

Ladies and gentlemen of the committee, good afternoon and thank you for the opportunity to speak on H.610

As we've seen, there are a few different parts of this bill and I would first like to address section 1 regarding the so called "Charleston Loophole." To understand this obscure occurrence, one must first be familiar with the process of purchasing a firearm.

When a person buys a firearm through an FFL (Federal Firearms Licensee), a background check is conducted through the National Instant Criminal Check (NICS) system which is operated by the FBI. Under current Vermont law (13 V.S.A. 4019) all transfers of a firearm, including private sales must be done in this fashion.

Upon informing the dealer of their intent to purchase the firearm, the dealer will require the buyer to complete ATF form 4473 (copy enclosed for reference), and produce a valid, picture identification. When the form is completed and signed, the dealer then initiates the background check through the NICS system either electronically or by phone. The moment the call comes through on the FBI's end the transaction is issued a unique identification number which stays with it throughout the process.

Usually the "instant" background check is exactly that and will report back to the dealer within a few minutes one of three ways: proceed (with the transaction), deny (means the person has been found to be prohibited from owning firearms), or delay, which basically means they are not sure yet and have to do some more homework on the buyer.

Under current federal law, the FBI has three full business days from that point before the "default proceed" status is reached. It is important to note that this "default" proceed order does not mean that the FFL MUST proceed with the transaction, rather they have the option to use their discretion in such cases. After the three day window is up and regardless if the transaction proceeds or not, the FBI will continue to gather information and try to make a determination on the buyer for up to 88 days (3 months from the original inquiry) until federal law requires that transaction to be purged from the NICS system. During this time, if the FBI determines the buyer to be a prohibited person, that triggers an order of operations in response to that information. The FBI will first call the FFL to determine if the transaction was completed. They also call the ATF to inform them of their findings. If the transaction was completed, the ATF will then take measures to retrieve the firearm from the prohibited individual. If the transaction did not proceed, the FBI will in turn notify the ATF of the denial at which point it will be ATF's judgement whether to pursue the individual for attempting to acquire a firearm illegally.

Using FBI data from 2017, approximately 31 percent of transactions turned up "hits" on the initial search and required further investigation. 20 percent were completed during the three-day window while the

other 11 percent were delayed for additional research past the three days. Ultimately the FBI found that 1.2 percent of delayed transactions resulted in denial. This means that 98.8 percent of initial "hits" on the NICS system resulting in further investigation were false positives and the purchaser was NOT a prohibited person. Furthermore, the FBI's own research shows that the NICS system allows a huge number of these delayed background checks to go uncompleted every year past the 90-day period. The FBI failed to complete approximately 1.3 million background checks from 2003 to 2013 and another 1.1 million from 2014 to 2019 respectively. Prohibiting the transfer of a firearm while waiting on a large government bureaucracy to deliver a report could have profound implications for good people who seek to lawfully acquire a firearm, especially when compounded by such high rates of misidentification in the NICS system. Under this law, lawful citizens will be denied their constitutional rights indefinitely and with limited mechanism of appeal. We believe that the implementation of such a provision in the current law is misguided and the burden will once again fall unfairly on the good people of Vermont.

We also think that it is prudent to acknowledge an important piece of context in that the right to keep and bear arms is the only right which is both protected by the constitution and also requires the pre-screening of any and all individuals attempting to exercise that right. We don't require background checks for peaceful assembly, nor for petitioning our elected officials. We don't require a background check for an individual to be protected from unlawful search and seizure nor to have a timely trial by an impartial jury of their peers. We do not require background checks to guarantee that our people shall not be subject to slavery and involuntary servitude as protected by the thirteenth amendment, nor is there any sort of vetting required for women to vote as protected by the nineteenth amendment. We don't require pre-approval to speak one's mind openly through the press or by individual expression and we certainly do not require it to practice the religion of our choosing. Religious zealotry is by far the leading cause of murder, oppression and genocide over the history of mankind yet the idea of a "public safety measure" requiring people to obtain the government's permission each time before attending church sounds downright ludicrous -as it should. Yet when it comes to the right to keep and bear arms, which at its core is the fundamental right of self-defense with which we are all born; the right which preserves all of the others, we have only for the last 26 years imposed this restriction which most everyone now considers routine. Article 16 and the Second Amendment have become the "well, it depends.." amendments.

Regardless of one's personal opinions on the constitutionality of background checks for firearm sales, the fact remains that we require them, and for the most part, the NICS system does a good job of screening for prohibited persons. Sometimes they even do a little too well. As we have previously indicated, research shows that the overwhelming majority of delays on the NICS system are false positives due to similar names and assorted other reasons. When this happens, the best-case scenario for the wrongfully identified purchaser is a delay in the sale and their ability to obtain a weapon for protection, the worst-case scenario is an outright denial which takes months of legal action and personal hardship to correct just to maintain one's rights. In this scenario, the question must be asked if we are not only violating this person's right to self-defense, but also their right not to be deprived of life, liberty, or property, without due process of law as guaranteed by the fifth and sixth amendments. The point is

that even without this proposed change in the law, the system already errs HEAVILY on the side of restricting people's rights on the CHANCE that they MIGHT be a threat to public safety.

As the committee heard from Henry Parro, a local firearms dealer with over 30 years of experience, it is already an extremely rare occurrence that a firearm is sold to a prohibited person past the three-day waiting period and in each case, the ATF is immediately on the task of separating that individual from the firearm. The term "Charleston Loophole" which identifies this obscure corner of the law is a misnomer created by gun control advocates for what might be best described as a microscopic pinhole in an otherwise broad and heavy canvass of a law. And it is disingenuous at best. When researching this specific phenomenon, we came up with some interesting results. After many hours of searching for a statistic on how many crimes are committed annually with firearms that slip through this alleged loophole, we found clear documentation of exactly ONE: the Charleston shooting itself which inspired the name. This is not to suggest that no crimes have otherwise been committed with a firearm obtained through a default proceed, but to recognize that the problem is so very miniscule that there is no observable data if in fact a problem even exists. It also bears noting that upon completion of the investigation into the Charleston Shooting, the FBI determined that the drug possession charge on the shooter's record was a misdemeanor and not a felony which means that at the time of purchase, the shooter was NOT a prohibited person under the criteria. While this information in no way lessens the abhorrence of the crime that was eventually committed, it does show that the NICS system worked as designed. This information also points to one very important conclusion: For all intents and purposes, the problem that this law proposes to address exists almost exclusively IN THEORY.

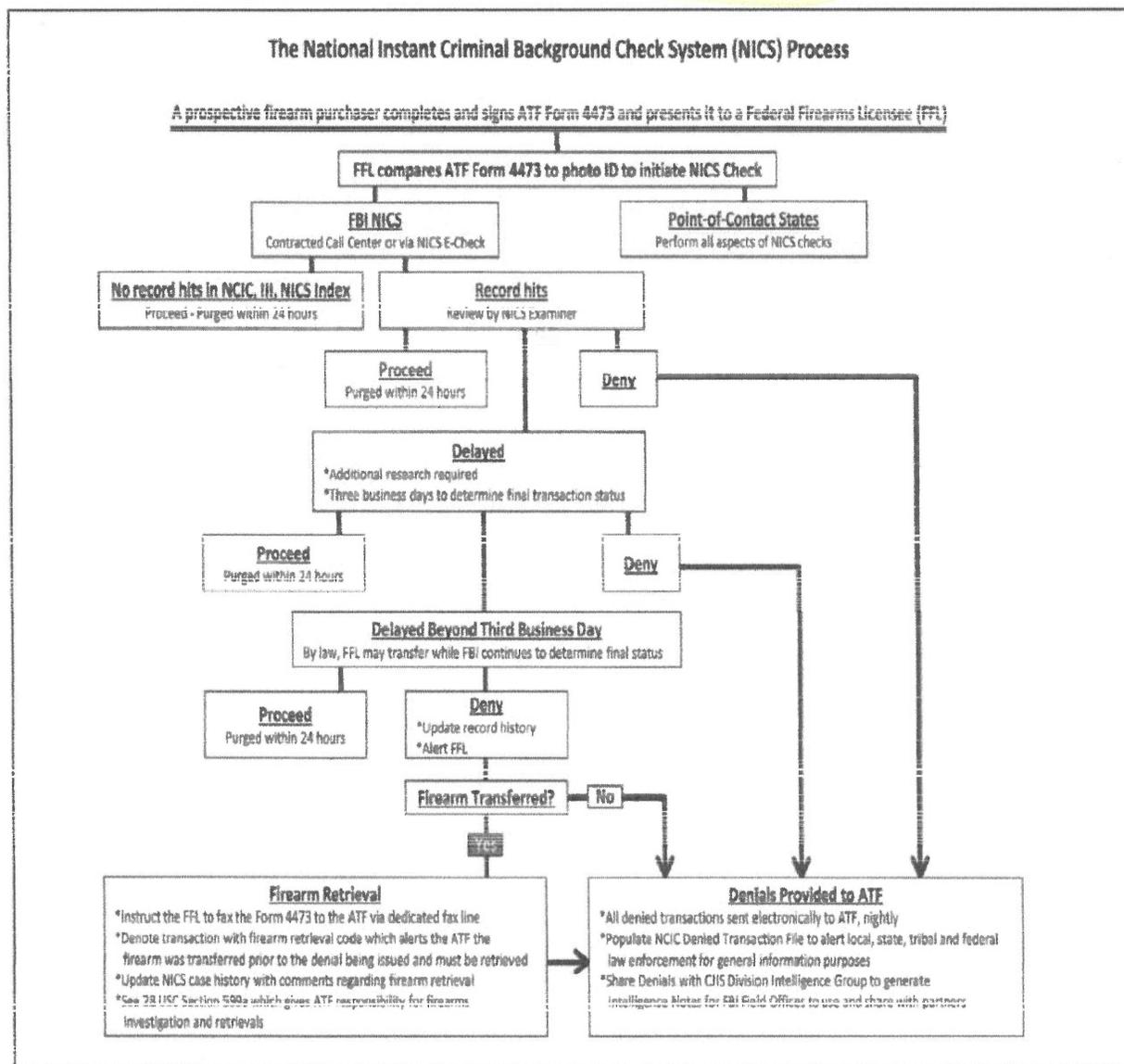
Given this information, section 1 appears clearly to us as a solution in search of a problem. If implemented, this policy will most certainly catch far more innocent people than criminals and we strongly oppose this part of the bill.

approve firearms purchases. Appendix 2 provides a map showing how each state and territory participates in NICS.

Whether the NICS background check is initiated through the FBI or state points of contact, the process for verifying customers' identity and histories are similar. This workflow process as represented from the federal perspective is depicted in Figure 1.

Figure 1

The Federal NICS Workflow Process



Note: The workflow process for state points of contacts are not intended to be represented by this diagram, although they involve similar responsibilities.

Source: The FBI

Firearms Transaction Record

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 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/
Seller's
Transaction Serial
Number (If any)

Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee/Buyer

1. Transferee's/Buyer's Full Name (If legal name contain an initial only, record "IO" after the initial. If no middle initial or name, record "NMN".)

Last Name (Including suffix (e.g., Jr, Sr, II, III))	First Name	Middle Name
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2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)

Number and Street Address	City	County	State	ZIP Code
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3. Place of Birth U.S. City and State	-OR- Foreign Country	4. Height Ft. _____ In. _____	5. Weight (Lbs.) _____	6. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	7. Birth Date Month _____ Day _____ Year _____
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8. Social Security Number (Optimal, but will help prevent misidentification)	9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)
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10.a. Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	10.b. Race (In addition to ethnicity, select one or more race in 10.b. Both 10.a. and 10.b. must be answered.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian	<input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander	<input type="checkbox"/> White
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11. Answer the following questions by checking or marking "yes" or "no" in the boxes to the right of the questions.

	Yes	No
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. 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. (See Instructions for Question 11.a.)	<input type="checkbox"/>	<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.)	<input type="checkbox"/>	<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.)	<input type="checkbox"/>	<input type="checkbox"/>
d. Are you a fugitive from justice? (See Instructions for Question 11.d.)	<input type="checkbox"/>	<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? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.	<input type="checkbox"/>	<input type="checkbox"/>
f. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)	<input type="checkbox"/>	<input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	<input type="checkbox"/>	<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.)	<input type="checkbox"/>	<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.)	<input type="checkbox"/>	<input type="checkbox"/>

12.a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)

<input type="checkbox"/> United States of America (U.S.A.)	<input type="checkbox"/> Other Country/Countries (Specify)
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	Yes	No
12.b. Have you ever renounced your United States citizenship?	<input type="checkbox"/>	<input type="checkbox"/>
12.c. Are you an alien illegally or unlawfully in the United States?	<input type="checkbox"/>	<input type="checkbox"/>
12.d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See Instructions for Question 12.d.)	<input type="checkbox"/>	<input type="checkbox"/>
12.d.2. If "yes", do you fall within any of the exceptions stated in the instructions? <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>

13. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#):

Previous Editions Are Obsolete

**Transferee/Buyer Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED**

I certify that my answers in Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.i and/or 12.b. through 12.c. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12.d.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 12.d.2. and provides the documentation required in 18.c. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law. (See Instructions for Question 14.)

14. Transferee's/Buyer's Signature	15. Certification Date
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Section B - Must Be Completed By Transferor/Seller

16. Type of firearm(s) to be transferred (check or mark all that apply): <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun (rifles or shotguns) <input type="checkbox"/> Other Firearm (frame, receiver, etc. See Instructions for Question 16.)	17. If transfer is at a qualifying gun show or event: Name of Function: _____ City, State: _____
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18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.)				
Issuing Authority and Type of Identification	Number on Identification	Expiration Date of Identification (if any)		
		Month	Day	Year

18.b. Supplemental Government Issued Documentation (if identification document does not show current residence address) (See Instructions for Question 18.b.)

18.c. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "YES" to 12.d.2. the transferor/seller must record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473. (See Instructions for Question 18.c.)

Questions 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 19, 20 and 21.)

19.a. Date the transferee's/buyer's identifying information in Section A was transmitted to NICS or the appropriate State agency: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; border: 1px solid black; padding: 2px;">Month</td> <td style="width:33%; border: 1px solid black; padding: 2px;">Day</td> <td style="width:33%; border: 1px solid black; padding: 2px;">Year</td> </tr> </table>	Month	Day	Year	19.b. The NICS or State transaction number (if provided) was:
Month	Day	Year		

19.c. The response initially (first) provided by NICS or the appropriate State agency was: <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied [The firearm(s) may be transferred on <input type="checkbox"/> Cancelled if State law permits (optional)]	19.d. The following response(s) was/were later received from NICS or the appropriate State agency: <input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Overturned <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No response was provided within 3 business days.
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19.e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date). Proceed Denied Cancelled

19.f. The name and Brady identification number of the NICS examiner. (Optional) _____ (name) _____ (number)	19.g. Name of FFL Employee Completing NICS check. (Optional)
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20. No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application. (See Instructions for Question 20.)

21. No NICS check was required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS. (See Instructions for Question 21.)

Issuing State and Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)
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Section C - Must Be Completed Personally By Transferee/Buyer

If the transfer of the firearm(s) takes place on a different day from the date that the transferee/buyer signed Section A, the transferee/buyer must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 22 and 23.)

I certify that my answers to the questions in Section A of this form are still true, correct, and complete.

22. Transferee's/Buyer's Signature	23. Recertification Date
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Transferor/Seller Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred

24. Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25. Model (If Designated)	26. Serial Number	27. Type (See Instructions for Question 27.)	28. Caliber or Gauge
1.				
2.				
3.				
4.				

REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

29. Total Number of Firearms Transferred (Please <i>handwrite</i> by printing e.g., zero, one, two, three, etc. Do not use numerals.)	30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:
31. For Use by Licensee (See Instructions for Question 31.)	32. Check if this transaction is to facilitate a private part transfer. <input type="checkbox"/> (See Instructions for Question 32.)
33. Trade/corporate name and address of transferor/seller and Federal Firearm License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)	

The Person Transferring The Firearm(s) Must Complete Questions 34-37.

For Denied/Cancelled Transactions, the Person Who Completed Section B Must Complete Questions 34-36.

I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections B and D is true, correct, and complete; and (3) this entire transaction record has been completed at my licensed business premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled, I further certify on the basis of — (1) the transferee's/buyer's responses in Section A (and Section C, if applicable); (2) my verification of the identification recorded in question 18 (and my re-verification at the time of transfer, if Section C was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

34. Transferor's/Seller's Name (Please print)	35. Transferor's/Seller's Signature	36. Transferor's/Seller's Title	37. Date Transferred
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NOTICES, INSTRUCTIONS, AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. The transferor/seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the transferor/seller must be familiar with the provisions of 18 U.S.C. 921-931 and the regulations in 27 CFR Parts 478 and 479. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a resident of another State, the transferor/seller is presumed to know the applicable State laws and published ordinances in both the transferor's/seller's State and the transferee's/buyer's State. (See ATF Publication 5300.5, State Laws and Published Ordinances.)

Generally, ATF Form 4473 must be completed at the licensed business premises when a firearm is transferred over-the-counter. Federal law, 18 U.S.C. 922(c), allows a licensed importer, manufacturer, or dealer to sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises only if the transferee/buyer meets certain requirements. These requirements are set forth in section 922(c), 27 CFR 478.96(b), and ATF Procedure 2013-2.

After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained for at least 20 years and after that period may be submitted to ATF. Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction serial number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.

FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not completed after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his/her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections B and D. The transferee/buyer should only make changes to Section A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

Exportation of Firearms: The State or Commerce Departments may require a firearms exporter to obtain a license prior to export. **Warning:** Any person who exports a firearm without proper authorization may be fined not more than \$1,000,000 and/or imprisoned for not more than 20 years. See 22 U.S.C. 2778(c).

Section A

The transferee/buyer must personally complete Section A of this form and certify (sign) that the answers are true, correct, and complete. However, if the transferee/buyer is unable to read and/or write, the answers (other than the signature) may be completed by another person, excluding the transferor/seller. Two persons (other than the transferor/seller) must then sign as witnesses to the transferee's/buyer's answers and signature/certification in question 14.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

November 20, 2019

MR. JOSHUA EATON
CO ROLL CALL

WASHINGTON, DC 20004

FOIPA Request No.: 1449897-000
Subject: NICS Transactions
(Specific Data: 2014-2019)

Dear Mr. Eaton:

This is in response to your Freedom of Information/Privacy Acts (FOIPA) request. The FBI has completed its search for records responsive to your request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

Material consisting of one page has been reviewed pursuant to Title 5, U.S. Code § 552/552a, and this material is being released to you in its entirety with no excisions of information.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, D.C. 20001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following website: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

Enclosure

January 1, 2014 - September 30, 2019

Year	Number of federal NICS transactions	Number of federal NICS transactions that received an immediate response	Number of delayed federal NICS transactions	Number of federal NICS transactions delayed past three business days	Number of federal NICS transactions purged unresolved at 88 days	Number of federal NICS transactions that received a proceed response	Number of federal NICS transactions that received a deny response
2014	8,256,688	7,477,549	779,139	228,006	172,879	1,917,774	90,895
2015	8,973,538	8,083,046	890,492	271,359	200,360	8,649,820	106,556
2016	9,360,833	8,306,584	1,054,249	303,146	216,744	8,967,829	120,497
2017	8,638,246	7,648,423	989,823	310,232	212,617	8,152,790	103,985
2018	8,235,342	7,309,648	925,694	275,879	201,323	7,749,951	99,252
2019	5,605,416	4,997,798	607,618	183,242	111,707 ¹	5,307,372	74,200

¹January 1, 2019 – July 31, 2019

The number of retrieval referrals from the Federal Bureau of Investigation (FBI) to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF")- Refer to ATF

The number of retrieval referrals to ATF with a confirmed sale-Refer to ATF

The number of retrieval referrals to ATF without a confirmed sale-Refer to ATF

The number of federal NICS transactions delayed past 30 calendar days- Information not maintained

The FBI's NICS Section

Upon receiving a request for a background check, the NICS call center operator or NICS E-Check system queries NICS for possible matching records that would prohibit the purchaser from possessing a firearm. If no disqualifying information is found, NICS notifies the dealer that the firearm transfer is approved and may proceed.¹¹ The FBI NICS Section Chief told us that 72 percent of NICS checks result in an immediate approval to proceed. The remaining 28 percent are held for additional review because the initial NICS screening found potentially prohibitive records that may match the identity of the purchaser. For cases held for further review, the dealer is notified that the transaction is "delayed" and the transaction undergoes further scrutiny by an FBI NICS Section Legal Instrument Examiner (NICS Examiner).¹²

After 3 full business days without receiving a confirmed denial or approval of a NICS background check, dealers have the right to transfer the firearm to customers under the Brady Act, although individual state's laws may prohibit this. Regardless of whether the firearm may have been transferred to the customer, the NICS checks continue for a maximum of 88 days, after which they effectively terminate and transaction records are purged in accordance with federal regulations.¹³ If the NICS check confirms that the customer is prohibited from purchasing firearms within 90 days, the NICS Examiner advises the dealer that the firearm transfer is denied.¹⁴ The NICS Section transmits all the data collected in connection with the federally denied transactions to ATF for such additional review,

¹¹ For all approved NICS transactions, identifying information about the purchaser and the firearm is purged from NICS within 24 hours in accordance with federal law. Records of denied transactions are not purged from the system. Purchaser identifying information must also be purged for open NICS transactions that are not approved or denied within 90 calendar days. For all purged records, NICS retains the original NICS transaction number and date of the initial NICS check for potential further inquiries, such as status queries, appeals, or ATF reviews of dealers.

¹² In point-of-contact states, the point of contact confirms any possible matching records and notifies the dealer that the transfer may proceed, is delayed pending further record analysis, or is denied (28 C.F.R. § 25.6(g)(2)).

¹³ Multiple factors may lead to transactions that are delayed for more than 3 business days, for example a NICS record may show the customer was arrested for possible commission of a crime, and therefore the NICS Examiner would need to conduct more research or wait for a response to a request for information from judicial or law enforcement agencies to determine whether the customer was convicted. Federal regulation 28 C.F.R. § 25.9(b)(1) requires that transaction records for NICS checks that remain open for 90 calendar days are purged from the system. The FBI purges transaction records on the 89th calendar day, except for transactions that are open because of an appeal or audit. Those transactions remain open until a decision is reached on the appeal. Even after the transaction records have been purged, the NICS Section will nevertheless continue to accept and record in the NICS databases, any information regarding the customer received from the courts or law enforcement for future NICS transaction checks.

¹⁴ NICS transactions remain in an open status while NICS Examiners or state points of contact conduct additional research or wait for judicial or law enforcement agencies to provide additional information. We determined that from FY 2003 through May 2013, about 2 percent, or about 1.3 million records remained in an open or pending status until they were purged from NICS.

2017 NICS Operations

Out of One Hundred Checks

Pursuant to 28 C.F.R. §25.6, based on the information returned in response to a NICS background check, the NICS Section provides either a proceed, a deny, or a delay transaction determination to the FFL. If the NICS Section cannot determine a proceed or a deny response during the FFL's initial contact, the transaction is delayed. From January 1, through December 31, 2017, approximately 11 percent of all transactions processed were given an initial delay status.

When a NICS transaction is delayed, the Brady Act allows the FFL to legally transfer the firearm if the NICS transaction is not resolved within three business days. However, the NICS Section continues to search for the information necessary to make a final determination until the transaction is purged prior to 90 days.

