

**CRIMINAL JUSTICE
AND
PUBLIC SAFETY
COMMITTEE
HB 1220**

JANUARY 26, 2012

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number (If any)

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name		
Last Name	First Name	Middle Name (If no middle name, state "NMN")

2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)				
Number and Street Address	City	County	State	ZIP Code

3. Place of Birth	-OR-	4. Height	5. Weight	6. Gender	7. Birth Date
U.S. City and State	Foreign Country	Ft. _____ In. _____	(Lbs.)	Male <input type="checkbox"/> Female <input type="checkbox"/>	Month _____ Day _____ Year _____

8. Social Security Number (Optional, but will help prevent misidentification)	9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)
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10. Race (Ethnicity) (Check one or more boxes. See Instructions for Question 10.)

<input type="checkbox"/> American Indian or Alaska Native	<input type="checkbox"/> Black or African American	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> White

11. Answer questions 11.a. (see exceptions) through 11.l. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.		
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony , or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
c. Have you ever been convicted in any court of a felony , or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
d. Are you a fugitive from justice?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
j. Have you ever renounced your United States citizenship?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
k. Are you an alien illegally in the United States?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
l. Are you a nonimmigrant alien? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12. If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20d.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

13. What is your State of residence (if any)? (See Instructions for Question 13.)	14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?
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NICS

What Prohibits an Individual From the Transfer or Possession of a Firearm?

A deny message from the NICS indicates either you or another individual with a similar name and/or similar descriptive features has been matched with either **federally** prohibitive criteria (listed below) or state prohibitive criteria.

Section 922(g) and (n) of the Gun Control Act prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. **These prohibitions apply to any person who:**

18, U.S.C. §922 (g) (1)

Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year

18, U.S.C. §922 (g) (2)

Is a fugitive from justice

18, U.S.C. §922 (g) (3)

Is an unlawful user of or addicted to any controlled substance

18, U.S.C. §922 (g) (4)

Has been adjudicated as a mental defective or committed to a mental institution

18, U.S.C. §922 (g) (5)

Is illegally or unlawfully in the United States

18, U.S.C. §922 (g) (6)

Has been discharged from the Armed Forces under dishonorable conditions

18, U.S.C. §922 (g) (7)

Having been a citizen of the United States, has renounced U.S. citizenship

18, U.S.C. §922 (g) (8)

Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner

18, U.S.C. §922 (g) (9)

Has been convicted in any court of a misdemeanor crime of domestic violence

18, U.S.C. §922 (n)

Is under indictment for a crime punishable by imprisonment for a term exceeding one year

Please reference Volume 62, Federal Register 34634-02; June 27, 1997, Rules and Regulations, for more complete definitions of the prohibiting categories.

Note: If denied, your name will be included in a file accessible by law enforcement.

NICS Information:

NICS Customer Service
1-877-FBI-NICS (324-6427)

NICS Appeal Facsimile
1-304-625-0535

Telecommunications Device
for the Deaf (TDD)
1-877-NICS-TTY

NICS Appeal Web Site
<http://www.fbi.gov/nics-appeals>

August 2011



NICS

Guide for Appealing a Firearm Transfer DENIAL



Your Rights and Responsibilities

NTN:

If you believe you have been **erroneously denied** a firearm transfer based on a match to a record returned by the National Instant Criminal Background Check System (NICS), you may request an appeal of your deny decision. **Please be advised the agency which processed your NICS transaction is required to have an appeal process.** You may make application first to the *denying agency*, i.e., either the state or local law enforcement agency which processed your transaction. As an alternative to appealing directly through the denying agency, you may elect to submit your appeal request to the FBI NICS Section. The provisions for appeals are outlined in the NICS Regulations at Title 28, Code of Federal Regulations, Part 25.10, and Subsection 103 (f) and (g) and Section 104 of the Brady Handgun Violence Prevention Act of 1993.

Requesting an Appeal

You may request the reason for your denial from the FBI by writing to:

**Federal Bureau of Investigation
Criminal Justice Information Services Division
NICS Section
Appeal Services Team, Module A-1
Post Office Box 4278
Clarksburg, WV 26302-4278**

You must include the **required information (listed below)** along with your appeal request:

- (1) FULL NAME
- (2) COMPLETE MAILING ADDRESS
- (3) NICS TRANSACTION NUMBER (NTN) or STATE TRANSACTION NUMBER (STN)

You may also request the reason for your denial through the NICS Section's Appeal Web site or via the NICS Section's Appeal facsimile listed on the back of this brochure.

Failure to submit all required appeal information may result in the rejection of your appeal request.

When appealing through the FBI NICS Section, it is highly recommended that a fingerprint card be included along with your initial appeal request.

The submission of your (rolled or a hard copy of your electronically scanned) fingerprints may help accelerate the appeal process. **NOTE: Appeal Fingerprint Cards are not accepted via facsimile.**

The NICS Section's Appeal Services Team (AST) will respond to your initial appeal request by providing you with the general reason for denial within five business days of the receipt of your inquiry.

Appealing your Denial

The following information outlines the steps you must take to either challenge your record or make a claim the record used as the basis for your **denial** does not pertain to you.

Questions of Identity

In cases involving criminal history records, if fingerprints are not submitted along with your initial appeal request, you may subsequently be **required to submit your fingerprints to establish positive proof of your identity.** If your fingerprints are required by the FBI NICS Section and you wish to further the appeal process, you must have your fingerprint impressions rolled or electronically scanned by law enforcement or another authorized fingerprinting agency. The agency preparing your fingerprints must provide an agency name, address, telephone number, and an Originating Agency Identification number (as assigned by the FBI) and the legible signature of the person who rolled your fingerprints on the fingerprint card. The reason fingerprints should be marked "For NICS Purposes." The omission of any required information (as listed above) may result in a rejection of your fingerprint card.

NOTE: Specific appeal information can **only** be provided to you once positive proof of identity has been established via the submission of your fingerprints.

Record Challenges

You may challenge the accuracy of the record used in the evaluation of your denial or declare your rights to obtain a firearm have been restored, etc. If you have additional information (e.g., court documentation) to assist the AST in correcting or updating the record, you should include the information with your written correspondence.

If the AST is unable to resolve your appeal, you will be provided referral information to contact the agency maintaining the record on which your denial was based. For correction of the record, you must follow procedures established by the state or federal agency maintaining the original record. You may submit any information to the originating agency to assist with the correction or update of your record. **(This may also help accelerate the appeal process for you.)** If the originating agency corrects your record, the AST must be notified and provided documentation indicating such. The AST will evaluate and verify the information and provide you with a decision on your appeal in writing.

Appeal Inquiry

All appeal inquiries to the FBI must be directed to the **AST in writing.** Due to the Privacy Act of 1974, specific information cannot be disseminated to you via the telephone.

Successful Appeal

If your appeal is successful, you will be notified by the AST, via U.S. mail, that your denial has been overturned and you currently have no firearm prohibitions. You will be issued documentation which **must** be presented to the Federal Firearms Licensee who initiated your background check.



A deny message from the NICS indicates the subject of the background check has been matched with a similar name and/or similar descriptive features located on a criminal history record with the following federally prohibitive criteria or state law:

- 18, U.S.C. §922 (g)(1)**
Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
- 18, U.S.C. §922 (n)**
Is under indictment for a crime punishable by imprisonment for a term exceeding one year
- 18, U.S.C. §922 (g)(2)**
Is a fugitive from justice
- 18, U.S.C. §922 (g)(3)**
Is an unlawful user of or addicted to any controlled substance
- 18, U.S.C. §922 (g)(4)**
Has been adjudicated as a mental defective or committed to a mental institution
- 18, U.S.C. §922 (g)(5)**
Illegally or unlawfully in the United States
- 18, U.S.C. §922 (g)(6)**
Has been discharged from the Armed Forces under dishonorable conditions
- 18, U.S.C. §922 (g)(7)**
Having been a citizen of the United States, has renounced U.S. citizenship
- 18, U.S.C. §922 (g)(8)**
Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner
- 18, U.S.C. §922 (g)(9)**
Has been convicted in any court of a misdemeanor crime of domestic violence

Please reference the Federal Register, Volume 62, Number 124, Rules and Regulations for more complete definitions of the prohibiting categories.

NICS SECTION INFORMATION

NICS Customer Service
1-877-FBI-NICS (324-6427)

NICS Section Facsimile
1-888-550-6427

NICS Appeal Facsimile
1-304-625-0535

Telecommunications Device for the Deaf (TDD)
1-877-NICS-TTY

NICS Website
www.fbi.gov/nics

NICS E-mail Address
a_nics@leo.gov

NICS Appeal Website
www.fbi.gov/nics-appeals

National Instant Criminal Background Check System (NICS)



December 2011

BRADY HANDGUN VIOLENCE PREVENTION ACT OF 1993

On November 30, 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law. The Brady Act required the United States Attorney General to establish a National Instant Criminal Background Check System (NICS) for Federal Firearms Licensees (FFLs) to contact for information to be supplied immediately as to whether the transfer of a firearm would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.) or state law. Through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Department of Justice; and state and local law enforcement agencies, the FBI developed the NICS which was implemented on November 30, 1998.

ACCESS TO THE NICS

Access to the NICS is restricted to the following three circumstances:

- ❖ An FFL can initiate a background check only in connection with a proposed firearm transfer as required by the Brady Act and pursuant to 18, U.S.C., § 922(i)(1).

- ❖ Pursuant to Title 28, Code of Federal Regulations (C.F.R.), Section 25.6(j)(1), to provide information to local, state, or federal criminal justice agencies only in connection with the issuance of a firearm-related or an explosives-related permit or license.

- ❖ Title 28 C.F.R. §25.6(j)(2) permits the NICS to respond to inquiries by the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act of 1968 or the National Firearms Act.

HOW THE NICS WORKS

All states have the option to implement a state-based NICS program. Such states serve as a point of contact (POC) between the NICS and the state's FFLs. The FFLs conducting business in these POC states contact a state-designated agency to initiate all background checks.

The FFLs conducting business in the states that do not operate in a POC capacity, otherwise known as Non-POC states, contact the FBI Criminal Justice Information Services Division's NICS Section to initiate background checks. Also, several states share responsibility with the FBI for processing background checks for the state's FFLs. These Partial-POC states process the FFL's handgun checks while the FBI processes the FFL's long gun checks.

When an FFL initiates a NICS background check, a name search is conducted for matching records in three national databases. These databases are the National Crime Information Center (NCIC) which contains information on wanted persons and protection orders; the Interstate Identification Index (III) which contains criminal history records; and the NICS Index which contains the names of prohibited persons as defined in the Gun Control Act of 1968. The NICS Index includes individuals who have been determined to be federally prohibited from possessing a firearm and the disqualifying information may not be available through the NCIC or III systems.

Also, a search of the applicable databases of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) is conducted on all non-U.S. citizens.

The majority of NICS checks are determined within seconds to minutes after the background check search is initiated. If the NICS does not match any records in the databases searched, the transaction is proceeded. However, if the search yields a valid match to prohibiting information, the transaction is denied.

If the search is matched to any potentially prohibiting records, the NICS Section must reach out to judicial and/or law enforcement agencies for the information needed to render a final decision. The Brady Act allows three business days for this purpose. If the information is not obtained within the three-business-day time frame and a final decision of proceed or deny is not made, the FFL has the option to legally transfer the firearm.

PRIVACY AND SECURITY

The data stored in the NICS is documented federal information. Access to this information is restricted to agencies authorized by the FBI. Extensive measures are taken by the FBI to ensure the security and integrity of the NICS information and agency use. The information specific to background checks that result in an allowed transaction is destroyed in accordance with existing federal law. Further information pertaining to privacy and security of the NICS is located via the NICS website.

TITLE I--BRADY HANDGUN CONTROL

SEC. 101. SHORT TITLE. This title may be cited as the ‘Brady Handgun Violence Prevention Act’.

SEC. 102. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NON-LICENSEE.

(a) INTERIM PROVISION- (1) IN GENERAL- [Section 922 of title 18, United States Code](#), is amended by adding at the end the following: (s)(1). . .

SEC. 103. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

. . . (e) ADMINISTRATIVE PROVISIONS-

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION-

Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of [section 922 of title 18, United States Code](#) or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

. .

(f) WRITTEN REASONS PROVIDED ON REQUEST- If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION- If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of [section 922 of title 18, United States Code](#) or State law, **the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor.** Upon receipt of such a request, the Attorney General shall immediately comply with the request. **The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee.** After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

. . .(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS- No department, agency, officer, or

employee of the United States may—

- (1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or
- (2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm. . .

SEC. 104. REMEDY FOR ERRONEOUS DENIAL OF FIREARM.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

‘Sec. 925A. Remedy for erroneous denial of firearm

‘Any person denied a firearm pursuant to subsection (s) or (t) of section 922--

‘(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

‘(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922, may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.’

SEC. 105. RULE OF CONSTRUCTION.

This Act and the amendments made by this Act shall not be construed to alter or impair any right or remedy under [section 552a of title 5, United States Code](#).
<http://www.law.cornell.edu/uscode/5/552a.html> “Records Maintained on Individuals”

§ 25.10

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NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

(4) *Creation and Use of Individual FFL Audit Logs.* Upon written request from ATF containing the name and license number of the FFL and the proposed date of inspection of the named FFL by ATF, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on denied transactions, and, with respect to all other transactions, only non-identifying information from the transaction. In no instance shall an Individual FFL Audit Log contain more than 60 days worth of allowed or open transaction records originating at the FFL. The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such Logs to ATF.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part

of a record system created and maintained pursuant to independent state law regarding firearms transactions.

[Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2354-2001, 66 FR 6474, Jan. 22, 2001; Order No. 2727-2004, 69 FR 43900, July 23, 2004]

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the "denying agency," which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.)

(b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (i.e., a claim that the record in question does not pertain to the individual who was denied).

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the denying agency, which will, in turn, verify the record correction

Department of Justice

§25.11

with the originating agency (assuming the originating agency has not already notified the denying agency of the correction) and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C-3, Clarksburg, West Virginia 26306-0147. Upon receipt of the information, the FBI will investigate the matter by contacting the POC that denied the transaction or the data source. The FBI will request the POC or the data source to verify that the record in question pertains to the individual who was denied, or to verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any state that was the source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS and the denying agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. If the appeal of a contested record is successful and thirty (30) days or less have transpired since the initial check, and there are no other disqualifying records upon which the denial was based, the NICS will communicate a "Proceed" response to the FFL. If the appeal is successful and more than thirty (30) days have transpired since the initial check, the FFL must recheck the NICS before allowing the sale to continue. In cases where multiple disqualifying records are the basis for the denial, the individual must pursue a correction for each record.

(f) An individual may also contest the accuracy or validity of a disquali-

fyng record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved.

(g) An individual may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing the future erroneous denial or extended delay by the NICS of a firearm transfer. Such file shall be used only by the NICS for this purpose. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by that individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system. If the FBI finds a disqualifying record on the individual after his or her entry into the Voluntary Appeal File, the FBI may remove the individual's information from the file.

[Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, as amended by Order No. 2727-2004, 69 FR 43901, July 23, 2004]

§25.11 Prohibited activities and penalties.

(a) State or local agencies, FFLs, or individuals violating this subpart A shall be subject to a fine not to exceed \$10,000 and subject to cancellation of NICS inquiry privileges.

(b) Misuse or unauthorized access includes, but is not limited to, the following:

(1) State or local agencies', FFLs', or individuals' purposefully furnishing incorrect information to the system to obtain a "Proceed" response, thereby allowing a firearm transfer;

(2) State or local agencies', FFLs', or individuals' purposefully using the system to perform a check for unauthorized purposes; and

(3) Any unauthorized person's accessing the NICS.



Forms

[Get FBI Update](#)

Home - NICS Appeal Request Form

I wish to request the reason for my denial.

Complete Name:

First	Middle	Last	Cadence
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

State of Purchase:

▼

NICS Transaction Number (NTN) or State Transaction Number (STN)

Please provide all NTN's and/or STN's for all NICS background checks you wish to appeal

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>				

Complete Mailing Address:

Address Line 1

Address Line 2

City

State ▼ Zip

Telephone Number:

E-Mail Address:

Appellant Questions/Concerns:

2000 characters remaining

Upload File Attachments:

If you have additional information (e.g., court documentation) to assist in processing your application, you may submit it by attaching below.

Attachment 1 Browse...

Attachment 2 Browse...

Attachment 3 Browse...

Attachment 4 Browse...

Please e-mail any additional attachments to a_nics@leo.gov along with your complete name, address, and NTN or STN.

submit reset

Please Click the Submit Button "Only Once".

[Read our Privacy Policy.](#)

NICS Appeal Request Form

I wish to know the reason for my denial.

[Privacy Policy](#)

(*) - Denotes required fields

Date of application:

Complete Name:

*First

Middle

*Last

Cadence

*State of Purchase

NICS Transaction Number ([NTN](#)) or State Transaction Number ([STN](#))

Please provide all [NTNs](#) and/or [STNs](#) for all NICS background checks you wish to appeal.

* <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Complete Mailing Address:

*Address Line 1

Address Line 2

*City

*State

*Zip

Telephone Number:

(No spaces, please)

E-mail:

Appellant Questions/Concerns:



NICS Resolution Card

The FBI Criminal Justice Information Services (CJIS) Division's, National Instant Criminal Background Check System (NICS) Section is pleased to announce a newly developed tool for firearm dealers and their customers. The NICS Section has noticed an increased propensity for a denied or delayed customer to be unsure about the best avenue to pursue when receiving a delayed or deny response from their NICS background check. So in reply, the attached NICS Resolution Card has been created. The purpose of this card is two-fold: 1) to define the most appropriate action for the customer to pursue; and 2) to educate and encourage customers to utilize the NICS website. Customers who initiate their inquiry through the NICS website will experience an improved user-friendly, streamlined process.

Firearm Dealers: We are recommending the following practice be employed when utilizing the cards.

If a prospective transferee has been *denied* the transfer of a firearm, the FFL should give the individual a NICS Resolution Card; **circle** the word "Deny?" on the top of the card and **provide the individual with the NICS transaction number (NTN)**. The FFL should write the NTN on the line provided on the bottom of the card. The Deny side of the card provides the customer with information on how to appeal this decision on-line or how to call customer service to request an appeal packet.

If a prospective transferee gets extended and/or experiences continuous delays, the FFL may provide a NICS Resolution Card highlighting the Voluntary Appeal File (VAF) option. The FFL should **circle** the word "Delayed?" on the top of the card and **provide the individual with the NTN**. The FFL should write the NTN on the line provided on the bottom of the card. The Delay side of the card provides the customer with information on how to download a VAF application online or how to call customer service for a VAF packet.

Both options can be found at www.fbi.gov/nics-appeals. For customers with no internet access, the NICS Resolution Card also provides the NICS Customer Service number of 1-877-FBI-NICS (324-6427) where a request can be initiated to have an appeal or VAF packet mailed directly to them.

To receive a shipment of the NICS Resolution Cards, please contact the FFL NICS Liaison Specialist at (304) 625-7387.



DENY?



The National Instant Criminal Background Check System (NICS) is a descriptor-based name search. If you believe you have been **erroneously denied** a firearm transfer based on a match to a record returned by the NICS, you may submit an appeal of your deny decision.

The agency which processed your NICS transaction is required to have an appeal process. You may make application first to the *denying agency*, i.e., either the state or local law enforcement agency that processed your transaction. As an alternative to appealing directly through the denying agency, you may elect to submit your appeal request to the FBI Criminal Justice Information Services Division's NICS Section.

The **NICS Appeal Web site** was established to help guide NICS *Denied* appellants through the appeal process. The appellant also has the opportunity to apply online.

<http://www.fbi.gov/nics-appeals>

You will be notified via U.S. mail once the status of your appeal is determined.

Check out what the NICS Appeal Web site has to offer:

- Downloadable Appeal Brochure
- Downloadable Fingerprint Card
- Appeal Request Form
- Appeal Frequently Asked Questions
- **Submit your Appeal online**

For customers with no internet access, the NICS Section will send an appeal packet via U.S. mail. For an appeal packet or general questions, call the NICS Customer Service at 1-877-FBI-NICS (324-6427).

NICS Transaction Number (NTN):



DELAY?



The Voluntary Appeal File (VAF) was established to permit **delayed** applicants to request the National Instant Criminal Background Check System (NICS) maintain information about themselves in the VAF if denials are continuously overturned or to prevent **extended delays** of a firearm transfer.

The **NICS Appeal/VAF Web site** was established to help guide NICS *Delayed* applicants through the VAF process and allow them to download an application.

<http://www.fbi.gov/nics-appeals>

VAF applicants will be notified via U.S. mail if their application qualifies for entry into the VAF. Entry into the VAF will not automatically result in a proceed response on subsequent firearm purchases. A complete NICS check is still required and will result in a denial if additional prohibiting information is discovered.

Check out what the NICS VAF Web site has to offer:

- **Downloadable VAF Brochure/Application**
- Downloadable Fingerprint Card
- VAF Application
- VAF Frequently Asked Questions

Note: Your completed VAF application, applicant's statement, and fingerprint card **must** be mailed to the FBI Criminal Justice Information Services Division's NICS Section.

The NICS Section will send a VAF Packet via U.S. mail to customers with no internet access: For a VAF Packet or general questions, call the NICS Customer Service at 1-877-FBI-NICS (324-6427).

NICS Transaction Number (NTN):

Federal Denials

Reasons Why the NICS Section Denies
November 30, 1998 - December 31, 2011

<u>Rank</u>	<u>Prohibited Category Description</u>	<u>Total</u>	<u>Percent of Total</u>
1	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	540,210	60.08%
2	Misdemeanor Crime of Domestic Violence Conviction	95,820	10.66%
3	Fugitive from Justice	77,916	8.67%
4	Unlawful User/Addicted to a Controlled Substance	72,189	8.03%
5	Protection/Restraining Order for Domestic Violence	39,186	4.36%
6	State Prohibitor	34,754	3.86%
7	Under Indictment/Information	14,231	1.58%
8	Illegal/Unlawful Alien	10,950	1.22%
9	Adjudicated Mental Health	7,879	0.87%
10	Federally Denied Persons File	5,296	0.59%
11	Dishonorable Discharge	618	0.07%
12	Renounced U.S. Citizenship	50	0.01%
Total Federal Denials		899,099	100.00%

PENNY S. DEAN
Attorney and Counselor at Law

59 Warren Street
Concord, NH 03301-3951
Admitted in D.C. Cir., NH, MA & ME

phone 603.230.9999
fax 603.226.4023
penny@pennydean.com

September 14, 2010

VIA CERTIFIED MAIL

Federal Bureau of Investigation
Criminal Justice Information Services Division
NICS Section
Appeal Services Team, Module A-1
Post Office Box 4278
Clarksburg, WV 26302-4278

RE: NTN# XXX - Mr. Joseph Smith (DOB: 02/2/02)

Dear Sir or Madam:

Enclosed please find a completed Authorization to Release Confidential Information form regarding Mr. Joseph Smith. I am requesting the record for the above referenced individual, **including all conviction and non-conviction data in your possession or control pursuant to law and regulation, i.e. I want a complete, full, certified copy of the individual's record and the reason for the denial in writing.** Please note that the NTN# is XXX. Also, please advise our office if there is any fee for processing of this request. Enclosed for your convenience is a self addressed stamped envelope for your return of this information. If you have any questions please do not hesitate to contact our office. Thanking you in advance for your anticipated cooperation in this matter.

Very truly yours,

Penny S. Dean

PSD/esp
Enclosures

Cc: Client (without SASE enclosure)



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

September 21, 2010

Ms. Penny S. Dean, Esq.
59 Warren Street
Concord, NH 03301-3951

SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background Check
System (NICS) Transaction
Number (NTN) [REDACTED]
[REDACTED]

Dear Ms. Dean:

This letter is in response to your inquiry concerning your client's, Mr. [REDACTED] denial to purchase or redeem a firearm. By way of background, during a NICS check, our computer system searches several databases which contain records of persons with disqualifying conduct. As a name and descriptive-based system, the computer program is designed to screen individuals with similar names and/or similar descriptive features within certain parameters. Mr. [REDACTED] denial indicates that either he or another individual with a similar name and/or similar descriptive features has been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

To expedite the validation process, if your client believes he is the individual who meets this criteria, and is in possession of the original certified documents which contain an embossed agency seal and would like to submit them to our office, he may submit them to the FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Appeal Services Team, Post Office Box 4278, Clarksburg, West Virginia 26302-4278.

Ms. Penny S. Dean, Esq.

Additionally, if your client believes he is not the individual whose FBI identification record is on file and desire a copy of that record, he must submit positive proof of his identity.

If your client believes he is not the individual whose FBI identification record is on file, he must also submit positive proof of his identity. Positive proof of his identity requires that he provide a set of your rolled fingerprint impressions prepared by law enforcement or authorized fingerprinting agency on the enclosed fingerprint card. The fingerprint card must contain the following information:

- The agency rolling the fingerprint impressions must include its agency name and address on the fingerprint card in the designated area. The agency's telephone number and employee signature also must be included.
- The fingerprint card must be completed in its entirety. The Name, Date of Birth, Sex, Race, State of Residence, and Country of Citizenship areas on the fingerprint card must be complete; however, the inclusion of any additional information may help expedite his appeal.

The NICS Section will not charge a fee for this procedure. However, a fee may be charged by the law enforcement agency.

Please be advised that failure to comply with any of the above-listed requirements may result in the rejection of his fingerprint card submission, thereby causing further delays in the processing of his appeal.

Upon receipt of his fingerprints, we will conduct a fingerprint comparison. If the record used for the denial does not match your client's fingerprints, you will be notified. If the fingerprint comparison is identical, you will be furnished additional information regarding the record(s) on which the denial is based.

To facilitate initial processing and eliminate unnecessary administration, once a disqualifier has been

Ms. Penny S. Dean, Esq.

identified, the NICS Section Appeal Services Team (AST) will not review other records for additional disqualifiers. However, should your client's appeal be successful on the initially denied record, the AST will examine any additional records for disqualifying information which may result in sustaining the denial.

A postage-paid return envelope is enclosed for his convenience. Ensure all correspondence/submissions contain your client's NTN. Failure to do so will only delay his appeal.

If you and/or your client have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-FBI-NICS(324-6427).

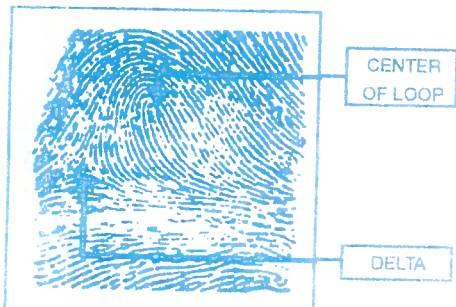
NICS Section
CJIS Division

Enclosures (2)

**FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
CJIS DIVISION/CLARKSBURG, WV 26306**

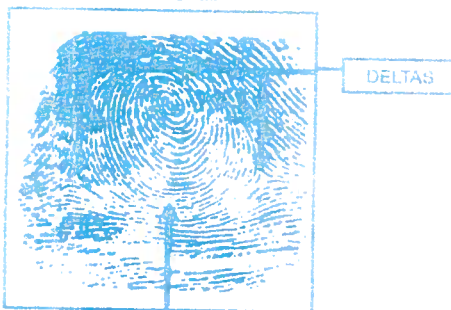
APPLICANT

1. LOOP



THE LINES BETWEEN CENTER OF LOOP AND DELTA MUST SHOW

2. WHORL



THESE LINES RUNNING BETWEEN DELTAS MUST BE CLEAR

3. ARCH



ARCHES HAVE NO DELTAS

TO OBTAIN CLASSIFIABLE FINGERPRINT:

1. USE BLACK PRINTER'S INK
 2. DISTRIBUTE INK EVENLY ON INKING SLAB
 3. WASH AND DRY FINGERS THOROUGHLY
 4. ROLL FINGERS FROM NAIL TO NAIL, AND AVOID ALLOWING FINGERS TO SLIP
 5. BE SURE IMPRESSIONS ARE RECORDED IN CORRECT ORDER
 6. NOTE IN THE APPROPRIATE FINGER BLOCKS IF APPLICANT IS MISSING ONE OR MORE FINGERS OR ANY REASON OTHER THAN MISSING ALL TEN IMPRESSIONS MUST BE PROVIDED WITH SCARS AND DEFORMITIES NOTATED
- IF SOME PHYSICAL CONDITION MAKES IT IMPOSSIBLE TO OBTAIN PERFECT IMPRESSIONS, SUBMIT THE RESULTS AS OBTAINED.
- BEFORE EXAMINE THE COMPLETED PRINTS TO SEE IF THEY CAN BE CLASSIFIED. BEAWARE IN MIND THAT MOST FINGERPRINTS FALL INTO THE PATTERNS SHOWN ON THIS CARD. OTHER PATTERNS OCCUR INFREQUENTLY AND ARE NOT SHOWN.

THIS CARD FOR USE BY:

LEAVE THIS SPACE BLANK

1. LAW ENFORCEMENT AGENCIES IN FINGERPRINTING APPLICANTS FOR LAW ENFORCEMENT POSITIONS
2. OFFICIALS OF STATE AND LOCAL GOVERNMENT FOR PURPOSES OF EMPLOYMENT, WITHIN AN EMPLOYER'S AUTHORITY TO CONTRACT, HIRE, AND APPOINT, BY THE ATTORNEY GENERAL OF THE UNITED STATES AND COUNTY DEPT. CLERKS, UNLESS SPECIFICALLY BASED ON APPLICABLE STATE STATUTES DO NOT SATISFY THIS REQUIREMENT
3. U.S. GOVERNMENT AGENCIES AND OTHER ENTITIES REQUIRED BY FEDERAL LAW
4. OFFICIALS OF FEDERALLY CHARTERED OR INSURED BANKING INSTITUTIONS TO PROMOTE OR MAINTAIN THE SECURITY OF THOSE INSTITUTIONS

INSTRUCTIONS:

1. PRINTS MUST FIRST BE CHECKED THROUGH THE APPROPRIATE STATE IDENTIFICATION BUREAU, AND ONLY THOSE FINGERPRINTS FOR WHICH NO DISQUALIFYING RECORD HAS BEEN FOUND LOCALLY SHOULD BE SUBMITTED FOR FBI SEARCH
 2. PRIVACY ACT OF 1974 (PL 93-579) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION AND USES WHICH WILL BE MADE OF IT
 3. IDENTITY OF PRIVATE CONTRACTORS SHOULD BE SHOWN IN SPACE "EMPLOYER AND ADDRESS". THE CONTRIBUTOR IS THE NAME OF THE AGENCY SUBMITTING THE FINGERPRINT CARD TO THE FBI
 4. FBI NUMBER, IF KNOWN, SHOULD ALWAYS BE FURNISHED IN THE APPROPRIATE SPACE
- MISCELLANEOUS NO. [RECORD OTHER ARMED FORCES NO. PASSPORT NO. (FP), ALIEN REGISTRATION NO. (ARI), PORT SECURITY CARD NO. (PS), SELECTIVE SERVICE NO. (SS) VETERANS' ADMINISTRATION CLAIM NO. (VA)]

APPLICANT

DATE

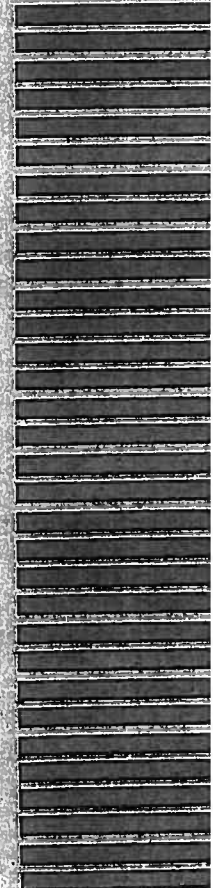
AGENCY

174925000
1000
CLARKSBURG, VA

To Law Enf: Please stamp your agency's name, address and phone number.



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 12083 WASHINGTON DC

POSTAGE WILL BE PAID BY ADDRESSEE

NICS Appeal Services Unit
NICS PROGRAM OFFICE
FEDERAL BUREAU OF INVESTIGATION
PO BOX 4278
CLARKSBURG WV 26302-9951



PENNY S. DEAN
Attorney and Counselor at Law

59 Warren Street
Concord, NH 03301-3951
Admitted in D.C. Cir., NH, MA & ME

phone 603.230.9999
fax 603.226.4023
penny@pennydean.com

October 20, 2010

VIA CERTIFIED MAIL 304-625-0535

a_nics@leo.gov

Federal Bureau of Investigation
Criminal Justice Information Services Division
NICS Section
Appeal Services Team, Module A-1
Post Office Box 4278
Clarksburg, WV 26606-9922

RE: **NTN# XXX Mr. Joseph Smith (DOB: 02/2/02)**

Dear Sir or Madam:

I am requesting the specific information/reason for the denial of Mr. Smith's firearm purchase. I am asking that you follow the law. 28 C.F.R. 25.10 (a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the denying agency, which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.)

Read more: <http://cfr.vlex.com/vid/25-10-correction-erroneous-system-information-19676561#ixzz12vTW6r67>

Read more: <http://cfr.vlex.com/vid/25-10-correction-erroneous-system-information-19676561#ixzz12vSwJSxe>

The law requires that. You have a release on file for me. I am requesting the **reason for the denial in writing**. Mr. Smith is not required by law to provide his fingerprints prior to obtaining this information. If you have any questions please do not hesitate to contact our office. Thanking you in advance for your anticipated cooperation in this matter. Never gives us his fingerprints

Very truly yours,

Penny S. Dean

PSD
Enclosures

Cc: Client (without SASE enclosure)

VOLUNTARY APPEAL FILE (VAF) APPLICATION

Date of application: _____

Please fill out the following information: (* Denotes Mandatory Information)
***** THIS APPLICATION MUST BE ACCOMPANIED WITH A COMPLETED FINGERPRINT CARD *****
 NOTE: If you are interested in applying for the VAF, please ensure you read and sign the Applicant's Statement on the reverse side of this application. An application cannot be processed without an original signature.

*Last Name		*First Name	Middle Name	Cadence
Social Security Number		*State of Residence	Telephone Number	

*Date of Birth		*Place of Birth (State)	*Gender	*Race
*Month	*Day	*Year	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> 1 American Indian or Alaskan Native <input type="checkbox"/> 2 Hispanic or Latino <input type="checkbox"/> 3 Black or African American <input type="checkbox"/> 4 Asian <input type="checkbox"/> 5 Native Hawaiian or Other Pacific Islander <input type="checkbox"/> 6 White or Caucasian <input type="checkbox"/> 7 Unknown

Height	Weight	Eyes	Hair	*Country of Citizenship
--------	--------	------	------	-------------------------

*MAILING ADDRESS (for receiving correspondence):

*REASON FOR APPLICATION:

OTHER LEGAL NAMES -		First Name	Middle Name	Cadence
Last Name		Miscellaneous Numbers (Military ID, Driver's License)		

Alien Registration Number (* mandatory if Country of Citizenship is other than US)

Additionally, if you have denied transactions you would like for the NICS Section to place under appeal along with your VAF application, you must provide the NICS Transaction Number(s). NTN(s): _____

OMB No: 1110-0043

Voluntary Appeal FILE



NOTE: THIS IS NOT AN APPEAL BROCHURE. HOWEVER, THIS APPLICATION CAN BE USED TO INITIATE AN APPEAL ALONG WITH APPLYING FOR THE VAF. IF YOU WANT TO INITIATE AN APPEAL, PLEASE PROVIDE THE NICS TRANSACTION NUMBER ON THE BOTTOM OF THIS APPLICATION.

FOR MORE VAF INFORMATION:
 Customer Service 1-877-FBI-NICS (324-6427)
 Telecommunications Device for the Deaf (TDD) 1-877-NICS-TTY (6427-889)

Brady Act Requirements

The Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law in November 1993, requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the U.S. Attorney General to establish the National Instant Criminal Background Check System (NICS) that any FFL may contact by telephone or by other electronic means for information to be supplied immediately on whether receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law.

The FBI developed the NICS through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies. The NICS is designed to respond to background check inquiries to provide FFLs with an immediate response as to whether the transfer of a firearm can proceed or if more research must be completed to make a determination if the transfer would violate state or federal law.

The NICS, which is operated by the FBI Criminal Justice Information Services (CJIS) Division's NICS Section, is a national name check system that queries available records in the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index to determine if prospective purchasers are disqualified from receiving firearms.

Voluntary Appeal File

A final rule was published by the Department of Justice in *The Federal Register*, outlining the following changes. Per Title 28, Code of Federal Regulations, Part 25.9(b)(1), (2), and (3), the NICS Section must destroy all identifying information on allowed transactions within 24 hours of notification to the FFL. If a potential purchaser is delayed or denied a firearm and successfully appeals the decision,

the NICS Section cannot retain a record of the overturned appeal. If the record is not able to be updated, the purchaser continues to be denied or delayed, and if that individual appeals the decision the documentation must be resubmitted on every subsequent appeal.

For this reason, the Voluntary Appeal File (VAF) has been established. This process permits applicants to request the NICS maintain information about themselves in the VAF to prevent future erroneous denials or extended delays of a firearm transfer.

Application Process

Under this process, individuals have the option to supply the NICS Section with information such as name, date of birth, social security number, and any other identifying numbers using the VAF application included in this brochure to request entry into the file. The individual's signature under the applicant's statement is required to give the NICS Section permission to retain the information in this file. Documents that may clarify records or prove identity (c.g., fingerprint cards, court records, pardons, etc.) will be entered in the VAF along with the descriptive information from the application. This application, a set of rolled fingerprints and any supporting documentation should be sent to the following address:

Federal Bureau of Investigation
Criminal Justice Information Services Division
National Instant Criminal Background Check System
Voluntary Appeal File
Post Office Box 4278
Clarksburg, WV 26302-4278

After reviewing the application and fingerprint card and validating the materials submitted by the applicant, the NICS Section will enter successful applicants into the VAF. The applicant will be notified by mail if their application qualifies for entry

into the VAF. Entry into the VAF will not automatically result in a proceed response on subsequent purchases. A complete NICS check is still required and will result in a denial if additional prohibitive information is discovered. The NICS Section is required to destroy any records submitted to the VAF upon written request of the individual. Additionally, if the NICS Section discovers a disqualifying record on the individual after their entry into the VAF, the NICS Section may remove the individual's information from the file.

APPLICANT'S STATEMENT:

I give the information on my VAF application voluntarily with the understanding that if my application is successful, I will be entered into the Voluntary Appeal File (VAF), maintained by the FBI Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section. I understand if at any time I wish to be removed from the VAF, I can make a request in writing to the NICS Section to be removed. I also understand if the NICS Section discovers a disqualifying record after my entry into the VAF, the NICS Section may remove my information from the file.

SIGNATURE _____

DATE _____

A signature is required on the above applicant's statement. If the required signature is absent, the application cannot be processed and will be returned to the applicant as insufficient. This brochure with original signature and original fingerprint card must be returned by mail only.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. The FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section tries to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden to you to provide us with information. The estimated average time to complete the application is 5 minutes, 2 hours for fingerprinting, and 25 minutes for mailing for a total of 2.5 hours. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the FBI CJIS Division's NICS Section, Post Office Box 4278, Clarksburg, West Virginia 26302-9922.



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

January 25, 2012

You have successfully downloaded and printed the Voluntary Appeal File (VAF) Application and fingerprint card to be used to initiate the VAF process.

Please be sure to sign the Applicant's Statement on the application. Additionally, the VAF process also requires positive proof of identity. A set of your rolled or original copy of your electronically scanned fingerprints must be included with your completed VAF Application. The FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section requires the original fingerprint card to process with your VAF Application; therefore, a scanned or e-mailed copy of your rolled fingerprints cannot be submitted.

You must have your fingerprints rolled or electronically scanned by a law enforcement or other authorized fingerprinting agency. The agency preparing your fingerprints must provide the agency name, address, and telephone number. The agency must also provide an Originating Identification Number as assigned by the FBI (if applicable) or legible signature of the person who rolled your fingerprints. If the agency electronically scans your fingerprints, you must have them print a copy and fill out the descriptive data on the printout. This printout must be included with your VAF application.

Your completed VAF Application and fingerprint card must be mailed to:

Federal Bureau of Investigation
Criminal Justice Information Services Division
National Instant Criminal Background Check System Section
Appeals Services Team, Module A-1
Post Office Box 4278
Clarksburg, WV 26302-4278

If you have additional information (e.g., court documentation) to assist the NICS Sections' Appeal Services Team in processing your application, you may submit it along with your completed VAF Application and fingerprint card.

If you have any questions regarding this communication, please contact the NICS Section Customer Service at 1-877-FBI-NICS (324-6427).

NICS Section
CJIS Division

Voluntary Appeal File (VAF) Application

Provides mandatory information.

[Privacy Policy](#)

Date of application:

January 25, 2012

Name	*First Name	Middle Name	Cadence

Social Security Number	*State of Residence	Telephone (No spaces, please)

Date of Birth	*Place of Birth (State or Country)	*Gender	*Race

Height	Weight	Eyes	Hair	*Country of Citizenship
				United States

Home Address (for receiving correspondence):

*Reason for Application

--

OTHER LEGAL NAMES:

Name	First Name	Middle Name	Cadence

Name	First Name	Middle Name	Cadence

Identification Registration Number (*mandatory if Country of Citizenship is other than the U.S.)

--

Miscellaneous Numbers (Military ID, Driver's License)

--

--

--

Mail

--

***APPLICANT'S STATEMENT:**

I give the information on my VAF application voluntarily with the understanding that if my application is successful, I will be entered into the Voluntary Appeal File (VAF), maintained by FBI Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section. I understand if at any time I wish to be removed from the VAF, I can make a request in writing to the NICS Section to be removed. I also understand if the NICS Section discovers a disqualifying record after my entry into the VAF, the NICS Section may remove my information from the file.

SIGNATURE

DATE

A signature is required on the above applicant's statement. If the required signature is absent, the application cannot be processed and will be returned to the applicant as insufficient. This form with the original signature and original fingerprint card must be returned by mail only.

APPLICANT

Privacy Act Notice on Back

REV. 12-10-07

LEAVE BLANK

TYPE OR PRINT ALL INFORMATION IN BLACK

LAST NAME **NAM** FIRST NAME MIDDLE NAME

FBI

LEAVE BLANK

FACE OF PERSON FINGERPRINTED

ALIASES **AKA**

O
R
I

BACK OF PERSON FINGERPRINTED

DATE OF BIRTH **DOB**
Month Day Year

CITIZENSHIP **CTZ**

SEX

RACE

HGT.

WGT

EYES

HAIR

PLACE OF BIRTH **POB**

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

YOUR NO. **OCA**

LEAVE BLANK

HOME AND ADDRESS

FBI NO. **FBI**

CLASS _____

LEFT FINGERPRINTED

SOCIAL SECURITY NO. **SOC**

REF _____

MISCELLANEOUS NO. **MNU**

1. R. THUMB

2. R. INDEX

3. R. MIDDLE

4. R. RING

5. R. LITTLE

6. L. THUMB

7. L. INDEX

8. L. MIDDLE

9. L. RING

10. L. LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

L. THUMB

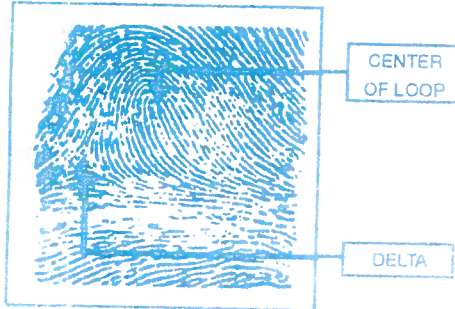
R. THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

**FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
CJIS DIVISION/CLARKSBURG, WV 26306**

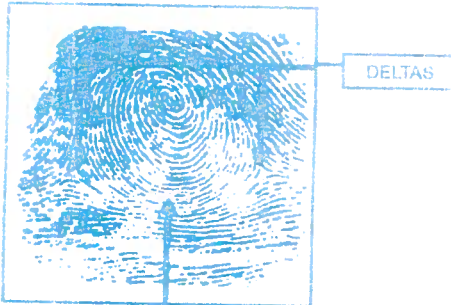
APPLICANT

1. LOOP



THE LINES BETWEEN CENTER OF LOOP AND DELTA MUST SHOW

2. WHORL



THESE LINES RUNNING BETWEEN DELTAS MUST BE CLEAR

3. ARCH



ARCHES HAVE NO DELTAS

TO OBTAIN CLASSIFIABLE FINGERPRINT

1. USE BLACK PRINTER'S INK
2. DISTRIBUTE INK EVENLY ON INKING SLAB
3. WASH AND DRY FINGERS THOROUGHLY
4. ROLL FINGERS FROM NAIL TO NAIL AND AVOID ALLOWING FINGERS TO SLIP
5. BE SURE IMPRESSIONS ARE RECORDED IN CORRECT ORDER
6. NOTATE IN THE APPROPRIATE FINGER BLOCKS IF APPLICANT IS MISSING ONE OR MORE FINGERS FOR ANY REASON
7. IF NOT MISSING, ALL TEN IMPRESSIONS MUST BE PROVIDED WITH SCARS AND DEFORMITIES NOTATED
8. IF SOME PHYSICAL CONDITION MAKES IT IMPOSSIBLE TO OBTAIN PERFECT IMPRESSIONS, SUBMIT THE BEST THAT CAN BE OBTAINED
9. EXAMINE THE COMPLETED PRINTED SET TO BE CLASSIFIED, BEARING IN MIND THAT MOST FINGERPRINTS FALL INTO THE PATTERNS SHOWN ON THIS CARD. OTHER PATTERNS OCCUR INFREQUENTLY AND ARE NOT SHOWN

THIS CARD FOR USE BY:

1. LAW ENFORCEMENT AGENCIES, IN FINGERPRINTING APPLICANTS FOR LAW ENFORCEMENT POSITIONS
2. OFFICIALS OF STATE AND LOCAL GOVERNMENT EMPLOYERS FOR PURPOSES OF EMPLOYMENT OF EMPLOYEES AND MEMBERS AS AUTHORIZED BY STATE STATUTES, AND APPROVED BY THE ATTORNEY GENERAL OF THE UNITED STATES, LOCAL AND COUNTY ORDINANCES, UNLESS SPECIFICALLY BARRED ON APPLICABLE STATE STATUTES DO NOT SATISFY THIS REQUIREMENT
3. U.S. GOVERNMENT AGENCIES AND OTHER ENTITIES REQUIRED BY FEDERAL LAW
4. OFFICIALS OF FEDERALLY CHARTERED OR INSURED BANKING INSTITUTIONS TO PROMOTE OR MAINTAIN THE SECURITY OF THOSE INSTITUTIONS

LEAVE THIS SPACE BLANK

INSTRUCTIONS:

1. PRINTS MUST FIRST BE CHECKED THROUGH THE APPROPRIATE STATE IDENTIFICATION BUREAU, AND ONLY THOSE FINGERPRINTS FOR WHICH NO DISQUALIFYING RECORD HAS BEEN FOUND LOCALLY SHOULD BE SUBMITTED FOR FBI SEARCH
 2. PRIVACY ACT OF 1974 (PL 93-579) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION AND USES WHICH WILL BE MADE OF IT
 3. IDENTITY OF PRIVATE CONTRACTORS SHOULD BE SHOWN IN SPACE "EMPLOYER AND ADDRESS". THE CONTRIBUTOR IS THE NAME OF THE AGENCY SUBMITTING THE FINGERPRINT CARD TO THE FBI
 4. FBI NUMBER, IF KNOWN, SHOULD ALWAYS BE FURNISHED IN THE APPROPRIATE SPACE
- MISCELLANEOUS NO. RECORD OTHER ARMED FORCES NO. PASSPORT NO. [FP], ALIEN REGISTRATION NO. [AR], PORT SECURITY CARD NO. [PS], SELECTIVE SERVICE NO. [SS], VETERANS ADMINISTRATION CLAIM NO. [VA]

When the American lawyer, Brandon Mayfield, was thrown in jail after the Madrid train bombings, the FBI said they were "100% certain" that his fingerprint was at the scene. Fingerprint examiners, one after the other, agreed with the identification and maintained that the prints were Mr Mayfield's.



But when the Spanish police named the real culprit, the world's leading law enforcement agency had to own up to a terrible mistake. The fingerprint experts had got it 100 per cent wrong.

After a century in which it has been accepted as the Gold Standard for forensic evidence, Claudia Hammond investigates the growing body of research that challenges the infallibility of fingerprint evidence. She talks to Brandon Mayfield himself and to critics who claim the UK has been slow to accept the urgent need for change. She hears about the Shirley Mckie case in Scotland, where a young detective was wrongly accused of leaving her prints at a crime scene and looks ahead to the forthcoming Scottish Fingerprint Inquiry into the Mckie case, due to report in a matter of weeks, which many believe could do for UK fingerprinting what the Mayfield case did for the USA.

Producer: Fiona Hill.

RELATED LINKS

- [American National Academy of Sciences report on forensic science system \(www8.nationalacademies.org\)](http://www8.nationalacademies.org)
- [Andrew Rennison, Forensic Science Regulator \(www.homeoffice.gov.uk\)](http://www.homeoffice.gov.uk)
- [Cognitive Consultants International Ltd \(www.cognitiveconsultantsinternational.com\)](http://www.cognitiveconsultantsinternational.com)
- [Dave Charlton, cognitive psychologist and fingerprint expert \(www.icaris.group.shef.ac.uk\)](http://www.icaris.group.shef.ac.uk)
- [Download a podcast of the programme](#)
- [Iain McKie \(www.shirleymckie.com\)](http://www.shirleymckie.com)
- [Institute of Cognitive Neuroscience: Dr Itiel Dror \(www.icn.ucl.ac.uk\)](http://www.icn.ucl.ac.uk)
- [The Fingerprint Inquiry Scotland \(www.thefingerprintinquiryscotland.org.uk\)](http://www.thefingerprintinquiryscotland.org.uk)
- [UCLA School of Law: Jennifer L. Mnookin \(www.law.ucla.edu\)](http://www.law.ucla.edu)
- [University of Strathclyde: Professor Jim Fraser \(www.chem.strath.ac.uk\)](http://www.chem.strath.ac.uk)
- [University of Lausanne: Faculty of Law and Criminal Justice \(www.unil.ch\)](http://www.unil.ch)

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Experts May No Longer Testify That Fingerprints 'Match'

Shannon P. Duffy
The Legal Intelligencer
January 9, 2002

For the first time, a federal judge has ruled that fingerprint experts cannot tell juries that two fingerprints are a "match" because the science they rely on does not meet the U.S. Supreme Court's *Daubert* test.

But Senior U.S. District Judge Louis H. Pollak of the Eastern District of Pennsylvania stopped short of tossing out all fingerprint testimony in *United States v. Plaza*, saying such a ruling would be "unwarrantably heavy-handed."

Instead, Pollak sided with the government by taking "judicial notice" of the fact that fingerprints are both "unique" and "permanent."

He then ruled that the experts on both sides can testify about how the prints were obtained and the similarities and differences between them, but are barred from expressing any opinion about whether the prints are a "match."

The ruling is a huge victory for the criminal defense bar, especially since it comes from a judge with the stature of Pollak, a former dean of both the Yale and University of Pennsylvania law schools who is routinely invited to sit on the U.S. Court of Appeals.

"This is a ground-breaking, extremely important opinion," said Assistant Federal Defender Robert Epstein.

But Epstein said the decision should come as no surprise to those who have been following the issue because "it has long been predicted by the forensic science community."

Epstein has no connection to the *Plaza* case, but nonetheless played a significant role by supplying the defense lawyers with the briefs he submitted in a previous case.

Judge Pollak incorporated the entire record from Epstein's case, *United States v. Mitchell*, in which Judge J. Curtis Joyner held five days of hearings before denying the defense request from the bench.

The *Plaza* defense team -- L. Felipe Restrepo of Philadelphia's Krasner & Restrepo; Jules Epstein of Kairys Rudovsky Epstein & Messing in Philadelphia; Gerald Stein; Bernard Siegel and Michael Giampetro -- argued that fingerprint evidence has never been properly subjected to the rigors of a *Daubert* test and that, when it is, it fails.

"Numerous forensic science commentators have now come to recognize that the field is scientifically bankrupt," they wrote.

Judge Pollak found that the issue boiled down to two questions:

- 1) Whether each individual has a unique set of fingerprints and, if so, whether these unique fingerprints are permanent.
- 2) Whether latent prints -- fragments of fingerprints "lifted" from a surface touched by an unidentified person -- can accurately be matched to "rolled" prints -- complete fingerprints that are obtained from an identified person through established fingerprinting procedures.

In the first section of the 49-page opinion, Pollak reviewed the science of fingerprints, relying heavily on the testimony of a government witness, Dr. William Babler, a former President of the American Dermatoglyphics Association who works as a professor of gross anatomy and embryologist.

Babler testified that fingerprints start forming when a fetus is in the ninth or 10th week of development and are permanently fixed by about the 17th week.

Pollak also found that fingerprint examiners refer to three levels of detail that can be observed on mature fingerprints. At the first level of detail, an examiner looks at the overall pattern of a fingerprint -- whorl patterns, loop patterns, and arch patterns.

In some states and in some foreign jurisdictions, fingerprint examiners must find a minimum number of so-called "Galton points," or characteristics on the fingerprint ridges, in common before they can declare a match with absolute certainty. But the FBI switched from relying on a mandatory minimum number of points to no minimum number in the late 1940s.

Since *Daubert*, Pollak said, several federal judges have addressed the issue of whether fingerprint identifications are admissible as expert testimony under Federal Rule of Evidence 702 -- including two Eastern District of Pennsylvania judges -- and all have come to the conclusion that fingerprint testimony should be admitted.

But Pollak found that the science of fingerprint identification as it currently exists fails the *Daubert* test for several reasons.

Pollak focused on the process fingerprint examiners employ which is known as "ridgeology" or ACE-V, an acronym for "analysis," "comparison," "evaluation" and "verification."

Prosecutors argued that "the ACE-V process and the experts' conclusions have been tested empirically over a period of 100 years."

But Pollak found that fingerprint science hasn't truly been "tested" in the scientific sense just because they have been disputed in trials.

"Adversarial testing in court is not what the Supreme Court meant when it discussed testing as an admissibility factor," Pollak wrote.

"It makes sense to rely on scientific testing, rather than 'adversarial' courtroom testing, because to rely on the latter would be to vitiate the gatekeeping role of federal trial judges. ... If 'adversarial' testing were the benchmark -- that is if the validity of a technique were submitted to the jury in each instance -- then the preliminary role of the judge in determining the scientific validity of a technique would never come into play," he wrote.

"Thus, even 100 years of 'adversarial' testing in court cannot substitute for scientific testing when the proposed expert testimony is presented as scientific in nature."

Pollak found that the government "had little success in identifying scientific testing that tended to establish the reliability of fingerprint identifications."

By contrast, he said, the defense lawyers presented testimony that "strongly suggested that fingerprint identification techniques have not been tested in a manner that could be properly characterized as scientific."

Pollak said he was particularly impressed by the testimony of forensic scientist David Stoney, the director of the McCrone Research Institute in Chicago, who said: "The determination that a fingerprint examiner makes ... when comparing a latent fingerprint with a known fingerprint, specifically the determination that there is sufficient basis for an absolute identification, is not a scientific determination. It is a subjective determination standard. It is a subjective determination without objective standards to it."

Government experts also confirmed Stoney's testimony that fingerprint identification is "a subjective determination," Pollak noted.

Turning to the second *Daubert* factor -- whether the theory or technique has been subjected to peer review and publication -- Pollak again sided with the defense.

Prosecutors argued that "the fingerprint field and its theories and techniques have been published and peer reviewed during a period of over 100 years."

But Pollak found that the writings to date don't satisfy *Daubert*.

"It is the case that there are numerous writings that discuss the fingerprint identification techniques employed by fingerprint examiners. But it is not apparent that their publication constitutes 'submission to the scrutiny of the scientific community' in the *Daubert* sense."

Even those at the top of the fingerprint identification field, he said, "tend to be skilled professionals who have learned their craft on the job and without any concomitant advanced academic training."

As a result, Pollak concluded that "it would thus be a misnomer to call fingerprint examiners a 'scientific community' in the *Daubert* sense."

The third *Daubert* factor -- that trial judges consider the known or potential rate of error and the existence and maintenance of standards controlling

the technique's operation -- also weighed in the defense's favor, Pollak found.

Error rates have never been thoroughly studied, Pollak found, but the U.S. Department of Justice has recently recognized the need for such a study by authorizing funding for it.

Pollak found that the varying standards used by different states in the United States and by other countries shows that the science does not depend on a uniform standard.

While witnesses said the ACE-V process is the method in general use among fingerprint examiners in the United States, Pollak found that "the application of this method, in particular whether a minimum number of Galton points must be identified before a match can be declared, varies from jurisdiction to jurisdiction."

The United Kingdom employs a 16-point minimum, Australia mandates that 12 points be found in common and Canada uses no minimum point standard.

In the United States, state jurisdictions set their own minimum point standards, while the FBI has no minimum number that must be identified to declare an "absolutely him" match, but does rely on a 12-point "quality assurance" standard, Pollak noted.

Pollak concluded that "while there may be good reason for not relying on a minimum point standard -- or for requiring a minimum number, as some state and foreign jurisdictions do -- it is evident that there is no one standard controlling the technique's operation."

Junk Science

Truth in Justice

Date: September 8, 1999
Time: 11:30 a.m.
Room: Room 102, LOB

The Senate Committee on Judiciary held a hearing on the following:

HB537 relative to background checks for firearms purchases

Members of Committee:

Senator Pignatelli
Senator Gordon
Senator Brown
Senator Cohen
Senator Fernald
Senator Squires
Senator Trombly
Senator Wheeler

The Chair, Senator Pignatelli, opened the hearing on HB 537.

Assistant Commissioner John Stephen: Thank you, Mr. Chairman and members of the Committee. My name is Assistant Commissioner from the Department of Safety, John Stephen.

I would just speak to you today and tell you that the Department is in favor of basically performing the function that the legislature would ask it to do in terms of the Brady background checks for firearms purchases. The federal law is already on the books and these purchases involve federal firearm dealers to contact the Department of Safety. Right now, as an agent of the federal government, we have to check to see if individuals possess either a felony record, domestic violence order, prohibition, or some other prohibition under Brady, and then we would either approve or deny the request. It is all done through a phone line and we have people working daily, seven days a week, at the Department of Safety on this issue.

Prior to this bill, or during the drafting of this bill, the issue came up about the continuation of our services. We are now doing, we are in the budget. There are two employees there. I think there are actually two and a half, we consider it half an employee, on the weekends. But, we have people there already doing the checks and it has been in the budget and it has been approved in the last session. This bill will basically give us statutory authorization to continue to do that. Right now, we are acting as the agent of the federal government in terms of the Brady checks.

Representative Welch: The answer to that is that the New Hampshire check is more thorough; we have a broader data base, as John Stephen talked about. Those cases that are not accompanied with fingerprints don't get entered into the federal system because there is no crosscheck without the fingerprints. At some point in the near future, in the system that they are using over there will, and they encourage training and the local police departments to take the fingerprints and include those records. Over a period of time, that will become the case and the federal government will have access to the same amount of information that New Hampshire has. We just happen to have more information and better access to it. That is changing over time.

Senator Debora B. Pignatelli, D. 13: I guess I didn't get an answer to my original question about, if we have more information in the State and if people are purchasing handguns and people are purchasing long guns because the federal government doesn't have that information...

Representative Welch: Well, that is not why, Senator. Excuse me for interrupting, but that is not the reason. The checks are roughly comparable. The problem is, say I was an individual, say yourself, you are going down to buy a long gun for whatever purpose and you get turned down. In order to figure out why you got turned down, you have to deal with the FBI, whereas, with a handgun purchase, which is more concealable if you are into that particular issue, and you get turned down, all you have to do is pick up the phone and call the Department of Safety and it can be straightened out. If there is a problem with your record that is not supposed to be there, it can be straightened out in a relatively short period of time. Local bureaucracy is much better than federal bureaucracy. And, this does not direct the Department of Safety to do anything, it only allows them to, if the federal funds are forthcoming. And, we understand there are some federal grants out there that have been applied for. It's not a direct answer, but I really don't have a direct answer. I'm sorry.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Senator Fernald has a question for you, Representative Welch.

Senator Mark Fernald, D. 11: Did you say that we have twice as many long gun sales in New Hampshire than handguns?

Representative Welch: That is an approximation, but it appears to be about that.

Senator Mark Fernald, D. 11: I think you said that this bill only applies to handguns and not to long guns, but I didn't see that in the bill.

Representative Welch: It only applies to handguns in the sense that the Department of Safety is only willing to do that because that is all the personnel that they have. If the federal government were to come across with some funds and ask them to do both handguns and long guns, it would require additional personnel and they could do that, if they had the money available. The only thing that restricts them is the amount of funding.

Senator Mark Fernald, D. 11: You mentioned the repeal of the previous law.

Representative Welch: Sunset provision.

Senator Mark Fernald, D. 11: Was that repeal or a sunset provision in state law or did the federal law in effect repeal the state law?

Representative Welch: Well, I was hoping you would ask that. Here's what happened. This individual, I think his name was John Nichols, went to one of the sports shops just south of Manchester, between there and Concord. Went in to buy a handgun and I guess the story goes that he wasn't sure, said he had something on his record that would make it not happen and he just, kind of a test run. They are not supposed to do that, so he agreed to purchase a handgun. The call went in and, of course, the dealer doesn't know why it is turned down. All he knows is that the sale cannot proceed. So, he was turned down.

Now, ordinarily the practice at this particular gun shop is to write the name down of this individual who was just refused and leave it right on the cash register. I don't know if that happened. I don't think it did. It is not a requirement. It is just something that they do.

This individual then waited a couple of days, went to another gun shop to make another attempt to purchase a handgun and was refused again and went off about his business and then, later on, went to a third gun shop, bought a shotgun, went to Nashua, and did his deed.

Now, when that happened, it made the headlines in the papers, as obviously something like that would. I immediately called the Department of Safety and I said, "I thought this wasn't going to happen". It should not have happened because, in the paper, I read about the two attempts to buy a handgun. I said, "What did you people do?" They called the Manchester Police Department and they called the Manchester District Court that issued the restraining order both times. Four phone calls were made - two to the court and two to the police department, and nobody had the common sense to call the victim, the potential victim, which is the person who the restraining order was issued to protect. Nobody called her.

Senator Mark Fernald, D. 11: I'm sorry. Who called the court and who called the police?

Representative Welch: The Department of Safety. When that was done, because they knew it was a protective order that was the reason for that sale not going through they, on their own initiative...

Senator Mark Fernald, D. 11: But, why did that sale go through, the shotgun? (tape turned) This was under Brady I?

Representative Welch: Yup. But see, nobody at the court took the time to pick up the phone and say, "Hey, Ms. Nicholson, the fellow that you have a restraining order against just tried to purchase a handgun. You ought not to be alone. You ought to be aware that something is going on." Nobody at the Manchester Police Department took the initiative to call Ms. Nicholson and say, "Hey, the guy that broke into your apartment committed a Class B felony a couple of months ago and just tried to buy a gun and got turned down". Nobody did that.

How do you legislate stuff like that? I mean, that really bothers me and I know Representative Pepino was as angry as I was over the whole thing. Those things shouldn't happen and it seems inconceivable to me that we have to make a law to govern every action that goes on.

This is fairly simple. We want to continue doing the checks. We would like to have the State do it, but we think because it is a federal law, that they ought to pay for it. We think, when it comes to enforcement of that law, the feds ought to enforce their own laws. Currently they are not. Why do we have these laws if they don't even enforce them? I don't mean to get on a soapbox, but I get kind of passionate...

Senator Mark Fernald, D. 11: Well, by current law, if the fellow was going to buy a handgun, the call goes to the Department of Safety and, if they get turned down because they are a felon or there is a restraining order, and if they try to buy a shotgun or another long gun, the call goes to Virginia and they would still be turned down, assuming the records are complete in Virginia. We have heard that their records aren't quite so good, but restraining orders are filed with Virginia?

Representative Welch: I believe so.

Senator Mark Fernald, D. 11: That's all.

Representative Welch: Essentially, what happens is, the paperwork that they make out is retained by the dealer and if there were a prosecution, they could subpoena those records and that would be evidence that the individual attempted to buy the handgun. That's how it would work in the real world. That is evidence and that is how that works. All we have to do now is find out if they are going to enforce the law.

Senator Mark Fernald, D. 11: Maybe we should have one of our own.

Representative Welch: Well, that may be. Thank you.

Senator Debora B. Pignatelli, D. 13: Representative John Tholl?

Representative John Tholl: Thank you, Madam Chairman. For the record, my name is John Edward Tholl, Jr. I represent Coos District #5 and the Towns of Whitefield and Dalton. I am currently the part-time Chief of Police in Dalton and a retired New Hampshire State Police Sergeant with twenty-three years of service.

My reading of this bill basically doesn't limit the background checks under this bill to pistols; it could be any firearm. That is the way I read the bill.

Part of the problem with the system we have now is, as was said before, the federal background database doesn't contain everything that our database contains. I have heard of at least one case where an FBI instant check approved the weapon, the person bought the weapon and went home, and then the FBI called the Department of Safety and said, "Will you go and pick it up? He shouldn't have it". That shouldn't be happening.

I also have a lot more confidence in the fact that, under the confidentiality concerns of gun owners, that the Department of Safety will in fact destroy the data that comes in as they are supposed to compared to what the federal government may do with whatever data comes into them. I think we can enforce it on a state level a lot better than we can on a federal level.

I am a cowboy shooter. I have a cowboy single action shooting club. We shoot steel silhouette targets with pistol caliber single action handguns, rifles, and shotguns. I went to purchase a replica 1866 Winchester, which is an old lever action. This particular one is made in Italy and is called a yellow where it has a brass frame. I never heard of that particular type of weapon ever being used in a crime. The dealer ordered the weapon and it came in. When it came in, I went to pick it up and he told me I couldn't pick it up because I was on delay. The federal government wasn't able to give him the answers to the records check. I was very fortunate. They called him back on a Saturday afternoon, because he worked out of his house and he got the information and I was able to get the rifle. But, otherwise, I would have had to wait until Wednesday of the next week to get it if it hadn't



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NICS Point of Contact States & Territories

Full Participants (13): States that conduct NICS checks for all firearms purchases and/or for alternate permits for handguns and long guns:

California*	Nevada
Colorado	New Jersey
Connecticut	Oregon
Florida	Pennsylvania
Hawaii*	Tennessee
Illinois	Utah*
	Virginia

Partial Participants (8): States that perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa*	Nebraska*
Michigan*	North Carolina*

States that perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Maryland	Washington
New Hampshire	Wisconsin

Nonparticipants (35): The FBI performs NICS checks on both handguns and long guns for:

Alabama	New Mexico
Alaska*	New York
American Samoa	North Dakota*
Arizona*	Northern
Arkansas*	Mariana Islands
Delaware	Ohio
Georgia*	Oklahoma
Guam	Puerto Rico
Idaho*	Rhode Island
Indiana	South Carolina*
Kansas	South Dakota
Kentucky*	Texas*
Louisiana	Vermont
Maine	U.S. Virgin Islands
Massachusetts	West Virginia
Minnesota	Wyoming*
Mississippi*	Washington, DC
Missouri	
Montana*	

*denotes states that have an ATF-qualified alternate permit
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States	Permit	Handgun	Long Gun	*Other	**Multiple	Admin	Pre-Pawn		Redemption		Returned		Rentals		Totals
							Handgun	Long Gun	Handgun	*Other	Handgun	Long Gun	Handgun	*Other	
Alabama	12,405	1,205,749	1,717,803	4,711	57,193	24	3,570	5,460	1,688,929	222,419	55	0	0	0	3,398,319
Alaska	37	227,206	352,373	2,246	15,676	3	643	649	17,542	24,391	5	0	0	0	641,103
Arizona	323,522	953,536	902,114	6,093	45,256	6,643	991	649	83,952	62,273	39	0	0	0	2,385,069
Arkansas	216,009	552,094	1,181,326	1,628	37,265	1,591	1,127	3,162	79,494	233,730	30	0	0	0	2,307,388
California	2,924,999	3,213,554	3,499,452	186	207,864	16,511	0	0	1,645	1,058	6	0	0	0	9,732,775
Colorado	59,110	1,326,327	1,755,804	0	231,435	2,891	0	0	0	0	0	0	0	0	3,375,567
Connecticut	839,699	87,913	356,721	1,727	8,024	27,680	3	4	70	149	0	0	0	0	1,601,764
Delaware	0	87,888	138,767	549	3,531	48	0	0	0	0	0	0	0	0	230,961
District of Columbia	2	1,309	405	0	8	0	0	0	0	0	0	0	0	0	1,772
Florida	45	2,769,801	2,151,809	0	117,558	75,540	2,090	1,444	77,382	62,167	24	0	0	0	5,257,866
Georgia	738,582	1,169,169	1,563,259	3,279	48,298	412,916	1,363	2,451	87,062	126,640	45	0	0	0	4,173,065
Hawaii	0	2,176	2,763	50	126	0	0	0	0	0	0	0	0	0	5,115
Idaho	106,186	1	33	1,338	19,228	22,544	340	863	21,998	82,505	15	0	0	0	106,323
Illinois	5,107,408	968,124	1,351,800	1	48,018	0	0	0	0	0	0	0	0	0	1,127,680
Indiana	561,377	860,069	1,379,147	7,960	30,618	0	7	496	123	56,567	4	0	0	0	2,896,368
Iowa	815,577	5,570	562,159	398	645	929	3	575	333	16,435	8	0	0	0	1,402,235
Kansas	17,557	495,000	852,505	3,773	33,066	21	504	157	37,662	57,515	18	0	0	0	1,498,178
Kentucky	9,630,654	1,051,263	1,594,261	3,242	69,467	36,957	2,175	4,325	144,221	252,755	45	0	0	0	12,789,367
Louisiana	31	960,485	1,470,564	4,537	42,006	37	751	1,142	94,104	147,688	13	0	0	0	2,721,358
Maine	0	210,342	459,682	1,313	13,461	0	1,149	4,283	5,321	15,580	1	0	0	0	711,132
Mariana Islands	0	171	104	0	13	0	0	0	0	3	0	0	0	0	291
Maryland	238,099	219,412	642,365	613	1,542	41	89	166	5,593	13,986	12	0	0	0	1,121,918
Massachusetts	794,620	293,654	222,136	2,726	9,327	60,042	0	0	0	0	0	0	0	0	1,382,505
Michigan	2,049,695	262,918	2,083,363	3,522	8,237	0	3	957	55	37,472	0	0	0	0	4,446,225
Minnesota	861,996	563,389	1,604,074	4,303	22,780	1	67	571	10,475	63,570	12	0	0	0	3,131,238
Mississippi	28,212	648,406	1,193,629	2,451	32,588	3	5,041	7,481	104,602	187,427	43	0	0	0	2,209,886
Missouri	113,503	1,029,533	1,953,900	7,923	44,982	0	376	1,753	40,874	179,540	17	0	0	0	3,372,402
Montana	57,413	257,863	635,521	1,216	22,495	405	334	1,372	38,218	122,938	7	0	0	0	1,137,782
Nebraska	271,970	4,286	381,218	274	378	68	9	110	241	13,148	2	0	0	0	671,706
Nevada	68,988	426,295	397,934	113	26,226	22	0	2	19,252	13,769	0	0	0	0	952,601
New Hampshire	186,140	246,192	349,751	384	1,921	329	0	11	641	641	2	158	0	0	785,530
New Jersey	0	248,604	300,549	231	8,762	458	0	0	0	0	0	0	0	0	558,604
New Mexico	30,879	429,209	584,437	2,654	26,608	2	426	986	44,080	97,143	15	0	0	0	1,216,440
New York	522,936	363,135	1,618,035	7,926	7,272	7,094	1,917	21	25	1,310	0	0	0	0	2,559,671
North Carolina	1,544,763	76,119	1,963,454	5,947	20,469	0	1,568	3,395	142,517	254,600	104	0	0	0	4,012,536
North Dakota	39,889	89,423	360,944	545	4,586	37	56	148	3,297	17,914	3	0	0	0	516,842
Ohio	7	1,803,987	2,278,283	11,822	93,550	23	2,023	7,235	73,208	121,176	14	0	0	0	4,391,330
Oklahoma	9	858,538	1,251,976	6,765	65,117	17	1,422	3,025	120,110	227,596	30	0	0	0	2,534,605
Oregon	6,548	798,244	1,273,054	0	47,250	0	0	0	0	0	0	0	0	0	2,125,099
Pennsylvania	52,481	4,284	7,205,020	3	59,386	35	0	0	0	0	0	134	0	0	7,321,343
Puerto Rico	0	81,616	17,624	116	2,293	0	0	0	0	0	0	0	0	0	101,649
Rhode Island	0	68,798	67,346	546	12,957	0	0	1	33	54	0	0	0	0	149,735
South Carolina	312,428	701,872	859,285	2,680	22,678	98	507	771	64,464	90,239	35	0	0	0	2,055,058
South Dakota	1	136,341	487,577	846	8,733	0	69	227	7,897	28,753	4	0	0	0	670,448
Tennessee	374,144	1,572,078	1,726,310	0	61,740	31	0	0	0	0	0	0	0	0	3,754,303
Texas	1,275,863	3,174,784	4,789,268	21,346	190,403	25,017	6,164	7,663	414,092	623,983	231	0	0	0	10,528,821
Utah	1,786,929	325,397	640,883	6	16,566	0	0	0	25	52	0	0	0	0	2,769,858
Vermont	0	93,296	183,451	485	3,909	2	0	0	2	5	0	0	0	0	281,150
Virgin Islands	7,083	1,675	163	0	29	0	0	0	0	0	0	0	0	0	8,950
Virginia	4	1,397,750	1,712,957	84	42,253	318	0	0	0	0	0	5	0	0	3,153,371
Washington	736,175	933,250	1,230,541	11,005	45,800	3,090	625	968	92,523	132,094	27	159	0	0	3,186,273
West Virginia	1,560	1,510,000	1,002,165	2,254	36,381	41	418	1,322	73,706	235,797	16	0	0	0	1,868,362
Wisconsin	83,728	668,600	1,774,940	3,911	1,318	1	23	336	872	26,970	9	0	0	0	2,560,718
Wyoming	42,972	149,557	285,689	778	9,629	888	240	867	11,144	31,780	3	0	0	0	533,547
Totals	32,910,455	35,121,366	62,942,318	146,106	1,986,921	702,505	36,093	65,379	2,093,143	3,883,832	889	14	0	0	139,889,533

*Refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.
Start date: June 29, 2009.

**Multiple (multiple types of firearms selected).

Some states may reflect lower than expected numbers for handgun checks based on varying state laws pertaining to handgun permits. Since the permit check is done in place of the NICS check in most of the affected states, the low handgun statistics are often balanced out by a higher number of handgun permit checks.

These statistics represent the number of firearm background checks initiated through the NICS. They do not represent the number of firearms sold. Based on varying state laws and purchase scenarios, a one-to-one correlation cannot be made between a firearm background check and a firearm sale.

DISCLAIMERS:



**FBI Criminal Justice Information Services Division's
NICS Section Firearm Appeal Certificate**

This is to certify that NICS Section has resolved the appeal of

Title First_Name Middle_Name Last_Name Cadence

Title Last Name is eligible to purchase or redeem a firearm from FFL Name

APPEALED NTN: NTN

INITIATION DATE: Initiation_Date

FFL - If initiation date is older than 30 days, a NICS recheck MUST be conducted. See the instructions below on conducting a recheck.

INSTRUCTIONS TO THE FFL

This certificate may only be used for one transaction at the FFL where the denial occurred; however, multiple firearms may be purchased if permitted by state law.

- Verify the above certificate is embossed with the NICS Section seal.
- Verify the identity of the person presenting this certificate is the same as the name that appears above.
- If more than 30 days have elapsed since the initiation of the original NTN appearing above on this certificate, federal law requires a NICS recheck must be conducted by the FFL before allowing the transfer. State law may require a NICS recheck for transactions less than 30 days old.
- If this is a state Point-of-Contact (POC) check, please contact your POC to complete the NICS recheck.
- If this is an FBI check, call the NICS Customer Service at 1-877-FBI-NICS (324-6427) (select Option 2) and advise the NICS Customer Service Representative you wish to perform an *appeal recheck*. Record the new NTN, date, and status on the original Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473.
- Provide the original denied NTN, appearing above on this certificate, to the NICS Customer Service Representative.
- The NICS Section's best practice recommendations: Retain the original copy of this certificate with the ATF Form 4473 for inspection purposes.

(Revised 03/02/2009)