



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

May 5, 2011

Open Letter to All Federal Firearms Licensees

The purpose of this Open Letter is to provide guidance to Federal Firearms Licensees (FFLs) on how to comply with recordkeeping requirements when there is a change to the response initially received by the National Instant Criminal Background Check System (NICS) during a background check for a firearm transfer pursuant to 18 U.S.C. § 922(t).

As you are aware, Federal law requires, with limited exceptions, that FFLs conduct a background check prior to transferring a firearm to a nonlicensee. The FFLs is required to record the initial response received from NICS or the appropriate State agency in a Point of Contact (POC) State on the ATF Form 4473, Firearms Transaction Record. At the time NICS or the appropriate State agency is contacted, the FFL must record in question 21a-c the date of contact, the NICS (or State) transaction number, and the initial response provided by NICS or the appropriate State agency. If the FFL receives a “delayed” response, before transferring the firearm, the FFL must record in question 21d any response subsequently provided by NICS or the State or that no resolution was provided within 3 business days.

Initial NICS response is “Denied” with a subsequent response “Proceed”

ATF has received inquiries from FFLs in which they have expressed concern on how to properly record a transaction when a response initially provided by NICS or the appropriate State agency was “denied” and afterward NICS or the State agency provides a “proceed” response. When the initial response to the FFL is “denied” and the FFL is subsequently contacted by NICS or the State that the response should be changed to “proceed”, the FFL should indicate the changed response in question 21d. The FFL should line through the word “Delayed” and write above it the word “Denied”, put an “X” in the box next to “Proceed” and write the date, and provide an explanation for the change in question 30c of the ATF Form 4473.

If the “proceed” response and the purchaser returns to pick up the firearm within 30 days of the date NICS or the State were originally contacted it is not necessary to complete a new ATF Form 4473 and the FFL may transfer the firearm provided that the transfer complies with all applicable Federal and State laws. The purchaser must complete Section C of the ATF Form 4473 if the transfer occurs on a different day from the date the purchaser completed Section A.

If the “proceed” response is received more than 30 days after the initial background check which resulted in the “denied” response, the FFL must complete a new ATF Form 4473 and conduct a new NICS check. In addition, the FFL must abide by all applicable Federal and State laws.

The FFL should be aware that a new NICS Transaction Number (NTN) will not be provided when the “denied” response is changed to a “proceed” response. In addition to keeping the original ATF Form 4473

as part of the required records, the FFL should maintain a copy of the ATF Form 4473 in the FFL's records of denied transactions.

NICS Denial Overturn

NICS denial overturns occur when a purchaser appeals a "denied" response. If the purchaser appeals and the "denied" response is overturned, NICS issues an overturn certificate to the purchaser. The purchaser then may return to the original FFL with the overturn certificate. If the purchaser returns within 30 days of the initial background check, the FFL is not required to complete a new ATF Form 4473. The original ATF Form 4473 should be amended to indicate the 'proceed' response in question 21d. The FFL should line through the word "Delayed" in question 21 d., write above it "Denied", put an "X" in the box next to "Proceed". Additionally, in question 30c, the FFL should indicate 'NICS Overturn'. The FFL must attach a copy of the NICS Firearm Appeal Certificate to the ATF Form 4473. The FFL may transfer the firearm provided the transfer complies with all applicable Federal and State laws. The purchaser must complete Section C of the ATF Form 4473 if the transfer occurs on a different day from the date the purchaser completed Section A. In addition to keeping the original ATF Form 4473 as part of the required records, ATF recommends that the FFL maintain a copy of the ATF Form 4473 in the FFL's records of denied transactions.

The Firearms Industry Programs Branch staff is available to answer your questions about the issues addressed in this letter. You may reach them by phone at (202) 648-7190 or by fax at (202) 648-9640.

A handwritten signature in black ink, appearing to read 'Arthur Herbert', is centered on the page.

Arthur Herbert
Assistant Director
Enforcement Programs and Services