



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

December 29, 2005

Open Letter to All Pennsylvania Federal Firearms Licensees

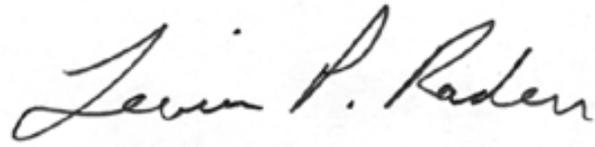
The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received questions from firearms dealers in Pennsylvania concerning the use of the National Instant Criminal Background Check System (NICS)/Pennsylvania Instant Check System (PICS) to do background checks of people who are acquiring firearms from other nonlicensees in what are commonly called “private transfers.” Specifically, questions have been raised concerning whether a Federal firearms licensee (FFL) would be violating the Gun Control Act (GCA) by conducting a PICS check (which includes a NICS check) when a private seller, rather than the FFL, is transferring the firearm. Another question is whether a licensee doing such a check should log the firearms into his Acquisition and Disposition Record and prepare an ATF Form 4473, Firearms Transaction Record.

Pennsylvania law generally requires private transfers of certain firearms, such as handguns, to be run through an FFL or a sheriff to allow PICS checks to be conducted, and State records of sale to be prepared, prior to the transfers.

NICS regulations prohibit FFLs from using NICS to conduct a background check on a person who is not attempting to acquire a firearm from the FFL. Therefore, in a “private transfer,” an FFL who conducts a PICS check without taking a firearm into inventory would violate NICS regulations. The FFL would be doing a PICS check on someone who was not attempting to acquire a firearm from the FFL.

In order to comply with Pennsylvania law without violating NICS regulations, the FFL must take the firearm into inventory, record the acquisition and subsequent disposition in his Acquisition & Disposition (A&D) Record, and prepare an ATF Form 4473, in addition to the Record of Sale required by State law. Once a firearm is taken into an FFL’s inventory, the PICS check (which as stated above includes a NICS check) is not a violation of NICS regulations. Rather, it is required under the GCA. Please note, however, that the GCA prohibits FFLs from selling or delivering a handgun to a person under 21 years of age. Therefore, once a handgun is taken into an FFL’s inventory, it can only be transferred to a person who is at least 21 years old.

We trust that this information is helpful. If further assistance is required, please do not hesitate to contact your local ATF field office.

A handwritten signature in black ink that reads "Lewis P. Raden". The signature is written in a cursive style with a large, prominent initial "L".

Lewis P. Raden
Assistant Director
Enforcement Programs and Services