NICS.



- **Felony Criminal History**
- **Criminal History for Misdemeanor Crime of Domestic Violence**
- **Criminal History for Drug/Controlled Substance Abuse**
- **Criminal History for Other Reasons (Multiple DUIs, Non-NCIC Warrants, etc)**
- **IFFS Flags**
- **Fugitives From Justice**
- **Domestic Violence Restraining Orders**
- **Illegal/Unlawful Aliens, Dishonorable Discharges, Denied Persons File, Mental Defectives**

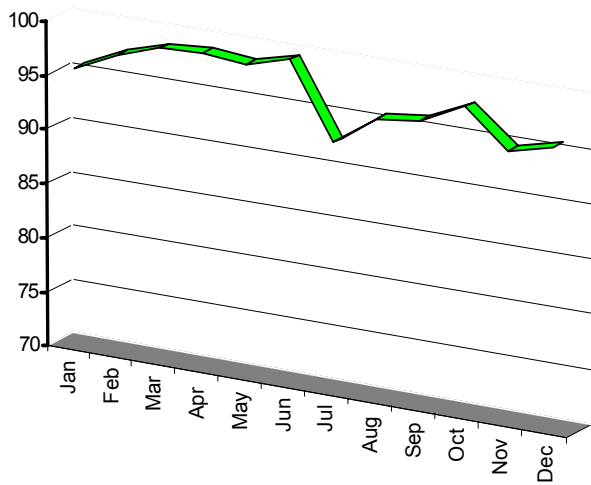
*(Based on NICS Section statistics only)*

Figure 2  
The NICS Denial Distribution

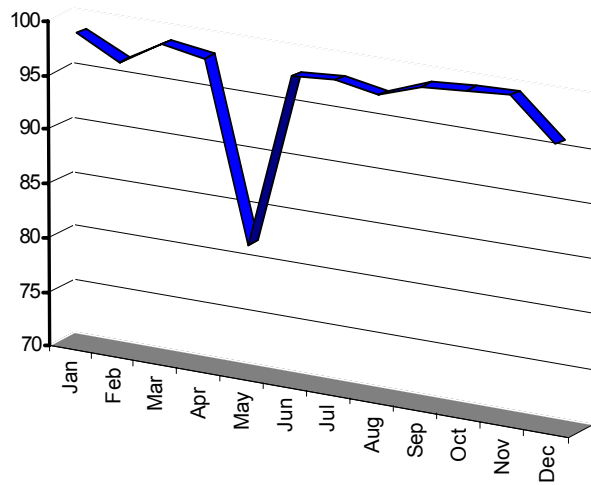
## System Availability of the NICS

Over the life of the NICS, maintaining a high level of system availability has been a challenge. Although the NICS was designed to meet or exceed its availability requirement, the NICS depends on data provided by interfacing systems to complete each NICS background check. In particular, the NICS depends upon the III criminal history records and the National Crime Information Center (NCIC) 2000 for access to firearm prohibitive records, as well as telecommunication services. The NICS operating system has been operational more than 99.5 percent of the time. However, technical issues with the interfacing systems (the NCIC and the III) have caused outages which result in lower service availability to NICS customers. For the first 2 years of the NICS Program, the overall service availability averaged just below 97 percent. Improvements to FBI systems increased the NICS service availability to 99 percent in both 2001 and 2002, as illustrated in Figure 3.

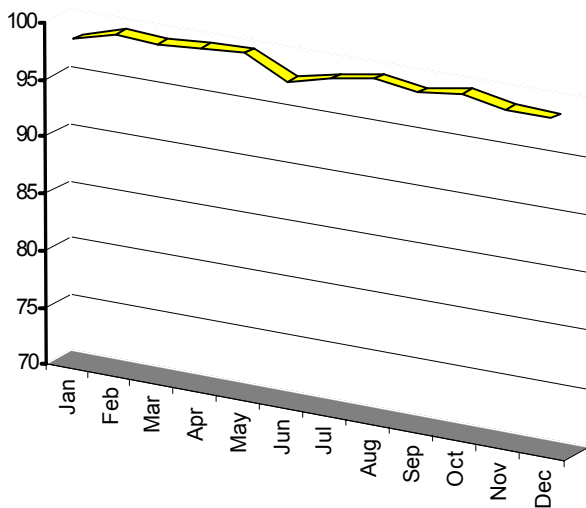
The FBI continues to work diligently to improve the NICS service availability. To accomplish this goal, technical improvement efforts have focused on the interfacing systems. For example, the Identification Tasking and Networking (ITN) segment of the original Integrated Automated Fingerprint Identification System (IAFIS) design required all IAFIS transaction traffic to pass through the ITN segment to reach criminal history data stored in the III. During July and August of 1999, problems with the ITN segment of the IAFIS accounted for 70 percent of the NICS service outages. In September 2000, NICS implemented the "ITN bypass," replacing the ITN interface to III information with a more efficient and effective route. During the peak gun buying season of 2001, service outages were reduced by approximately 70 percent as compared to 1999 and approximately 21 percent when compared to 2000. In 2002, service outage time was reduced by a further 28 percent when compared to 2001. To continue this service availability trend, the FBI consistently works to identify technical improvements to virtually all systems upon which the NICS relies. The most significant of these improvements is an upgrade to the IAFIS-III. By increasing the processing and throughput capability of the IAFIS-III, the III queues will not build to levels that create degraded NICS service, and in severe instances, cause NICS service outages.



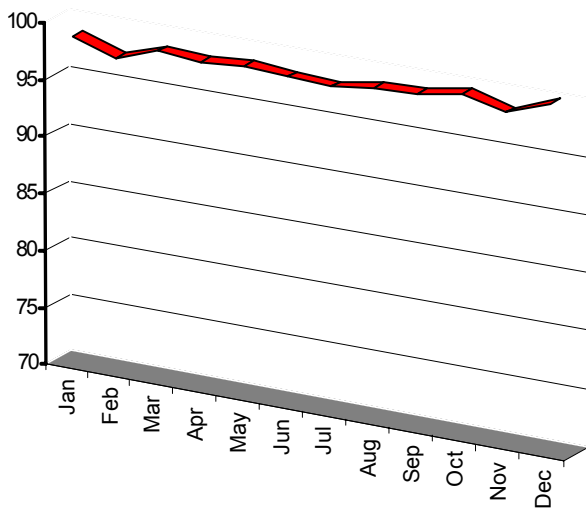
NICS System Availability, 1999



NICS System Availability, 2000



NICS System Availability, 2001



NICS System Availability, 2002

Figure 3  
Accessibility of the NICS to Users: 1999-2002

## Immediate Proceed Rate/Immediate Determination Rate

Despite some continued issues with service availability, the quality of service provided to the NICS customers remains exceptional. Of the 13,596,770 federal checks processed by the FBI NICS Section from inception through December 31, 2001, the NICS issued an immediate proceed determination in 9,683,880 transactions (approximately 71 percent of total transactions). (On average, immediate proceed transactions are completed in less than 30 seconds after the entry of data into the system.) System enhancements implemented in the latter part of 2001 and during 2002 increased the NICS Immediate Proceed Rate to 77 percent. Moreover, as a result of additional changes made in response to directives issued to the FBI by the Attorney General in June 2001, and February 2002, the NICS Immediate Determination Rate increased to 91 percent when the Transfer Process was put in place in July 2002. This allowed the NICS to attain the Attorney General's goal of a 90 percent or higher Immediate Determination Rate. The NICS Immediate Determination Rate is discussed further in the next section and additionally in Part 4.

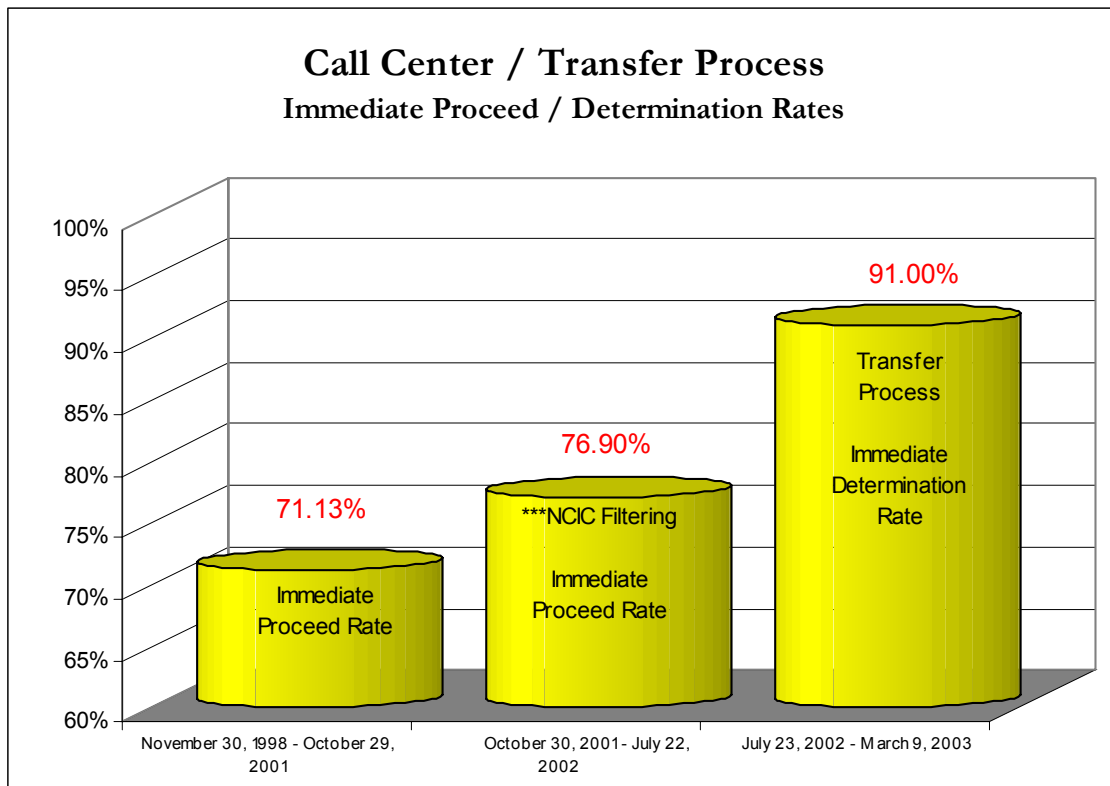


Figure 4  
Call Center Immediate Proceed/Determination Rates

## PART 2: THE NICS SYSTEM ENHANCEMENTS

Successful organizations, whether they are Fortune 500 companies, state or municipal governments, or one of the many federal departments or agencies, have recognized that developing customer focus is an absolute necessity. The importance of recognizing customer needs and expectations in providing service and in planning for the future cannot be overemphasized. With that philosophy in mind the NICS Section has worked to identify and implement operational enhancements that will allow the NICS to provide improved services to its users. While several of the NICS operational enhancements and system changes developed by the NICS Section resulted from ongoing reviews, audits and/or evaluations of system performance, the NICS Section has implemented others as a result of requests from NICS' users or as a result of legislation or directives from the United States Attorney General. The following sections outlines the enhancements implemented during 2001 and 2002.

### NCIC Filtering

The NCIC name search algorithm was originally developed to meet the overall needs of general law enforcement. To overcome some of the deficiencies associated with conducting name searches, the algorithm was modified to provide wider search parameters for matching the subject of a search to records in the database. However, after the implementation of the new NCIC system and modified algorithm in July 1999, the rate of false positives (records erroneously matched to the descriptive data of the purchaser) received increased by 2 percent. NCIC filtering, a system of additional rules relating to the NICS scoring algorithm used for NCIC responses, was expected to eliminate the 2 percent increase. The filtering included the application of additional rules to the name, date of birth, sex, social security number, and miscellaneous number data fields. It also included the assessment of alias' dates of birth as part of the record evaluation criteria.

Phase 1, implemented in the fall of 2000, was a transparent filter not intended to change the results of matches returned by the NICS, but rather to assign a score to each NCIC hit using the refined NICS filtering algorithm. The NICS automatically inserted the resulting score into the header portion of each NCIC response record. Records receiving a score of zero were records determined to be false positives. This scoring system allowed NICS personnel to evaluate the effectiveness of the new filtering rules and modify the algorithm to better meet the needs of the NICS. In October 2001, the NICS Section implemented Phase 2, which completed the installation of this enhancement and put the new scoring algorithm into operation by actually omitting those records with a score of zero from the NICS consolidated response.

The NICS expected a 2 to 3 percent increase in the Immediate Proceed Rate as a result of the new NCIC Filtering. After the full implementation of the NCIC Filtering enhancement, those expectations were exceeded and the Immediate Proceed Rate rose to 77 percent (illustrated in Figure 4). The next topic of discussion, the Transfer Process, will further explain the



subsequent rise of the NICS Immediate Proceed Rate from 77 percent to the *Immediate Determination Rate* of 85 percent and ultimately, to over 90 percent.

The POC states desiring to take advantage of Phase 2 may request that the filtering be applied to their state's responses from the FBI by submitting written correspondence to the NICS Section. The FBI will not filter responses to the POC states unless requested. To date, 9 states are currently taking advantage of the NCIC filtering enhancement: Georgia, New Jersey, Colorado, Utah, Oregon, Tennessee, New York, Virginia and Nevada.

### The Transfer Process

On June 28, 2001, the FBI received a directive from the United States Attorney General to increase its Immediate Determination Rate, then averaging 71 percent, to at least 90 percent. The advent of the NCIC Filtering enhancement had increased the Immediate Proceed Rate to 77 percent. However, in response to the Attorney General's directive, the FBI NICS Section conducted further research and analysis and identified another process to increase the number of immediate determinations. The NICS Section recommended the option, now known as the Transfer Process, and was directed by the Attorney General on February 13, 2002, to implement that process.

With the Transfer Process, any calls initially delayed at the NICS Call Centers due to a potential match against a possibly prohibiting record will be automatically transferred to an FBI NICS Legal Instruments Examiner (NICS Examiner) at the NICS Section. The NICS Examiners have the authority and security access to instantly view the criminal history record(s) matched to the applying individual's descriptive information while on the telephone with the FFL. In most instances, the NICS Examiner will be able to determine definitively whether the buyer is indeed a match to the record in question and whether the record contains any information that could be potentially prohibiting. This process enables the NICS Examiner to advise the FFL immediately as to whether the transfer may proceed or must be denied.

On July 23, 2002, the Transfer Process was implemented. Although the Transfer Process slightly extends the length of time for each call by an average of up to one and a half minutes, most firearm dealers support this change in processing and have positively commented on the *overall* improved service and response time being provided. It is important to note that this enhancement impacts the level of service provided to the FFLs currently serviced by the FBI. While our state counterparts likewise strive to provide the most efficient and accurate service possible to dealers within their states, there are variables such as mandatory waiting periods in administering state-managed programs that must be taken into consideration.

Over the past 2 years, the NICS Section has continually improved the level of service provided to FFLs. As discussed previously, the ultimate implementation of Phase 2 of the NCIC Filtering enhancement facilitated an increase in the NICS Immediate Proceed Rate to 77 percent. Combined with the Transfer Process, the NICS Section increased its Immediate Determination

Rate to 91 percent.<sup>3</sup> This successfully satisfied the Attorney General's directive for an increase to 90 percent or better.<sup>4</sup>

### Long Gun Notification

The Long Gun Notification enhancement, implemented in July 2001, allows NICS to notify POC state agencies whenever a resident of their state is attempting to purchase a long gun out of state. Long Gun Notification is an electronic message from the NICS to a state via the NCIC. If a check comes through the NICS where the state of residence and state of purchase differ, the state of residence, if it has so elected, will be notified of the attempted purchase. Whether the background check has been initiated in a POC or a non-POC state does not impact the notification. This feature is desired by some states so that state-held databases, not accessible by the NICS or other state POC agencies, can be cross-referenced to ensure the purchaser's eligibility. The Long Gun Notification feature will allow a prospective firearm transferee's state of residence to notify the appropriate agency should state law prohibit the pending transfer. States desiring to take advantage of the Long Gun Notification feature of the NICS may request to be included in the program by written correspondence to the NICS Section.

### State Tailoring Table

The State Tailoring Table enhancement enables the NICS Section to tailor its responses to full-and partial-POC states based upon each state's needs and/or requirements rather than providing states with a blanket response based on architectural changes implemented at the federal level. Operational options, such as the NCIC Filtering and Long Gun Notification discussed above, are offered by the NICS Section and each state's preference for particular enhancements can be customized within the NICS by individualized system programming adjustments.

Another benefit associated with the State Tailoring Table enhancement is the ability of the NICS to identify the types of checks (handgun, long gun, or both) that FFLs are permitted to conduct through the FBI, which is dependant upon the state's level of participation (full-POC, partial-POC or non-POC). This feature will ensure that FBI NICS checks only for the appropriate firearm type. This enhancement accordingly ensures that state firearms statistics are not skewed and that checks intended to be processed by the state are not inadvertently processed by the FBI NICS Section. It is important to note that this enhancement will be of the most benefit to states operating in a partial-POC status. States desiring to take advantage of the State

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<sup>3</sup> Originally, the NICS Section calculated that the Immediate Determination Rate increased to 85 percent when the Transfer Process was implemented. When a programming error was discovered and corrected, however, the actual rate was shown to be 91 percent.

<sup>4</sup>More information regarding this topic and the Transfer Process can be found in Section 4 - Increasing the NICS Immediate Determination Rate.

Tailoring Table enhancement may request to participate by submitting written correspondence to the NICS Section.

### Pawn Shop Purpose Codes

Previously, the NICS utilized only five purpose codes to identify the reason for a search request. They are as follows:

- P - Firearm permit of any type
- H - Transfer of handgun(s)
- L - Transfer of long gun(s)
- B - Transfer of both handgun(s) and long gun(s)
- A - Administrative check for testing, training, etc.

Another NICS enhancement, implemented on October 30, 2001, established six additional purpose codes that allow the NICS Section to differentiate transactions relating to *pawned* firearms from other firearm *sale* transactions conducted by pawn shops. There are three types of pawnshop transactions: A firearm sale (such as those from an FFL retail business); a collateral pawn ("pre-pawn"), which is an *optional* transaction that may be conducted prior to a firearm pawn to ascertain a subject's eligibility to redeem the firearm; and a pawn redemption that occurs whenever the pawn ticket holder redeems a firearm (which is required). Accordingly, the following six additional purpose codes were established:

- C - Collateral check for both handgun(s) and long gun(s)
- D - Collateral check for handgun(s)
- E - Collateral check for long gun(s)
- R - Redemption check for both handgun(s) and long gun(s)
- S - Redemption check for handgun(s)
- T - Redemption check for long gun(s)

Legally, handguns can be pawned across state lines; however, the NICS Call Centers previously could not process such transactions through standard procedures because the NICS was designed to disallow the purchase of handguns out of the purchaser's state of residence. In these instances, the NICS Call Centers would refer the transaction to the NICS Section Customer Service for special processing. With this enhancement, the NICS Call Center is able to initiate these types of transactions at the onset, creating an easier, more efficient process for pawn shop owners and freeing the NICS Customer Service Representatives to respond more expeditiously to other pending calls. Additionally, it allows the NICS to collect statistical information relating to pawnshop transactions.

During 2002, the NICS Section conducted a 3-month study to ascertain what percentage of NICS checks were currently being attributed to pawn shops. As illustrated in Figure 5,

transactions initiated from pawn shops accounted for approximately 37 percent of the total transactional activity conducted by the NICS Section during the period of study. Statistics generated from October 2001 through December 31, 2002, indicate that the NICS Section processed 21,684 "pre-pawn" collateral checks (which are strictly optional) and 691,287 pawn redemption checks (which are required).

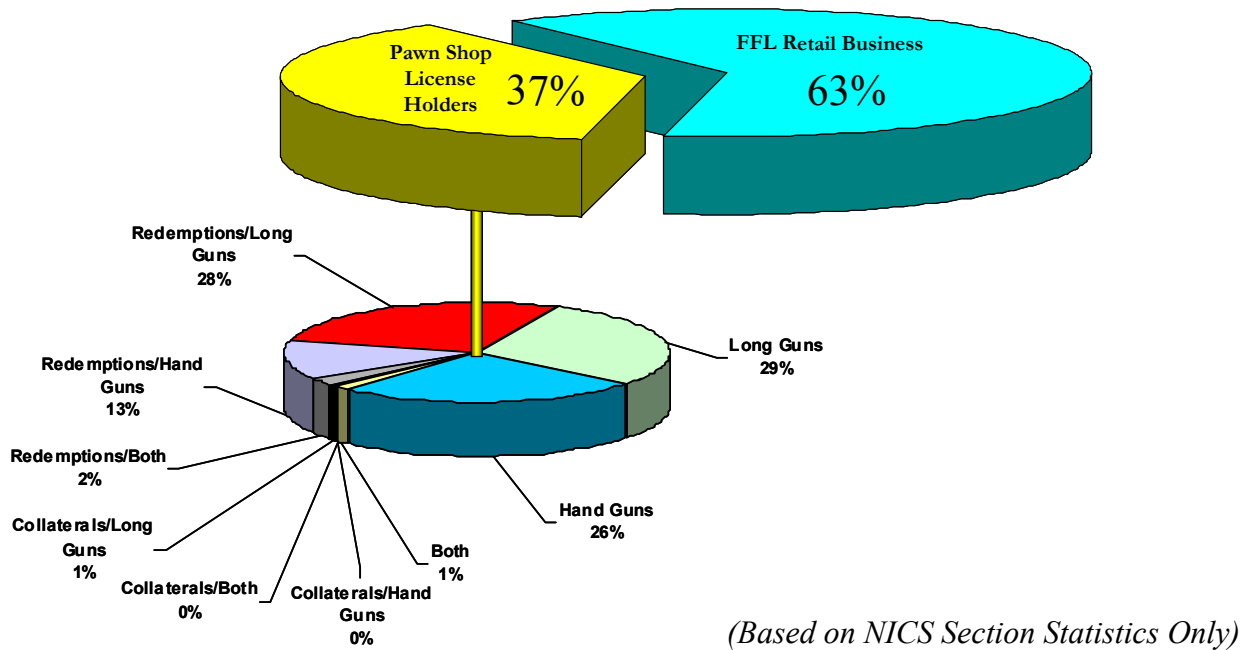


Figure 5  
Allocation of Pawn Shop-Related Transactions from NICS Total Transactions

### Waiting For Disposition

The "Waiting For Disposition" enhancement provides the NICS Section with an internal classification for delayed transactions indicating that an initial analysis was conducted, and potentially prohibiting charges were found but additional or complete information is needed to make a final eligibility determination. More importantly, the implementation of this enhancement allows the NICS Section to better monitor program operations by collecting statistical data relating to the number of missing dispositions identified and requested from each state. The enhancement also allows NICS to track the history of the state's response time, accuracy, and completeness. This type of data will allow the NICS Section to target corrective measures.

## Ready For Callback

The NICS "Ready For Callback" enhancement creates a new internal classification for delayed transactions. This classification will indicate that a final determination has been made but that contact is pending with the transaction's initiator. Per NICS protocol, NICS Examiners make a minimum of two attempts to contact an FFL with a final status. If the attempts are unsuccessful or if the NICS Examiner can tell by the FFL's contact information that the FFL is unavailable on that day, the NICS Examiner will designate the final status of the transaction within the system and send it to a queue known as Ready For Callback. The NICS Customer Service manages the Ready for Callback queue and will continue to attempt contact. The queue prioritizes transactions based on creation date, with the oldest transactions receiving highest priority. The queue also ranks denials first so that denials can be communicated to the FFLs as soon as possible.

Another feature of this enhancement is that it allows the NICS Customer Service to query and sort the Ready For Callback queue according to an FFL's license number, allowing for final statuses on all pending transactions for each FFL to be provided at one time. That feature is particularly helpful when dealing with large corporate chains and during the NICS peak season. Internally, this enhancement allows the NICS Section Examiners to utilize their time in the most efficient manner and facilitates the resolution of pending transactions as quickly as possible.

## NICS E-Check

Currently, in states where the state government has declined to serve as a POC for the NICS, the FFLs contact the NICS Section to initiate a NICS check by using a toll-free number. However, the Brady Act and the NICS Regulations, 28 Code of Federal Regulations (CFR) Part 25, allows for the development of other electronic means of contact as alternatives to the telephone. Therefore, early in the NICS development, the NICS Section planned to provide the FFLs with alternative means, commonly referred to as "electronic access," to initiate NICS background checks. This function, named the "NICS E-Check," enables the FFLs to initiate an unassisted NICS background check for firearm purchases via the Internet. The FFLs using the NICS E-Check also continue to have the ability to telephonically access the NICS Section via the NICS Call Centers to conduct firearm background checks.<sup>5</sup>

Some of the benefits of the NICS E-Check are:

- The reduction of NICS Call Center traffic and contractor costs.

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<sup>5</sup> Commonly asked questions about the NICS E-Check can be found in Appendix B.

- Providing a more accurate search because the originator enters data directly, increasing data integrity.
- The ability to retrieve NICS background check results 24 hours a day, 7 days per week.
- The ability to print completed NICS background check search requests for record keeping purposes.
- Increased accessibility of the NICS for the hearing impaired.
- The ability to receive messages regarding the NICS operational status.

Security was the foremost priority throughout the development of the NICS E-Check. Access to the NICS is restricted through computer software utilizing firewall techniques and certification authority, thereby providing secure and restricted access.

The following is a comprehensive time line of developmental milestones associated with the implementation of the NICS E-Check:

- May 1999—The FBI conducted a survey to identify FFLs preferred form of electronic access. A secure Internet solution proved best due to technical feasibility, ease of use, and cost-effectiveness.
- October 2000—The FBI conducted a focus group study with 12 FFLs to present, discuss, and gain feedback on the proposed system design.
- May 2001—The NICS E-Check hardware was installed on-site at the NICS Section in Clarksburg, West Virginia. It was originally expected that the NICS E-Check would be implemented on a limited basis in the latter part of 2001. A general ramp-up for the remaining FFLs was planned for early 2002. However, implementation was delayed pending security accreditation from the FBI's National Security Division (NSD). Although the NICS had previously received accreditation, the NICS E-Check is considered to be a subsystem of the NICS and was therefore subject to its own review and accreditation.
- May 2002—The NSD granted interim security accreditation, which allowed the NICS Section to implement the NICS E-Check.
- June 2002—The NICS Section began a pilot project with selected FFLs to test the NICS E-Check functionality. To facilitate better on-site consultations and trouble-shooting, NICS selected FFLs within close proximity to the CJIS Division Complex in Clarksburg, West Virginia (where the NICS Section is located).

- August 2002–The NICS E-Check enrollment packages were mailed and open enrollment began. Enrollment packages were mailed to FFLs in 2-week increments through September 2002 in numerical order by zip code. The NICS staff selected this approach in lieu of a nationwide mass mailing to all eligible FFLs to avoid massive influxes of enrollment forms and a possible delays in service to FFLs opting to participate.<sup>6</sup> **The NICS E-Check became operational on August 19, 2002.**

As of December 31, 2002, the NICS had enrolled 2,396 FFLs with the new electronic access option and, in less than 5 months, had conducted a total of 19,065 checks.

Below are a few of the comments received by users of the NICS E-Check:

"Just to let you know we are enjoying using the E-Check system. It seems to be getting quicker each day and we don't have to tie up our phone line getting our 4473 forms done. Also it is good to be able to print out the results so there is no chance of transposing numbers. We print out all of ours and staple them right to the 4473. Really neat!" - Joyce, Arkansas FFL

"...very happy with E-Check." - Jean, Multi-state/high volume FFL

"It's easy to use, and once you get the hang of it, the entry process is fast."  
- Mike, Multi-state/high volume FFL

"I have found that using the E-Check is extremely efficient. Very quick response time for each inquiry." - Nina, Facility Manager of an FFL

"I would like to comment on the great job everyone is doing at the NICS E-Check. The computer e-checks are quick and convenient. I am sure I speak for the majority of FFL holders. Thanks for the support and excellent job." - Les, Florida FFL

As with every other aspect of the NICS, improved service is always a priority. There are already some exciting NICS E-Check enhancements in store for the future.

- Spanish Screen Formats–To accommodate Spanish-speaking dealers and customers, the NICS E-Check is developing the NICS E-Check screens to display instructions, data fields, and responses in Spanish.

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<sup>6</sup> For security purposes, each employee of a licensed firearm establishment that will be utilizing the NICS E-Check is required to individually enroll. Each employee is provided their own certificate of access. Therefore, the number of certificates issued by the NICS Section outnumbers the total number of FFLs enrolled in the NICS E-Check.

- Access for FFLs Operating in POC States—The NICS section is currently considering an option to allow FFLs operating in POC States to initiate transactions via the NICS E-Check. The NICS E-Check would route the response of the NICS to the state-designated agency for further review. The state agency could then complete the check by accessing any additional state-held databases and provide a final combined response to the dealer.

Additional information relating to the NICS E-Check System can be obtained by visiting [www.nicsezcheckfbi.gov](http://www.nicsezcheckfbi.gov) or by contacting the NICS E-Check System Liaison Analyst via the NICS Customer Service at 1-877-444-NICS.

### Automated Immigration Alien Query (IAQ) Process

As detailed in Part 5 of this report, after the terrorist attacks of September 11, 2001, the Attorney General directed ATF and the FBI to enhance enforcement of the general prohibition on non-immigrant aliens possessing and receiving firearms. This enhanced enforcement required that NICS conduct an IAQ for all non-U.S. citizens attempting to purchase and possess a firearm. An IAQ provides a cross-reference of all databases held by the Division of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE), formerly the United States Immigration and Naturalization Service. The NICS, along with many of our state POC counterparts, implemented temporary provisions to accommodate these checks until permanent alterations could be made to the NICS to automate the process.

On July 23, 2002, the NICS implemented a system enhancement that allows the NICS to automatically request an IAQ of the ICE whenever the data field entitled "Country of Citizenship" contains anything other than "United States". The NICS, along with the POC states, receive an automatic response from the ICE providing the immigration status of the individual.

### Expanded Race Codes

Also discussed in Part 5, the ATF implemented an emergency revision of their Form 4473<sup>7</sup> to accommodate the enhanced enforcement of the prohibition disallowing the purchase and/or possession of firearms by non-immigrant aliens. One of the revisions to the form was the addition of new race code options along with a provision allowing the selection of more than one race code. At the time the new form was implemented, neither the NICS nor any of the other systems accessed by the NICS, were able to accept the new race codes or the multiple race code

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<sup>7</sup> The ATF Form 4473, Over-the-Counter Firearms Transaction Record, is the form legally required for the FFLs to document the attempt or purchase of a firearm. This form captures descriptive information about the buyer needed to conduct a federally required background check and also requires that the applying individual sign and attest to the validity of the information and responses provided therein.



option. Again, temporary processes were employed to accommodate these new provisions until the NICS implemented the permanent alterations on July 23, 2002.

#### Alterations of Call Center Graphical User Interface (GUI)

On July 23, 2002, the format of the call center GUI (pre-formatted user screens) was modified to coordinate with the revised ATF Form 4473. The FFLs were required to begin using the revised ATF Form 4473 on February 19, 2002. The revised version contained additional data fields necessary to collect information concerning the applicant's citizenship and/or immigration status. Between February 2002 and July 2002, the NICS Call Center employees requesting descriptive information from the FFL about the prospective buyer faced impediments because data fields on the call center GUI no longer followed the order in which the revised ATF Form 4473 captures the information. This enhancement allowed for the consistent and efficient exchange of needed information between the NICS Call Center employees and the FFLs and also made provisions to capture the new/multiple races code options. As a result of the implementation of the revised GUI, the average talk time of calls to the NICS Call Centers decreased.

#### State Denials Without A Record

There are times when state POC agencies base a denial decision upon information obtained outside of the NICS response. Although the NICS Section highly encourages states to submit their final eligibility determinations to the NICS, it currently is not a requirement. Prior to an enhancement, implemented in April 2002, a state could not send the FBI a denial notification message unless the denial was based upon an FBI-held record because an NCIC number (NIC), FBI, or NCIC Record Identifier (NRI) was required. However, this enhancement allows the states to notify the FBI of deny decisions they have made based on a State Record Identifier (SRI) and *requires* that at least one of the identifying fields (the SRI, NIC, FBI or the NRI) be populated. In addition, the NICS Section requests that the states enter comments in the NICS denoting the reason of the denial decision.

#### Enhanced Facsimile Server

The NICS Section installed an enhanced facsimile server in November 2002 that helped to create a more robust faxing system and streamlined the distribution of incoming information. On average, the NICS Section processes 12,000 transactions a day. Because approximately 9 percent of these transactions are delayed and require additional and/or clarifying disposition information, having an efficient faxing system in place to obtain needed information is vital in maintaining operational efficiency standards. Future plans include having a requestor's return faxed response electronically delivered directly to his/her workstation thereby streamlining the information retrieval processes and, ultimately, customer service.

## FBI/CJIS Technical Refreshment Plan (TRP)

The FBI CJIS Division implemented a Technical Refreshment Plan (TRP) in August 2002 to update hardware and software requirements for the Division's systems. There are three initiatives associated with the TRP that will affect the NICS. First are the future enhancements to the NICS E-Check (see p. 18 .) Second, is an implementation of an efficiency upgrade to the NICS, referred to as the PC Client, to allow for additional functionality at employee workstations, ultimately providing for more efficient and streamlined processes. The third includes a III rehost study that will be used to identify appropriate/recommended hardware platform enhancements providing provisions to accommodate the future long term growth of the NICS and secure operational efficiencies.

### **PART 3: CRIMINAL HISTORY DISPOSITIONS**

The implementation of the NICS played an important role both in exposing the extent of the missing disposition problem and bringing the issue to the forefront. The NICS Section also plays a proactive role in helping to improve the status of today's criminal justice record keeping systems.

Final disposition information is vital to the NICS because it is required in order to determine the eligibility of potential firearm purchasers. When information on final judicial action is missing from an arrest record, the NICS employees must contact local, state, or federal law enforcement agencies to obtain the disposition. The NICS Section is mandated under the Brady Act to resolve a delayed transaction within 3 business days or the gun dealer may transfer the firearm at his or her discretion. Due to this time restraint, the NICS Section has been authorized to obtain disposition data by means other than those established by FBI guidelines. Upon the implementation of the NICS, the FBI devised an internal policy and procedure that allows for the posting of final disposition information obtained by NICS Examiners during the course of processing a NICS background check. This policy facilitates compliance by the NICS with governing federal regulations while also ensuring the integrity of information contained within state and federal criminal history record systems. Currently, the NICS receives final disposition information in the following ways:

- By facsimile that reflects "indicia of authenticity," i.e., State Identification Bureau or local agency letterhead/seal or court record.
- As a result of telephonic information and the NICS employee completing an R-84 Disposition Form<sup>8</sup>. The FBI NICS employees can utilize this information to determine the purchaser's eligibility to possess a firearm. However, before the IAFIS record can be updated, the NICS employee must have the R-84 Form stamped and signed by an official from the contributing agency.
- By the NICS Section through direct Internet links to state-held databases or e-mail addresses supplied by the contributing agency.

As of December 31, 2002, the NICS had facilitated the posting of over 300,000 final dispositions. As the law enforcement community becomes more accustomed to the NICS Program and its requirements, more final dispositions should become readily available from our nation's criminal

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<sup>8</sup> An R-84 Form is sent to a court or other law enforcement agency to request final disposition information on a particular charge from the contributing agency in order to update state and/or FBI records.

history repositories. It is anticipated that with improved responses from law enforcement agencies across the country, the NICS Immediate Determination Rate, correspondingly, will continue to increase.

The NICS strives to actively participate in the improvement of our nation's criminal history records by sharing disposition information received during the course of background checks with state bureaus whenever the NICS finds that the information obtained is not reflected at the state level. To ascertain whether the information NICS has shared with state bureaus was in fact being utilized to update state criminal history databases, the NICS Section conducted a study with all state bureaus. A total of 44 states participated in the study and all but one responded that they were receiving final disposition information from the NICS Section.<sup>9</sup> Ninety-three percent of those receiving the information reported that it was being utilized to update state-held records. The few not utilizing the information provided the following reasons: (1) lack of manpower, (2) policy requirements specifying that the type of information being provided could be updated only if it was received directly from the courts on official letterhead, or (3) it simply was not an agency priority. Of the 93 percent utilizing the information supplied, 33 percent reported having a backlog. Respondents with information regarding their agency's turnaround time reported that the average length of time between the date of receipt and the date of posting was 62 days.

During the course of conducting background checks, there are times when a POC state agency will request and receive disposition/records information from another state agency. In November 2002, the NICS Section, with the assistance of the FBI's CJIS Division, provided a means for POC state agencies to submit, to the FBI, record information received from other states to update and/or correct the FBI's criminal history records. The FBI CJIS Division established a point of contact to receive submissions and requirements were promulgated and disseminated to all POC state agencies for implementation. By ensuring that criminal history information is posted to the FBI's national databases, the NICS Section is helping to improve efficiency in future transactions. Additionally, posting information in the national database eliminates a replication of efforts should another POC state agency need to process a background check for the same individual.

The NICS Section encourages all states to take advantage of the disposition information uncovered as a result of the NICS background check process by updating state criminal history records with that information. Up-to-date criminal history information benefits both law enforcement and the general public. It facilitates the safety of our local, state, and federal law enforcement officers by advising them of past violent behavior and helps them to make informed decisions. This type of information serves the public not only by promoting overall public

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<sup>9</sup> The question was not applicable to two states because all NICS requests for information in these states are routed, at the onset, through the state bureau. Therefore, it is unnecessary for the FBI to provide a subsequent copy to the state.

safety, but also by providing vital information for authorized employment background checks to ensure unfit persons are not placed in positions of trust.

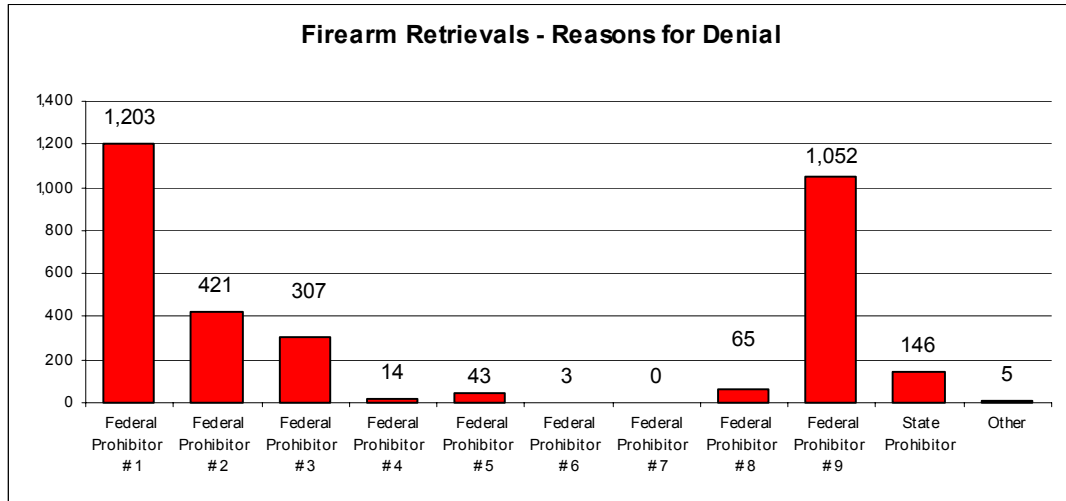
As part of a June 28, 2001, directive from the Attorney General, the Bureau of Justice Statistics (BJS) conducted a study of state criminal history records to determine their completeness and make recommendations on ways to achieve greater completeness. The BJS announced its preliminary findings from this study on February 13, 2002, and expects to issue its final report in 2003. The Department of Justice's National Criminal History Improvement Program (NCHIP) has provided nearly \$400 million to the states since 1995 to improve their record systems in many different ways. The BJS will distribute another \$48 million in Fiscal Year 2003. The 2003 NCHIP Program Announcement identifies the problem of missing dispositions as key priorities for use of NCHIP money by state courts and other criminal justice agencies, including: (1) ensuring the submission of and proper linkage between court-imposed dispositions for a defendant and the arrest transaction fingerprint record; and (2) addressing the historical problem of older arrest charges on criminal records for which disposition information was never recorded.

### Firearm Retrievals

Although there are efforts underway to alleviate the impact of missing dispositions on present and future NICS operations, some firearm transfers still occur because the NICS cannot locate disposition information within the 3-day period required by statute. As mentioned earlier, under the Brady Act, firearms dealers may legally transfer a firearm to the purchaser if no definitive response is provided by the NICS after the third business day. When that circumstance occurs, it is called a "default proceed." During 2001 and 2002, approximately 1.63 percent and 1.73 percent (respectively) of total FBI-processed transactions were "default proceeded." However, should NICS Examiners obtain prohibitive information after the close of the third business day, they contact the firearm dealer to determine whether the firearm was transferred. If the dealer opted to transfer the firearm, a request for a firearm retrieval is forwarded to the ATF. Of the 4,291,926 background checks processed by the NICS Section during 2001 and the 4,248,893 background checks process in 2002, a total of 4,265 and 3,429 firearm retrievals (respectively) were forwarded to the ATF, representing less than 1/10 of a percent of NICS proceeded transactions. These figures indicate a decrease of nearly 800 retrievals when compared to the 5,056 requested in 2000, and a decrease of 736 for 2002 when compared to the 2001 number.

The NICS Section began keeping statistics during 2002 to track the reasons firearm retrievals are initiated. Of the 3,429 retrievals initiated in 2002, the majority were due to final disposition information being unavailable for disqualifying felony offenses (illustrated below in Figure 6). The second largest reason was that NICS uncovered evidence demonstrating the elements of a misdemeanor crime of domestic violence after the close of the third business day. These findings further substantiate the need of the NICS for accurate and complete criminal history information. In the majority of firearm retrievals initiated during 2002, ATF agents

would not have had to divert their already limited time and resources, nor would they have had to place themselves in possibly volatile situations, had the needed information initially been readily available to the NICS.



#### FEDERAL PROHIBITORS

- #1 Convicted of/under indictment for a crime punishable by imprisonment for a term exceeding 1 year, whether or not sentence was imposed. This category includes misdemeanor offenses with a potential term of imprisonment in excess of 2 years, whether or not sentence was imposed.
- #2 Persons who are fugitives from justice, for example, the subject of an active felony or misdemeanor warrant.
- #3 An unlawful user and/or an addict of any controlled substance, for example, a person convicted for the use or possession of a controlled substance within the past year; or a person with multiple arrests for the use or possession of a controlled substance within the past 5 years with the most recent arrest occurring within the past year; or a person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.
- #4 Adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle his or her own affairs, including persons found not guilty by reason of insanity or found incompetent to stand trial.
- #5 An alien illegally/unlawfully in the United States or a non-immigrant who does not qualify for the exceptions under 18 USC 922 (y).
- #6 Dishonorable Discharge from the United States Armed Forces.
- #7 Persons who have renounced United States citizenship.
- #8 The subject of a protective order issued after a hearing of which the respondent had notice that restrains the person from harassing, stalking, or threatening an intimate partner or child of such partner. This category does not include Ex Parte orders.
- #9 Persons convicted in any court of a misdemeanor crime which has an element the use or attempted use of physical force or threatened use of a deadly weapon and the defendant was the spouse, former spouse, parent, guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited in the past with the victim as a spouse, parent, guardian, or a person who is similarly situated to a spouse, parent or guardian of the victim

**Figure 6**  
Reasons that the NICS Section Initiated Firearm Retrievals in 2002

## **PART 4: INCREASING THE NICS IMMEDIATE DETERMINATION RATE**

The NICS Section is continually striving to improve and enhance its performance to provide optimal service to the user community. To better execute the Brady Act's directive of supplying information "immediately" to FFLs as to whether the receipt of a firearm by a prospective transferee would be unlawful, the Attorney General, on June 28, 2001, directed the FBI to increase, to the fullest extent practicable, the percentage of NICS checks resulting in an immediate response of "proceed" or "denied" to FFLs. The NCIC Filtering system enhancement (discussed earlier in Section 2) implemented on October 30, 2001, effected an increase in the Immediate Proceed Rate from a historical 71 percent to 77 percent. After conducting further research and analysis, the NICS Section identified an additional solution to satisfy the Attorney General's directive. The NICS Section recommended the option now known as the Transfer Process and was directed by the Attorney General on February 13, 2002, to implement that process.

Prior to the development and implementation of the Transfer Process, the FFLs operating in a non-POC states, contacted the NICS Section through one of two contracted call centers located in Moundsville, West Virginia, and Uniontown, Pennsylvania. FFLs utilized a toll-free telephone number to provide to call center employees the information necessary to initiate a background check for a prospective firearm transferee. If the search of the NICS revealed any potentially matching records, the transaction was placed in a delay status, electronically forwarded to the NICS Section for further review and/or research. The call center would conclude the initiating call and the NICS Section would return a call to the FFL to complete the transaction. Several variables (e.g., staffing availability, seasonal increases in the influx of transactions, lengthy records review and research, availability of FFLs to receive return calls, etc.) determined the length of time a transaction might be delayed awaiting final status and notification to the FFL.

Currently, under the Transfer Process, all transactions delayed at either of the call centers are immediately transferred to the NICS Section for review and evaluation by a NICS Examiner. The NICS Examiner attempts to resolve the transaction and provide eligibility status while the FFL is still on the telephone. This process, in most instances, enables the NICS Section staff to provide an immediate response to the FFL without the need for subsequent return telephone calls, thereby increasing the Immediate Determination Rate as directed by the Attorney General. The implementation of the Transfer Process on July 23, 2002, as scheduled, resulted in an astounding increase in the NICS Immediate Determination Rate to 91 percent.<sup>10</sup> The NICS Section is therefore pleased to report that it has successfully satisfied the Attorney General's directive to increase the Immediate Determination Rate to 90 percent or better.

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<sup>10</sup> The NICS Section originally calculated that the Transfer Process resulted in an increase in the Immediate Determination Rate to 85 percent. After discovering and correcting a programming error, however, the actual rate was revealed to be 91 percent.

The transfer process has been successful because calls are immediately routed to persons with the authority to make determinations on transactions. Contracted call center personnel do not have access to and cannot receive any data relative to criminal history records, wanted persons, or any other protected information. In contrast, the NICS Examiners are authorized to access this information and have the expertise to analyze the information to determine whether a person is prohibited. Therefore, they can immediately determine the validity of the match that the NICS makes between the prospective firearm transferee and the criminal history record(s) in question, as well as assess whether any existing records prohibit the transfer of a firearm.

The Transfer Process was designed to both maintain the accuracy of the NICS determinations and preserve the security and confidentiality of the information in the databases accessed by the NICS staff. Since implementation, the Transfer Process consistently carried an average 91 percent Immediate Determination Rate, as compared to the NICS' historical 71 percent and more recently, 77 percent Immediate Proceed Rate as indicated in Figure 4 (see Page 8). The remaining transactions, comprising 9 percent of the transactions received by the call centers, were placed in a delay status to be worked by the NICS Section staff in the order received. Prior to NCIC filtering and the Transfer Process, the NICS call centers had a 24 to 29 percent delayed transaction rate. The current 9 percent delayed transaction rate accordingly reflects a remarkable improvement in NICS efficiency.



## **PART 5: ENFORCING THE NON-IMMIGRANT ALIEN PROHIBITION**

On September 11, 2001, foreign terrorists committed grave acts of terrorism against the United States. On September 23, 2001, President Bush found that the "continuing and immediate threat of further acts on the United States constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." To counter that threat, the Administration determined that it was necessary to immediately enhance enforcement of the general prohibition on non-immigrant aliens possession and receipt of firearms.

On February 13, 2002, the Attorney General announced several new directives, some of which have previously been discussed. One of these directives required the NICS Section to run an IAQ through the ICE for all non-citizen transactions. Up to this point, IAQs had been conducted only on delayed non-citizen transactions. The NICS Section immediately implemented a temporary process on February 19, 2002, to accommodate this directive until permanent alterations could be made to the NICS to automate the process. At the time, the NICS Section estimated that the automation of the IAQ process would take approximately one year.<sup>11</sup> The temporary process asked for the potential purchaser's citizenship information at the very onset of the transaction at the FBI NICS' call centers. If the purchaser was not a United States citizen, the transaction was immediately transferred to the NICS Section in Clarksburg, West Virginia, where the remaining processing protocol was completed. That protocol included conducting an IAQ.

The NICS POC states were required to meet the same February 19th implementation date for processing non-U.S citizen transactions within their states. Faced with a similar technology obstacles, revisions to all of our POCs' state systems could not be completed within the short deadline to accommodate an automated process. Therefore, many states had to implement their own work around process or worked in a combined effort with the NICS Section in order to comply.

Concurrent to the February 19, 2002, deadline, the ATF published an emergency change in its regulation. This regulation change required FFLs across the country to begin using a revised ATF Form 4473. The ATF Form 4473 was altered to capture newly required data elements. While other minor changes were made to the ATF Form 4473, the vast majority of changes were made to address the non-immigrant alien prohibition and its exceptions.<sup>12</sup> The changes implemented in connection with the February 19, 2002, deadline were:

- A requirement to indicate Country of Citizenship.

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<sup>11</sup> The IAQ Process was automated on July 23, 2002, as discussed in Part 2 of this report.

<sup>12</sup> For more information relating to the non-immigrant alien prohibition and its exceptions, contact the ATF Firearms Program Division at (202) 927-7770 or visit the ATF's website at [www.atf.treas.gov](http://www.atf.treas.gov).

- A requirement to provide an ICE-issued alien number or admission number for all non-U.S. citizens.
- Certification of the buyer as to whether he/she is a non-immigrant alien.
- If a non-immigrant alien, certification of the buyer that he/she does qualify under one of the statutory exceptions.
- A requirement for documentation validating such exception.

Additional information pertaining to the IAQ process can be found in Appendix E in a "Frequently Asked Questions" format.

## PART 6: THE NICS PROVIDES ADDITIONAL SERVICES TO USERS

### NICS Information Available on LEO

In 2000, the NICS Section identified the need to share more internal information with its counterparts, the POC and partial POC states. In addition to the existing avenues (annual POC Conference, POC newsletters, communications to state Control Terminal Officers [CTOs]), the NICS Section has added more information resources to its web site on LEO. Highlights include:



- NICS Articles of Interest (e.g., Operational Reports, General Accounting Office [GAO] Reports to Congress).
- Legal Opinions of the NICS Attorney-Advisor.
- Frequently Asked Questions.<sup>13</sup>
- Protection Order Reference Guide.
- State Definitions of Felonies and Misdemeanors.
- Federal Statutes.
- Proposed/Final Rules.
- POC Manual.

In addition, the NICS Section has established an e-mail address, [a\\_nics@leo.gov](mailto:a_nics@leo.gov), where NICS users can obtain prompt responses to questions and voice comments or concerns regarding NICS-related issues.

### The NICS Index

The NICS Index is one of three databases searched by the NICS during the background check process. The NICS Index was created solely for use by the NICS and contains records obtained from state and federal agencies about persons prohibited from receiving firearms under federal law. Authorized local and state law enforcement agencies may voluntarily contribute records to the NICS Index. All records in the NICS Index are disqualifying and will prohibit the sale of a firearm. The following list details the types of records contained within the NICS Index:

- Persons who are aliens and are illegally or unlawfully in the United States.
- Persons who have renounced their U.S. citizenship.
- Persons who have been adjudicated as a mental defective or have been committed to a mental institution.
- Persons who have been discharged from the armed forces under dishonorable conditions.
- Persons who are unlawful users of or addicted to any controlled substance.

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<sup>13</sup> Also available in Appendix C and E.

- Persons who are federally disqualified when a record is not already included in the NCIC or the III.<sup>14</sup>

In 2001, the NICS Section created a NICS Index Liaison position to facilitate the population and maintenance of records contained within the NICS Index. The number of records contained in the NICS Index as of December 31, 2002, is reported in Table 2.

TABLE 2  
Agencies Authorized to Submit to NICS Index Categories and Category Totals

	Controlled Substance Abuse	Mental Defective Commitment	Illegal/ Unlawful Alien	Dishonorable Discharge	Citizenship Renunciant	Denied Person File
<b>Department of Defense</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>7,387</b>	<b>0</b>	<b>0</b>
<b>ICE</b>	<b>0</b>	<b>0</b>	<b>2,671,876</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Department of State</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12,603</b>	<b>0</b>
<b>US Coast Guard (DOT)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>
<b>Department of Veterans Affairs</b>	<b>0</b>	<b>89,136</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>States</b>	<b>90</b>	<b>53,250</b>	<b>151</b>	<b>0</b>	<b>0</b>	<b>34,779</b>
<b>FBI</b>	<b>61</b>	<b>264</b>	<b>20</b>	<b>5</b>	<b>0</b>	<b>6,555</b>
<b>Total Active Records</b>	<b>151</b>	<b>142,651</b>	<b>2,672,047</b>	<b>7,405</b>	<b>12,603</b>	<b>41,334</b>
<b>Program To Date Totals</b>						<b>2,876,192</b>

The NICS Section hopes that in a coordinated effort with other law enforcement agencies, the NICS Index will help the NICS realize its full potential by providing a convenient repository for disqualifying records not accessible through the NCIC or the III. Questions regarding the

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<sup>14</sup> Examples include protection orders or active warrants that are not in the NCIC, persons who are under court order not to possess a firearm as a condition of deferred adjudication, felony record posted to the state record that is not reflected by the NCIC or the III, etc.

eligibility of records for inclusion in the NICS Index, should be directed to the NICS Index Liaison Analyst through the NICS Customer Service at 1-877-444-NICS.

### The NICS Disposition Retrieval Team (DRT)

The DRT was initially created as an internal resource for the NICS Examiners to assist them in retrieving missing disposition information. Since its implementation, the DRT has expanded its service to include assistance to external local and state law enforcement agencies as well. These services include:

- Review of disposition information/documentation to ensure validity, accuracy, and completeness before posting to the FBI's national database, the III.
- Analysis of domestic violence reports, appeal cases, and requests for firearm retrievals to determine whether IFFS flag should be updated or added.
- Liaison with various local, state, and federal agencies to gain clarification or additional information for court records such as dispositions, expungements, and restoration of rights.
- Facilitate updates to criminal history records both through the FBI's IAFIS and the state-held criminal history records repositories.
- Maintenance of a database in the NICS containing information related to individuals granted a relief of disabilities from the ATF.
- Assisting the states in obtaining the documentation needed to update/complete state records to reflect information within the national databases.

As discussed in Part 3, the value of complete criminal history information to the NICS is immeasurable. The DRT acts as a liaison between the NICS employees, the FBI's criminal history databases and external law enforcement agencies, and supports the effort to supply missing information discovered during the background check process. The DRT has been directly involved in posting over 300,000 final dispositions to criminal history records within the III. In addition, although statistics have not been tracked since the inception of the NICS, the DRT has facilitated the expungement of 2,284 arrest cycles since April 2001, uncovered over 150 ATF Reliefs of Disabilities since May 2001, and set over 473 IFFS status flags. Because the major obstacle to the "instant" NICS check is the fact that final disposition information is not always readily available, the importance of the work facilitated by the DRT cannot be overemphasized.

### Process Expedite

The NICS Section, in coordination with the National Association of Arms Shows, has worked to improve service to the FFLs conducting business at gun shows by identifying a method to assist the FFLs in the recovery of lost sales when extended system outages occur.

The NICS Section has designated Gun Show Liaisons and requests that gun show promoters pre-register an upcoming gun show event at least 1 week in advance. In the event of an extended system outage, the gun show promoter contacts the NICS Command Center to obtain a password that participating gun show FFLs can utilize for that business day only. When NICS resumes operations, the gun show FFLs can use the password to contact the NICS Customer Service directly to process any pending background checks. This system allows all processing to take place on the front-end of the check, which can increase the Immediate Determination Rate. This coordination is intended to minimize the loss of sales to the FFLs participating in gun shows when unplanned outages occur.

#### Fax-On-Demand

As part of the Facsimile Server upgrade discussed in Part 2, the NICS Section implemented a Fax-On-Demand service in November 2002. This service allows users of the NICS to call an automated system and request wanted and/or needed information relating to the NICS. This service will provide the selected information by faxing it back to the requestor without any human intervention. Some of the information available through this system includes the NICS Appeal Brochure and the FFL Enrollment Form. To take advantage of this service, contact 1-800-550-6427.

# Spotlight

## THE FBI NICS APPEAL SERVICES UNIT

To promote awareness and educate the NICS users on special services or particular points of interest, this report and future reports will incorporate a special section to highlight selected topics. In this report, the "Spotlight" focuses on the NICS Appeal Services Unit (ASU).

The NICS Section provides a valuable service by resolving or clarifying questions of eligibility for individuals who believe that they were wrongfully delayed or denied the transfer of a firearm due to information returned by the NICS in response to the background check process. As provided in the permanent provisions of the Brady Act and further outlined by the NICS Regulations, 28 CFR, Part 25.10, individuals may request the reason for their transaction determination by submitting a written request.

To specifically address these appeals and to provide service to those individuals requesting further review and consideration, the NICS Section created the NICS ASU.<sup>15</sup> The NICS ASU, through in-depth, factual research and investigation, obtains information on appealed NICS transactions, interprets and evaluates the data, and assists in facilitating the confirmation, correction, or update of criminal history information upon which the transaction's determination was based. The services provided by the NICS ASU are not limited to the transaction in question, but in most cases, they also provide long term benefits to the appellant by preventing future erroneous firearm denials based upon incomplete or inaccurate criminal history or other information.

Through experience, the NICS ASU has developed refined and effective methods to enhance its appeal process. For example, in 1998, five standard appeal response letters existed; currently there are 88. During the development of the NICS, it was anticipated that two FBI NICS employees could manage the workload associated with incoming appeal requests. Upon implementation, however, it became clear that the NICS Section had markedly underestimated the extent of missing disposition and/or complete criminal history information in the databases searched by the NICS. These factors significantly increased the projected level of anticipated appeals and the work that was required to research an average appeal.

From program inception through December 31, 2002, the NICS Section has received 41,309 appeal-related pieces of correspondence. This means that the ASU has received, on average, approximately 843 appeal cases per month.

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<sup>15</sup> For questions or general information relating to the NICS ASU, contact the NICS Customer Service at 1-877-444-6427 or by email at [nicsappeals@leo.gov](mailto:nicsappeals@leo.gov).

Originally, the NICS ASU employees processed every appeal from start to finish. However, NICS has streamlined the process through diversification and delegation. Specific functional teams were created within the NICS ASU to perform support duties, which eliminated many administrative tasks and ultimately provided more time for the NICS ASU staff to devote to the research and analysis of processing appeal cases. These support teams include:

- **File Team**—conducts an initial review of all incoming correspondence, creates a physical file for each appeal/review request implemented, officially places the applicable transaction in an appeal status, retrieves all historical information relating to the transaction from the NICS and conducts periodic and ongoing appeal file maintenance.
- **NICS Support Unit**—updates and posts to the FBI national database final disposition information obtained by the NICS personnel. As of December 31, 2002, the NICS had facilitated over 300,000 final dispositions updates, many of which were also supplied to the relevant state bureaus.
- **Disposition Retrieval Team**<sup>16</sup>—receives and clarifies documentation submitted for the purpose of explicating and/or updating criminal history record information. The team also captures and maintains, for future reference, documentation pertaining to record updates and resolutions that cannot otherwise be updated or posted to either the FBI national database or the applicable state-held databases.
- **Five-Day Response Group**—processes all initial correspondence and responses to ensure appellants receive their reason for denial within 5 business days, as mandated by NICS regulations. This group also facilitates all initial processing of fingerprint card submissions and subsequent correspondence.

The NICS Section also implemented a Firearm Retrieval Team (discussed in Part 3). The Team provides support to the NICS ASU by facilitating many of the tasks relating to firearm retrievals, including coordinating the efforts of the NICS Section, local law enforcement, and ATF.

When processing an appeal, NICS ASU personnel substantiate at least *one* valid prohibitor and conduct research on all other potentially prohibiting records before completing the appeal and responding to the appellant.

Ample research is conducted to substantiate one prohibiting record, and correspondence to the appellant includes notification of any and all other possibly prohibiting charges found. If, an appellant is able to clarify or remove a verified prohibition, additional research conducted at that time to determine the person's eligibility to receive a firearm.

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<sup>16</sup> For more details on the Disposition Retrieval Team, see Part 6 of this report.



Two of the best measures of the quality of NICS determinations is the number of appeals received and the number of decisions that were overturned during the appeal process. The NICS uses this information to improve its services. There are, however, factors that unfortunately are out of the NICS' control. As reflected in Table 3, a consistently small percentage of deny decisions result in an appeal. However, the number of denial decisions overturned increased during 2001 and again in 2002. By researching the origin of the increase, the NICS Section has determined that most denial overturns occurred because of inconsistencies on criminal history records. For example, the record upon which the prohibition was based was not updated to remove the appellant's disqualifier, or applicable post conviction relief was not posted or indicated within the available criminal history records. Other intervening factors include changes in applicable federal and/or state laws and changes in legal interpretations of existing laws.

TABLE 3  
Historical NICS Appeal Statistics

*(Based on NICS Section Statistics only)*

YEAR	# of Denials Issued	# of Appeals Received	% of Denials Resulting In An Appeal	% of Appeals (Denials) Overturned
2000	66,808	9,372	14%	21%
2001	64,500	9,336	14%	29%
2002	60,739	10,398	17%	31%

### Congressional Appeals

The NICS Section also implements and processes appeal inquiries that have been initiated through an appellant's congressional office. Often times, congressional offices inquire about eligibility status on behalf of their constituents or contact NICS when constituents become concerned over the amount of time taken to obtain resolution through the appeal process. As of December 31, 2002, the NICS Section has processed 454 congressional inquiries relating to appeals (see Table 4). On average, approximately 113 congressional appeal inquiries are received every year. However, the 2001 figures are substantially less, the biggest drop noted since the terrorist acts that occurred on September 11th when all congressional mail were quarantined because of the Anthrax threat (see Table 4). During the last quarter of 2001, only 8 congressional inquiries were received. Logically, it could be surmised that after the passage of time that the number of congressional appeal inquiries would increase; however, calendar year 2002 reported a record low of 55 appeal related congressional inquiries, thereby continuing the downward trend.

Since the inception of the NICS on November 30, 1998, the largest number of congressional inquiries was received in calendar year 1999. For each subsequent year, the NICS Section has noted a steady decrease in the number of congressional inquiries received for review. Consecutive decreases seem to correspond with revisions and enhancements to the appeal processing procedures (see Table 4). These decreases can, in part, be attributed to the ongoing efforts of the NICS Section to improve and refine the appeal processing procedures and guidelines to ensure that it renders accurate and timely transaction decisions at the appeal level.

TABLE 4  
Historical NICS Congressional Receipts

*(Based on NICS Section Statistics only)*

<b>YEAR</b>	<b>Number of Congressional Inquiries Received</b>	<b>Percentage of Total Congressional Inquiries Received</b>
1999	208	46%
2000	127	28%
2001	64	14%
2002	55	12%
Cumulative Totals	454	100%

## SUCCESS STORIES OF THE NICS

A background check on an individual, who was attempting to purchase a firearm in South Carolina, was delayed due to a match to a criminal history record reflecting two potentially disqualifying arrests for Assault & Battery and Domestic Violence. The criminal history record matched by the NICS did not reflect final disposition information for the arrests. Therefore, the NICS Examiner contacted the applicable law enforcement agencies and requested the disposition information. The needed information was not received within 3 business days and the firearm was transferred (as provided for in the Brady Act). On the fourth business day, additional information, which served to confirm a denial determination for the aforementioned transaction was obtained. Because the firearm had been transferred, the NICS Examiner notified local law enforcement and a firearm retrieval was initiated with the ATF. A few days later, the NICS Section was advised that the subject had been arrested recently by a narcotics task force, and the subject was armed at the time of arrest. The subject was charged with possession of narcotics and falsifying information to obtain a firearm.

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A man attempting to purchase a firearm in Alabama was matched to the subject of two active warrants. One of the warrants was for a probation violation by a local Sheriff's Office, and the other warrant was for a parole violation from the Alabama Department of Corrections. While validating the warrants, the NICS Examiner advised both agencies that the subject was attempting to purchase a firearm. Based on the information provided by the NICS Section, local law enforcement authorities were immediately dispatched to the FFL's place of business. The NICS Section was later advised that the subject had been apprehended that same day and was in custody.

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A man attempting to purchase a firearm in Texas was delayed due to a recent charge of Aggravated Kidnaping, Felony, first degree. The NICS Examiner contacted the applicable law enforcement agency and was advised that the charge had been dismissed but that the judge had committed the individual to a mental facility based on drug addiction, mental instability and severe depression. After receiving a hard copy of the applicable documentation, the transaction was denied. As a courtesy, the NICS Examiner called the judge involved in the case. The judge commented that the NICS Section had saved at least one life that day as the subject's wife had recently filed for divorce and the subject had made threats against her and himself.

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A NICS Examiner discovered that a man attempting to purchase a firearm at a gun show in Texas was wanted for Burglary. After validating the existing criminal warrant, the NICS Examiner provided the applicable law enforcement agency with the present location of the subject. The NICS Examiner later learned that an off-duty SWAT team officer was at the gun show and kept the subject under surveillance until law enforcement officers arrived to place him under arrest.

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A NICS check on a woman attempting to purchase a firearm in Idaho was delayed based on a record match for an arrest for Domestic Battery. A NICS Examiner contacted the appropriate law enforcement agency and obtained a copy of the police report. The police report confirmed that the incident involved the subject's husband and the associated court confirmed a conviction. Additionally, the NICS Examiner discovered that there was an outstanding active warrant on this subject for domestic violence. The NICS Examiner contacted the FFL to deny the sale and obtain the subject's address. The NICS Examiner provided the information to the local police department, the NICS Section received word that the subject had been apprehended within 11 minutes after their receipt of the subject's address.

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A man attempting to purchase a firearm in Texas was the subject of two active warrants. After validating the warrants, the NICS Examiner provided the subject's location to the appropriate law enforcement authorities. Law enforcement officials were immediately dispatched to the FFL's place of business to apprehend the subject while he was still in the store. However, the FFL had a scanner in his store and the subject heard the dispatcher's call and fled the scene. Fortunately, the subject was apprehended a few blocks away.

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A NICS Examiner confirmed three active warrants on a subject who was attempting to purchase a firearm in Alabama. The subject was wanted on charges of Assault and was under indictment in an adjacent county. The individual was still in the store when the NICS Examiner contacted the FFL to deny the transaction. The NICS Examiner contacted the local authorities who immediately dispatched law enforcement officials to the FFL's place of business. The officers apprehended the subject who was transported to the county line and turned over to the appropriate authorities.

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A man who was wanted for Aggravated Assault by Pennsylvania authorities was attempting to purchase a firearm at a major retail chain corporation in North Carolina. The NICS Examiner confirmed that the warrant was still active and then contacted the FFL to deny the transaction and obtain the subject's address. The NICS Examiner notified both the Pennsylvania and North Carolina authorities and provided the subject's address. The subject was subsequently arrested and held for extradition to Pennsylvania.

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A man wanted for Burglary in California was attempting to purchase a firearm in Minnesota. The NICS Examiner verified the active warrant and contacted the FFL to deny the sale and obtain the subject's address. The NICS Examiner provided the address to law enforcement. The following day, the NICS Section was notified by California authorities that the subject had been apprehended along with his wife who was also wanted for Burglary.

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A Georgia resident was attempting to purchase a firearm at a pawn shop in Mississippi. The individual was delayed based on a name search and record match to the subject of an active warrant for Insufficient Funds. The NICS Examiner contacted the local sheriff's office in Georgia to validate that the warrant was active, and was advised that there were actually three active warrants outstanding for this individual and that they would extradite. The NICS Examiner provided the sheriff's office with the contact information for the FFL and local law enforcement agencies in Mississippi. When the NICS Examiner contacted the FFL to deny the transaction, the Examiner was advised that the subject had already been apprehended by law enforcement.

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An individual in North Dakota, who had been arrested for Murder but had been found not guilty, attempted to purchase a firearm. The NICS Examiner contacted the court to see if the adjudication resulted in probation or treatment that might prohibit the possession of a firearm. The court indicated that the individual was found not guilty for lack of criminal responsibility. Based on the information surrounding the adjudication, the court clerk was advised by the judge that this individual may be prohibited pursuant to the state's mental health laws. The NICS Examiner was advised that the subject was ordered to receive 5 years of treatment with periodic reports to the court by treating physicians and placed under continuing supervision by the court. The individual was adjudicated as incompetent. Based on this information, the NICS Examiner denied the transfer pursuant to established federally prohibitive criteria pertaining to adjudication as a mental defective.

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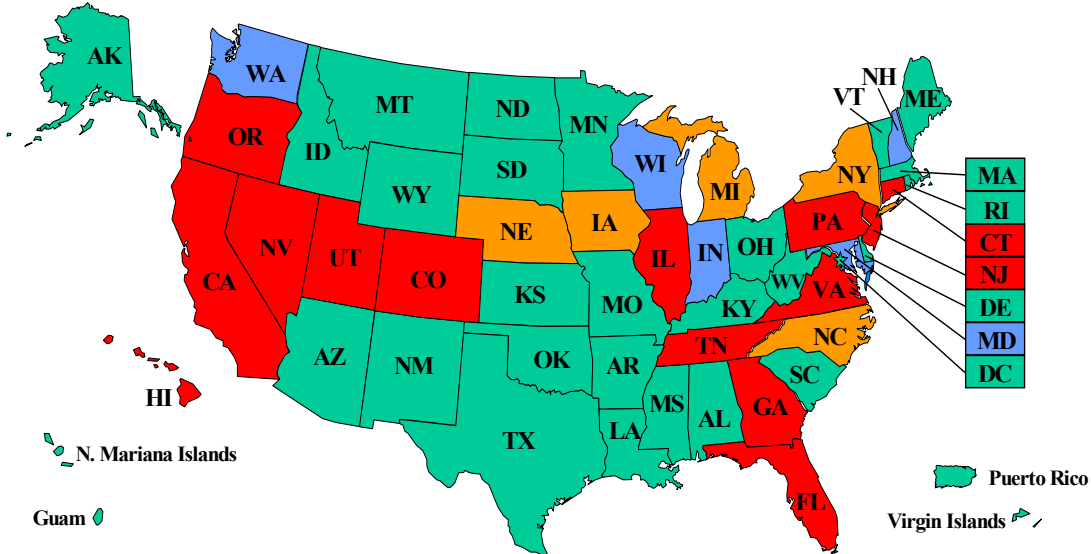
An individual, wanted for desertion from the U.S. Army, was attempting to purchase a firearm. The NICS Examiner confirmed from military officials that the warrant was still outstanding and that the military wanted to pursue extradition. The NICS Examiner contacted a local law enforcement agency in the vicinity of the FFL's place of business informed them of the location of the subject. An officer with the local law enforcement agency later informed the NICS Examiner that the subject was taken into custody to await extradition via the military authorities.

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## APPENDIX A



# NICS PARTICIPATION MAP



- **14** Contact State/Territory for ALL Firearm Background Checks
- **5** Contact State for Handgun Permits & FBI for Long Gun Background Checks
- **5** Contact State for Handgun & FBI for Long Gun Background Checks
- **31** Contact FBI for ALL Firearm Background Checks

## **APPENDIX B**

### **COMMONLY ASKED QUESTIONS ABOUT THE NICS E-CHECK**

#### **What is the FBI NICS E-Check?**

The FBI NICS E-Check allows authorized users to access the NICS via the Internet through a secure gateway. The FFL will be able to perform searches and retrievals on NICS transactions.

#### **Who can use the FBI NICS E-Check?**

Any FFL who normally contacts the NICS by telephone for firearm transactions may use the FBI NICS E-Check. Each employee of the FFL that utilizes the FBI NICS E-Check will have to register with the FBI NICS E-Check to obtain access. This system can only be used for firearm transactions in accordance with the Brady Act and NICS regulations.

#### **What is required by an FFL to use the FBI NICS E-Check?**

In order to use the FBI NICS E-Check, each FFL must have a personal computer (PC) and software that will allow the FFL and their employees to connect to the Word Wide Web using a browser with 128-bit encryption that the FBI NICS E-Check will support. In addition, they must go through the registration process to enable them to use the FBI NICS E-Check.

#### **How does an FFL register with the FBI NICS E-Check?**

In order to register with the FBI NICS E-Check, the FFL/User must submit a completed FBI NICS/NICS E-Check enrollment form. The FFL/User must then go online to [www.nicsezcheckfbi.gov](http://www.nicsezcheckfbi.gov) and apply for a digital certificate. When the request is approved, the FFL/user will be directed to a web site to download their digital certificate.

#### **Who does the FFL contact if help is needed?**

The NICS Section is available to serve various NICS-related needs of the FFLs. The NICS Section is available to receive telephone calls regarding FBI NICS E-Check questions from 8 a.m. to 1 a.m. ET, 7 days a week, with the exception of Christmas Day.

#### **Can an FFL still use the NICS Call Center after using the FBI NICS E-Check?**

**Yes.** FFLs using the FBI NICS E-Check will also be able to access the NICS Section via the NICS Call Centers to conduct firearm background checks. The FFLs will be able to retrieve responses from both the FBI NICS E-Check and the NICS Section, regardless of the origin of the transaction.

## APPENDIX C

### Federal Prohibitors

*Persons who are:*

- # 1 Convicted of/under indictment for a crime punishable by imprisonment for a term exceeding one year, whether or not sentence was imposed. This includes misdemeanor offenses with a potential term of imprisonment in excess of 2 years, whether or not sentence was imposed.
- # 2 Fugitives from justice, for example, the subject of an active felony or misdemeanor warrant.
- # 3 An unlawful user and/or an addict of any controlled substance, for example, a person convicted for the use or possession of a controlled substance within the past year; or a person with multiple arrests for the use or possession of a controlled substance within the past 5 years with the most recent arrest occurring within the past year; or a person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.
- # 4 Adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle his or her own affairs, including dispositions to criminal charges of found not guilty by reason of insanity or found incompetent to stand trial.
- # 5 An alien illegally/unlawfully in the United States or a non-immigrant who does not qualify for the exceptions under 18 USC 922 (y); for example not having possession of a valid hunting license.
- # 6 Dishonorable Discharge from the United States Armed Forces.
- # 7 A renouncer of United States citizenship.
- # 8 The subject of a protective order issued after a hearing of which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such partner. This does not include Ex Parte orders.
- # 9 Convicted in any court of a misdemeanor crime which has an element of the use or attempted use of physical force or threatened use of a deadly weapon and the defendant was the spouse, former spouse, parent, guardian of the victim, by a person with whom the victim shares a child in common, or by a person who is cohabiting with or has cohabited in the past with the victim as a spouse, parent, guardian or similar situation to a spouse, parent, or guardian of the victim.



## **APPENDIX D**

### **FREQUENTLY ASKED QUESTIONS REGARDING THE ATTORNEY GENERAL'S DIRECTIVE ON ALIENS AND NICS CHECKS**

**Are the POCs required to comply with the Attorney General's Directive that all aliens attempting to purchase firearms from an FFL must have an Immigration Alien Query (IAQ) performed as part of a NICS check?**

Yes. The Directive applies to both the FBI NICS Program and the POCs.

**What Purpose Code must be used to initiate an IAQ for a NICS check?**

Purpose Code F must be used; the use of any other Purpose Code in conjunction with a firearms check is not authorized and would be considered misuse. Please contact the NICS Section if you are experiencing any difficulties in utilizing Purpose Code F.

**Do the FBI and the POCs have to perform IAQs on non-immigrant aliens who qualify for an exception in 18 U.S.C. 922 (y), e.g., possession of a hunting license or permit lawfully issued in the United States?**

Yes. All aliens, including non-immigrant aliens, must be lawfully and legally in the United States in order to possess/purchase/acquire a firearm from an FFL. The IAQ is the only method to prove lawful status of an alien, including non-immigrants. Meeting an exception such as possession of a hunting license does not exempt the non-immigrant from the other requirements of the Gun Control Act.

**What other requirements must an alien (including a non-immigrant alien) meet to be a lawful purchaser?**

All aliens, including permanent resident aliens, must provide proof of 90 days' residency in a state as well as a Bureau of Immigration and Customs Enforcement (ICE)-issued number. IAQs must be conducted on permanent resident aliens to verify whether they are in legal lawful status.

**Must a POC provide denials based upon 18 USC 922 (g)(5), illegal or unlawful alien or non-immigrant who does not meet an exception in Section 922 (y)(2), to either the ATF or the FBI?**

Yes. Even if a POC is not presently providing denials to the FBI or the ATF based on other Gun Control Act prohibitions, the POC MUST provide alien denials to either the ATF or the NICS Section. The ATF will forward these denials to the ICE.

**What if FFLs in a POC state initiate NICS checks through a point-of-sale device which isn't programmed to accept the information on the new ATF Form 4473?**

The POCs must obtain the citizenship/non-citizenship information on all purchasers. If the point-of-sale devices cannot provide that information to the POCs, a POC must provide FFLs with an alternative method to supply the information, e.g. by telephone or facsimile. There are no exceptions to this requirement.

**Can the FBI or a POC conduct a NICS check without an ICE-issued number for a Canadian citizen who does not have an Alien Registration (AR)?**

No. Canadian citizens do not typically have to obtain a visa prior to entering the United States. Canada participates in the Visa Waiver Program. Consequently, Canadian non-immigrants/aliens do not typically have an ICE-issued number. However, in order to comply with the requirements of the Gun Control Act, a Canadian must return to either the Mexican or Canadian border and obtain an ICE-issued number prior to attempting to purchase a firearm in the United States. The FBI and POCs must perform IAQs on Canadians with that number. Canadians must provide 90-days' proof of residency as well. If a Canadian alien obtains an ICE-issued number, the ICE will record the date of issuance as his/her entry date. The ATF has informed the FBI, however, that 90-days' proof of residency which precedes that entry date is acceptable for Canadians. For all other non-citizens, the authorized length of stay which the IAQ reflects must be long enough to include the 90-day period of claimed state residency.

**What if the purchaser claims United States citizenship and yet there is a match to a NICS Index record indicating unlawful/illegal status? This an automatic deny under typical circumstances. Is an IAQ necessary?**

Yes. An IAQ must be conducted and if the match is good, the transaction must be denied under 18 USC 922 (g)(5). This denial should be provided to the ATF. If the IAQ response shows that the alien has since obtained legal status, please notify the FBI and provide a copy of the IAQ response. This will enable the FBI to correct the NICS Index. If the match is good, the transaction should be denied even though the alien is in legal status because the alien did not provide a ICE issued number or 90 days proof of residency and did not claim qualification for a non-immigrant exception (if applicable). In addition, the purchaser has falsified the Form 4473 by claiming United States citizenship. If the IAQ shows the individual has since become a United States citizen, proceed the transaction.

**Does a non-immigrant who is a member of a foreign military automatically qualify for one of the exceptions in Section 922 (y)(2), e.g. an official representative of a foreign government or a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business?**

No. Non-immigrant members of a foreign military do not qualify for the exceptions based upon military status. Only the Department of State can verify whether an individual qualifies for an exception (other than the hunting license exception). The FBI and the POCs should conduct an IAQ and contact the Department of State as well.

## APPENDIX E

### ACRONYM LIST

AR	Alien Registration
ASU	Appeal Services Unit
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CFR	Code of Federal Regulations
CTO	Control Terminal Officer
DA	District Attorney
DOD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
DOT	Department of Transportation
DRT	Disposition Retrieval Team
DUI	Driving Under the Influence
DVA	Department of Veterans Administration
EST	Eastern Standard Time
FBI	Federal Bureau of Investigation
FFL	Federal Firearm Licensee
FIFS	Felon Identification in Firearms Sales
GAO	General Accounting Office
GUI	Graphical User Interface
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
ICE	Bureau of Immigration and Customs Enforcement
IFFS	Identification For Firearms Sales
III	Interstate Identification Index
IP	Immediate Proceed
ITN	Identification Tasking Network
LEO	Law Enforcement On-Line
NCHIP	National Criminal History Improvement Program
NCIC	National Crime Information Center
NLETS	National Law Enforcement Telecommunications System
NIC	NCIC Number
NICS	National Instant Criminal Background Check System
NPRM	Notice of Proposed Rule Making
NRI	NCIC Record Identifier
NTN	NICS Transaction Number
PC	Personal Computer
POC	Point Of Contact
SAIC	Science Applications International Corporation
SID	State Identification Bureau

SRI  
SWAT  
TRP  
U.S.

State Record Identifier  
Special Weapons and Tactical  
Technical Refreshment Plan  
United States