U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services Division

National Instant Criminal Background Check System (NICS)

Operations Report
(November 30, 1998 - December 31, 1999)

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EXECUTIVE SUMMARY

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law, 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 Attorney General to establish the National Instant Criminal Background Check System (NICS) that any FFL may contact for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate federal or state law.

In its first 13 months of operation,[1] November 30, 1998, through December 31, 1999, the NICS has proven to be a highly effective system processing over 10 million inquiries. Each NICS background check includes automated searches of approximately 35 million criminal records, over 500,000 records on wanted persons, over 200,000 subjects of protective/restraining orders, and over one million records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under federal law, while denying transfers to more than an estimated 179,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), and local, state, and other federal agencies. For example, the FBI worked together with ATF and local and state law enforcement to design the NICS. State and federal agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contact (POCs) to support their FFLs in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than 2,400 wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted local, state, and federal law enforcement agencies to provide information that has resulted in the apprehension of many of these fugitives from justice.

[1]Note: This NICS operations report covers the period of November 30, 1998, through December 31, 1999, and updates the statistical information in the seven month report released on September 9, 1999. Future reports will be published annually and will encompass transactions on a calendar year (January-December) basis.

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BACKGROUND OF THE NICS

Situation Before the Brady Handgun Violence Prevention Act

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under federal law. Until the passage of the Brady Act in 1993, however, there was no mechanism to prevent these individuals from obtaining firearms. Firearms were sold, even by FFLs, on an honor system. Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

Brady Act Requires Background Checks

The Brady Act put an end to the honor system by requiring background checks on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994, until November 30, 1998, the rules of Interim Brady applied; since November 30, 1998, the provisions of Permanent Brady have been in place. During the Interim Brady phase, the Brady Act applied only to handgun sales, and background checks were conducted by local and state law enforcement. During this time, there was no centralized mechanism for firearms background checks, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background checks. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background checks. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited persons from getting handguns.

Brady Act Requires a National System for Conducting Instant Background Checks

The Brady Act also required the Attorney General to develop within five years a national system for conducting criminal background checks instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate federal or state laws.

Local and State Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of local and state law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the ATF and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations.

The concept called for firearms background checks to include a check of databases at the state and national levels. When an FFL conducts a NICS check, a name search is conducted for any matching records in three different databases, managed by the FBI. These include:

- The National Crime Information Center (NCIC), which contains over 500,000 records on wanted persons and over 200,000 subjects of protective/restraining orders;

- The Interstate Identification Index (III), which contains approximately 35 million criminal history records; and

- The NICS Index, which contains over one million records of other prohibited persons, as outlined in the Gun Control Act, such as individuals who have received dishonorable discharges from the armed services, individuals who have renounced their citizenship, mental defectives, and illegal/unlawful aliens.[2]

Establishment of the NICS Program Office

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to closely coordinate the final stages of the development of NICS and the transition to an operational program. This included coordinating a multitude of functions and projects such as: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones, and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; and creating and modifying work schedules.

[2]During the first year of the NICS operations, records in the NICS Index rose from approximately 900,000 to over one million. The FBI continues to work to increase records in this database.

Coordination of employee input resulted in the creation of the following NICS mission statement:

> To enforce the provisions of the Brady Handgun Violence Prevention Act by utilizing an effective system to ensure the timely transfer of firearms to individuals who are not specifically prohibited under federal law and denying the transfer to those who are prohibited from possessing or receiving such firearms through:
>
> 1. effective leadership in the management and operation of the NICS:
>
> 2. timely, accurate, and complete responses to NICS background checks; and
>
> 3. timely and effective customer service to other local, state, and federal law enforcement agencies, Federal Firearms Licensees, and other users of NICS.

FBI's Continuing Partnership with the States

The FBI has continued to seek and act upon the advice of local and state law enforcement in its operation of the NICS. Proven mechanisms are in place for the continual improvement of NICS operations. For example, regional and national meetings are held semi-annually in which the FBI provides status reports on the NICS to local, state, and federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted two NICS State Participant Conferences–one was held while under the provisions of interim Brady and the other took place after permanent Brady was implemented. The second conference was held on June 23-24, 1999, during which the FBI presented briefings and received supportive feedback on the NICS operation to date. Finally, the FBI incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice (DOJ), established the NICS Web site (www.fbi.gov/programs/nics/index.htm) to ensure the rapid, continual dissemination of important new information about the NICS.

WHAT IS A NICS CHECK AND HOW DOES IT WORK?

Legal Requirements for the NICS Background Check

The Brady Act prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *or* three business days have passed without an indication from the NICS that the prospective purchaser is prohibited from possessing a firearm. Once contacted, the NICS is expected to provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under federal or state law.

Prohibited categories include:

1. convicted felons and persons under indictment for a felony;
2. fugitives from justice;
3. unlawful drug users or drug addicts;
4. individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent;
5. illegal aliens and legal aliens admitted under a non-immigrant visa;
6. individuals who have been dishonorably discharged from the military;
7. persons who have renounced their citizenship;
8. persons subject to certain domestic violence restraining orders; and
9. persons convicted of misdemeanor crimes of domestic violence.

Actions Involved in a NICS Check

Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473

It has been determined that approximately 15 percent of the licensed dealers account for 80 percent of the NICS transactions. Currently, there are 49,844 type one (gun dealer) and type two (pawn broker) license holders in the United States and U.S. Territories enrolled with the NICS Operations Center. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, known as the Firearms Transaction Record. The completed ATF Form 4473 contains information such as name, address, and date of birth, and a certification from the purchaser that he or she is not prohibited under state or federal law from purchasing or possessing a firearm.

FFLs Contact the State Law Enforcement Agency Serving as a POC for NICS Checks

In states that agree to conduct Brady background checks, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check rather than contacting the FBI. Currently, 15 states serve as a full POC for NICS (checks on handguns and long guns) and 11 states serve as partial POC for NICS (states perform checks for handgun purchases; and FBI processes checks for long gun purchases.) See Appendix A.

A state POC will access the state's independent criminal history database as well as the NICS system. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to those of the state's records which are part of the NICS databases, but also to the state's records and manual records–including many final dispositions–which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order. Through programs such as the National Criminal History Improvement Program (NCHIP), federal authorities are working to improve NICS access to such records, but the availability of these records to the states is a very important benefit of state participation in the system.

In Other States, FFLs Contact the FBI for NICS Checks

In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI, via a toll free telephone number,[3] to request a background check. (Refer to NICS Operation Workflow Diagram–Appendix B–for overview of activities described on next several pages.) NICS is available for background checks 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia, and Uniontown, Pennsylvania.

A call center customer service representative (CSR) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to NICS, one of two responses will be returned from

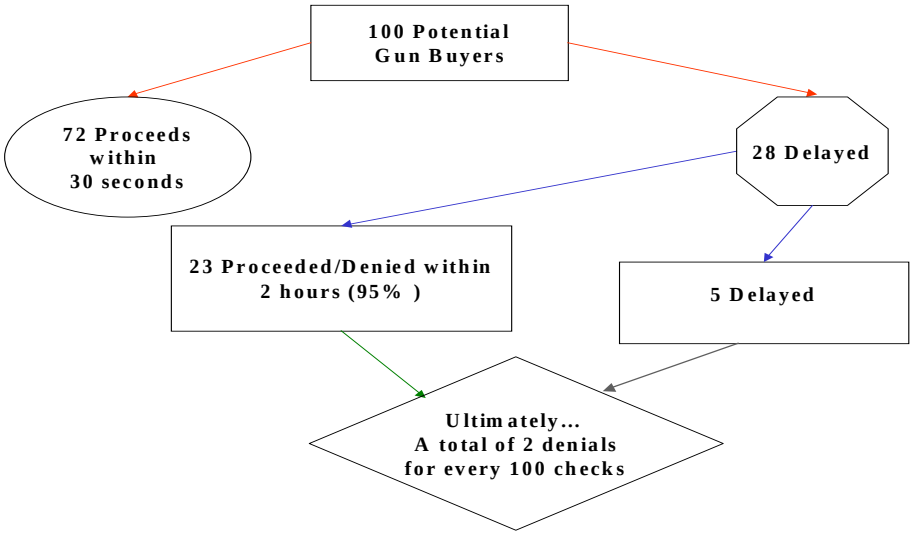
[3]The NICS Operation Center is currently working to develop an alternative electronic means by which FFLs might contact the NICS in addition to the telephone.

NICS–proceed or delay–along with a NICS Transaction Number (NTN) for that particular transaction.

The call center CSR does not have access to and cannot receive any other information in the NICS relative to criminal history information, wanted persons information, or any other NICS Index protected information. Most of the time, the NICS responds immediately with a proceed response because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, the NICS identifies disqualifying or potentially disqualifying information in the system and generates a delay response. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee known as a NICS examiner will review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest or disposition information.

NICS Responses to Requests for Background Checks Must be Timely and Accurate

Under the Brady Act, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is *no* federal waiting period. As described in greater detail below, 72 percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into NICS). Experience shows that the NICS provides a definitive response (proceed or deny) to 95 percent of all requests within two hours of receipt of information to search NICS. Only five percent of prospective purchasers have to wait more than two hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:



RESULTS FROM THE FIRST YEAR OF NICS OPERATIONS

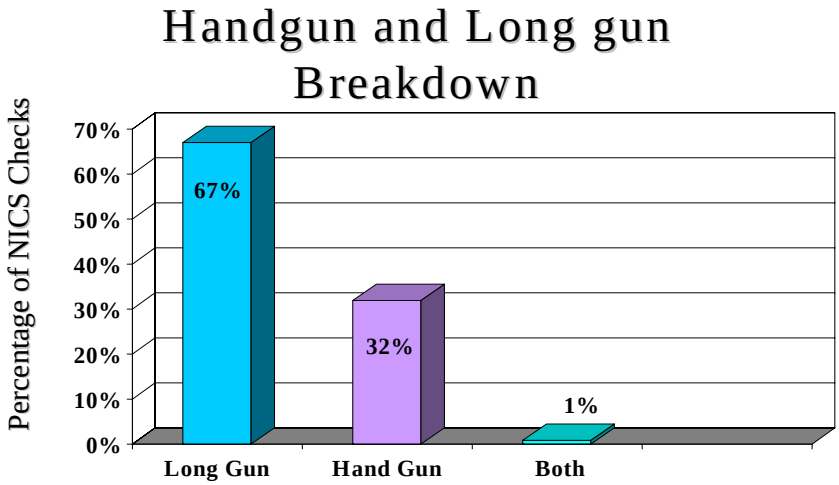
Number of NICS Checks

In the first 13 months of operation, the NICS completed 10,030,963 background checks. Of these, 5,044,574 were handled by the FBI, while 4,986,389 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

NICS TRANSACTIONS

	State	*Federal*
***November 98** (one day only)*	**6,626**	**14,570**
December 98	**379,660**	**491,984**
1998 Totals	**386,286**	**506,554**
January 99	**315,869**	**275,486**
February 99	**369,647**	**326,676**
March 99	**399,574**	**353,509**
April 99	**341,128**	**305,584**
May 99	**311,736**	**264,536**
June 99	**306,825**	**262,668**
July 99	**303,485**	**285,991**
August 99	**363,503**	**339,891**
September 99	**382,779**	**425,848**
October 99	**435,325**	**510,376**
November 99	**459,161**	**545,172**
December 99	**611,071**	**642,283**
1999 Totals	**4,600,103**	**4,538,020**
Project to Date	**4,986,389**	**5,044,574**

With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.



Note: NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to the number, make, model or serial number of the firearm(s) being purchased.

Immediate Proceeds –There is No Disqualifying Information in the NICS

Of the total 5,044,574 NICS checks handled at the federal level, 4,890,399 were processed through the Call Center, where 3,494,311 (72 percent) resulted in an immediate proceed determination to the FFL.[4] This indicates that no records regarding the prospective buyer have been located by the NICS, and that the Brady Act does not prohibit transfer of the gun. It takes 30 seconds or less to provide an immediate proceed after information is entered into NICS.

[4]The remaining 154,175 NICS checks were processed through the FBI's Operations Center. These include overflow calls from the Call Center, processing of permit checks, and initial searches from FFLs in POC states that experience difficulty with their state system.

Delays–There is Potentially Disqualifying Information in the NICS

The other 28 percent of NICS checks are delayed because additional time is required to determine whether a firearm purchaser is prohibited from possessing a firearm. If information needed to finish the background check is available electronically, the background check is completed within two hours. Of the NICS checks for which additional information is required, 80 percent are completed within two hours after performing additional electronic checks. In other words, approximately 95 percent of all NICS checks are completed within two hours.

The remaining five percent of checks cannot be completed electronically and require more time to finish. The FBI must contact the local or state entity that has the information usually disposition information about an arrest, to complete the record. For example, the check of criminal history records, which are comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information about an arrest, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show an arrest without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under current federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Therefore, final disposition information from the states is critical to the NICS.

The first year of NICS operation demonstrated the connection between the lack of state arrest disposition information and the delays in NICS responses. When the NICS shows a potentially disqualifying criminal history record for a prospective purchaser but does not have electronic access to final disposition information, a NICS examiner must take steps to obtain that information from nonelectronic sources often requiring direct contact with the local court where the information is held. The ability to obtain the required disposition information depends on several factors, including whether the court is open (courts are typically closed on weekends), the availability of the court clerk to assist, and accessibility of the disposition information. For these reasons, the Brady Act allows the NICS three business days to complete a check.

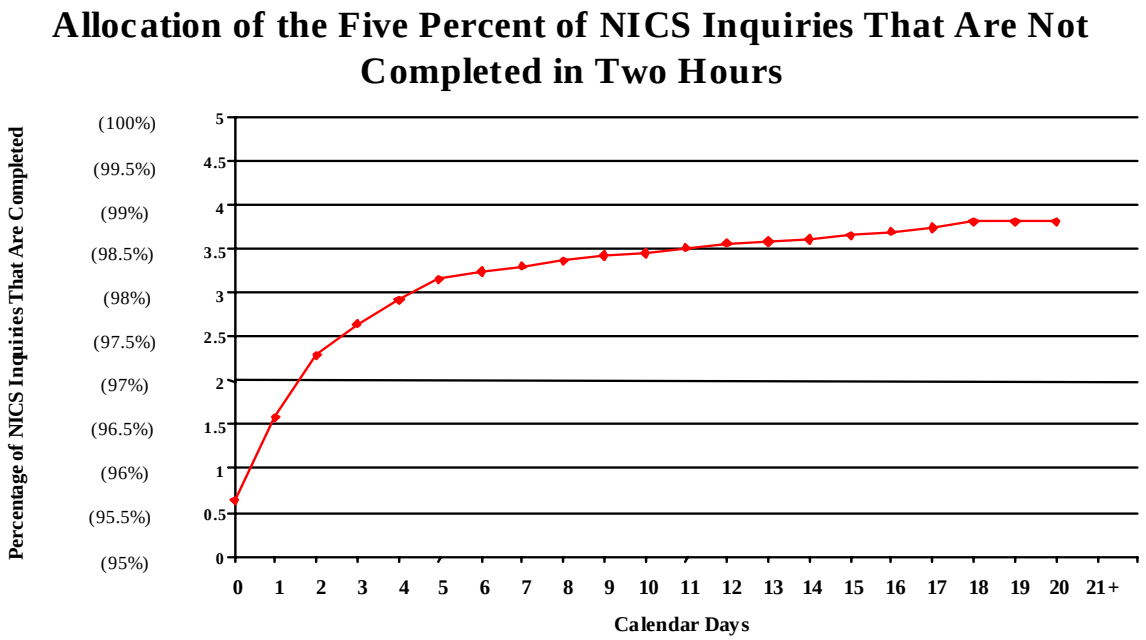
It is significant that the Brady Act allows the NICS three business days to complete a check, rather than three days or 72 hours. A 72-hour rule would mean that, if a purchase were initiated on a Saturday morning and arrest disposition information was needed, the FBI would have approximately eight business hours–on Monday–to obtain this information in order to complete the check. Of the 89,836 NICS denials issued by the FBI during the first year of NICS operation, over 13,000 or 15 percent would not have been issued if the law allowed only 72 hours to complete a check instead of three business days.

Some examples illustrate the impact of a 72-hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15,1999; a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27,1999; and a person convicted of domestic violence in Kansas who tried to buy a gun on Saturday, January 30, 1999.

Reducing the time limit for checks from three business days to lesser periods, such as 48 hours or 24 hours, would mean a corresponding decrease in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first year, 21,354 or 24 percent would not have been stopped if a 48-hour limit had been in place and 33,992 or 38 percent would not have been stopped if a 24-hour limit had been in place.

Default Proceeds–Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated

A portion of the five percent of NICS checks that require more than two hours to complete cannot be completed within the three-business day time period currently provided under the Brady Act. The data regarding the time where checks cannot be completed in two hours is illustrated in the graph below:



Note - 95% of all inquiries are completed within two hours. This chart represents the five percent of inquiries not completed within two hours.

As soon as the NICS examiner receives information to complete the check–such as the disposition of an arrest–contact is immediately made with the relevant FFL to provide the result of the NICS check, whether or not within the statutory three business day period. However, the Brady Act does not prohibit FFLs from transferring firearms after three business days even if the check is incomplete.

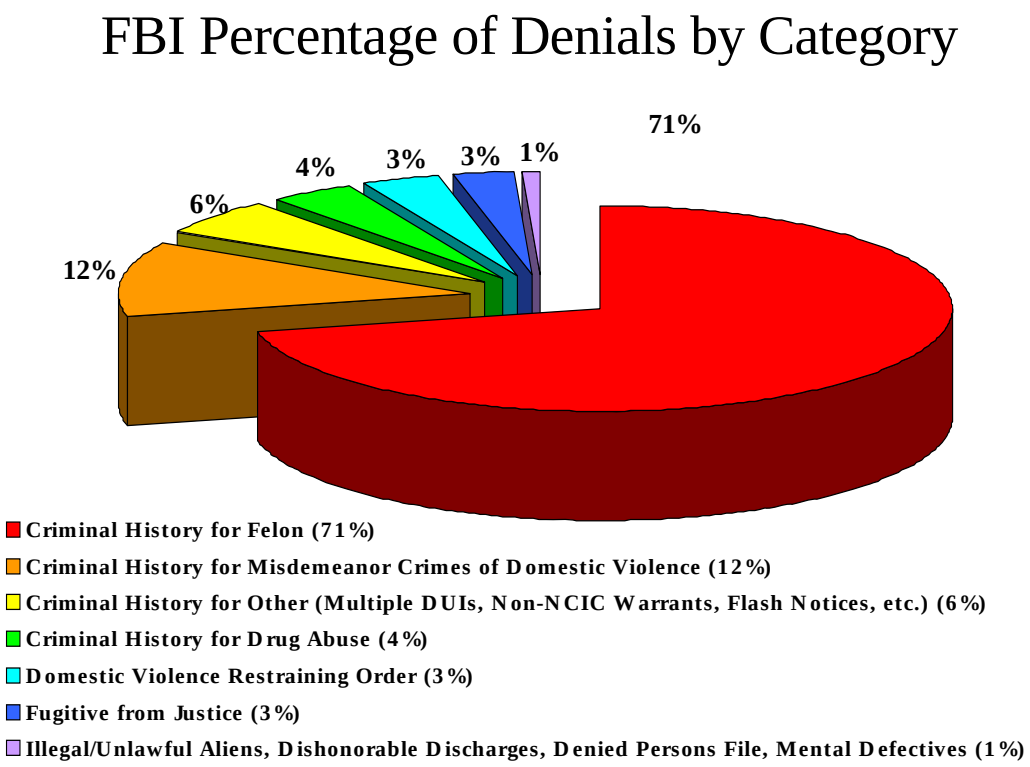
These situations are called default proceeds, because the FBI does not actually issue a proceed for the firearms transfer. Rather, the FBI provides the FFL with information that efforts are continuing to obtain data to complete the background check. When a final disposition is unretrievable within the three business days, the NICS Operations Center contacts and advises the FFL verbally through a prepared script that the NICS is still in the process of reviewing the matter and cannot give either a proceed or a denial response for the sale. The FFL is also advised that if they are not contacted by the NICS by the close of business that day, the Brady Act does not prohibit the transfer of the firearm on the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will continue to review the matter for two more weeks and will contact the FFL within that time if the NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information such as a disposition of an arrest after the three business days indicates the purchaser is prohibited from purchasing or possessing a firearm. The FBI will contact the FFL to determine whether or not the firearm has been transferred.

Retrievals

When the FBI determines that an FFL has already transferred the firearm to an individual determined by the NICS to be a prohibited person, the FBI notifies both the ATF and local law enforcement where the firearm was sold (or where the purchaser lives, if different), that a prohibited person received a firearm. During the first year of NICS operations, there were 3,849 occasions where information demonstrating a purchaser was prohibited was received after three business days, and it was determined that the firearm had been transferred to the purchaser, thus necessitating local law enforcement or ATF having to retrieve the firearm(s) from the prohibited person.

Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. Even though the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first year of NICS operation, the FBI blocked 89,836 illegal gun sales, a denial rate of about two percent. Based on the information received from individual states, the FBI estimates that a comparable number of denials have been issued by the state POCs, for an estimated total of 179,000 denials under the permanent provisions of the Brady Act.[5] The FBI denials by prohibited category are illustrated as follows:



[5]The denial calculation basis now used by the NICS eliminates a software flaw that, in limited circumstances, previously counted an original denial and a subsequent entry in the same record as two separate denials.

As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. These includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes that establish illegal drug use or drug addiction. Detailed information on each denial transaction is referred to ATF for investigation.

Dispositions

In trying to prevent as many prohibited people with disqualifying information as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to expeditiously provide the needed disposition information.[6] Finally, because POC states have access to more records containing dispositions, the FBI is working to encourage more states to serve as POCs.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal the decision directly to the FBI. A critical measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 89,836 denials issued by the FBI from November 30, 1998 through December 31, 1999, the FBI has received 15,505 appeals, representing 17 percent of the denials. Denials have been sustained on 10,895 appeals while 2,913 appeals have resulted in the denial being overturned. Of those overturned upon appeal, approximately 46 percent were the result of information missing from the original record, such as an expungement or restoration of rights. As of December 31, 1999, 1,697 appeals were in various stages of the review process.

[6]Some state court systems have expressed significant difficulties in responding to NICS requests for information. Some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement.

NICS SYSTEM AVAILABILITY AND DEVELOPMENT

During July 1999, the FBI replaced two computer systems that are integral to the NICS operation and that interface with the NICS. One of the new systems, the National Crime Information Center (NCIC) 2000, which includes information on wanted persons, persons under protective orders, and others, was implemented on July 11, 1999. Because NCIC 2000 provides enhanced name search capabilities, it is very beneficial to the NICS process.

The second new system, the Integrated Automated Fingerprint Identification System (IAFIS) was interfaced with the NCIC 2000 and NICS on July 28, 1999. The IAFIS was developed to support the electronic capture, submission, processing, matching, and storage of fingerprints received by the FBI. The IAFIS will enhance system capabilities and reliability, provide rapid response time, provide electronic submission and transfer of fingerprint and criminal history information, conduct remote searches of FBI criminal and fingerprint database information, and enhance latent fingerprint search capabilities.

Implementation of these two new systems will significantly enhance law enforcement's ability to identify the perpetrators of criminal activity. Bringing these two systems on-line however, did have some adverse effect on NICS availability.

System Availability

NICS system availability generally improved from the date of first operation through June 1999. As previously discussed, in July 1999, the FBI replaced two major computer systems; both of which interface with the NICS. Implementation of these two new systems created some periods of system unavailability. The FBI is continuing to refine these systems and to eliminate all periods of unavailability. The table below summarizes the availability for NICS during its first 13 months of operation.

MONTH	TOTAL CALL CENTER AVAILABILITY[7]	TOTAL POINT OF CONTACT STATE AVAILABILITY[8]
December '98	97.24%	97.74%
January '99	94.82%	95.58%
February '99	97.48%	96.71%
March '99	98.41%	98.63%
April '99	98.89%	98.94%
May '99	98.50%	98.54%
June '99	99.54%	99.62%
July '99	92.04%	92.67%
August '99	95.20%	95.56%
September '99	95.81%	95.97%
October '99	97.71%	97.94%
November '99	94.37%	94.54%
December '99	95.32%	95.47%
Average	**96.56%**	**96.76%**

[7] ~~Availability through th~~e NICS system at the FBI's call center in Moundsville, West Virginia, and Uniontown, Pennsylvania.

[8] Availability recorded through the NICS system in the states that serve as POCs.

System Development

A future enhancement to the processing of the NICS background checks includes the utilization of electronic access or unassisted search, whereby FFLs will query the NICS through a direct electronic line. It is anticipated that a pilot system could be in place as early as at the beginning of year 2001.

The NICS system was Y2K tested and found to be compliant, which was demonstrated with the successful rollover into the new millennium. Continual efforts are being made to ensure that the NICS is operating to its full capacity.

PRIVACY AND SECURITY ISSUES

Because the NICS contains an extensive amount of sensitive personal information about individual criminal histories and other disqualifying information, there is the potential that the system will be used improperly. Congress recognized this possibility and required the Attorney General to ensure the privacy and security of the system. To fulfill this responsibility, instances of fraud and abuse must be identified. Audits of those entities and individuals who have access to the system are conducted to detect and punish fraud. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, but also at least for a limited period of time-to records of firearms purchasers who are approved.

Basic security audits are essential to preventing the invasions of privacy that would result from misuse of the system. Audits allow the FBI, working in conjunction with the ATF, to detect both persons who misuse the system to perform unauthorized background checks and felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether FFL submit false names to evade the name check system. For instance, a corrupt FFL may send in one name known to have no disqualifying record for a NICS check, but record a different name on the firearms transaction record. If the record of the name sent to the system were destroyed immediately, there would be no way of proving that the dealer had deliberately evaded the background check system by sending the NICS a false name. The audit log contains information relating to each NICS background check requested by FFLs and allows the FBI to audit use of the system by FFLs and POCs. The audit log also allows the FBI to perform quality control checks on the system's operation by a review of the accuracy of the responses given by the NICS record examiners to FFLs.

Thus far, NICS audits conducted by the FBI and ATF based on the current NICS rule (the interim audit system) have uncovered multiple instances involving improper use of the system. For example, the audit log has helped the FBI to identify an FFL who was transferring firearms without doing background checks and has aided in identifying several possible straw purchases forwarded to the ATF for investigation.[9] The audits have also been used to identify FFLs who have been conducting NICS inquiries on persons outside of the context of a gun transfer.

[9]A straw purchase includes the situation in which the person acquiring the firearm purchases it on behalf of a person who has previously been denied a purchase.

The DOJ NICS Regulation Final Rule was published in the *Federal Register* on October 30, 1998. This final rule provides that the FBI may retain records of all NICS transactions for six months, and that the FBI will work to reduce the retention period to the shortest practicable period of time (less than six months) that would allow basic security audits of the NICS. The final rule also provides that records be retained for a longer period if necessary to pursue identified cases of misuse of the system. In addition, the final rule mandates that information in the audit log be used only for the purpose of conducting audits of the use and performance of the system or pursuing cases of misuse of the system.

SUCCESS STORIES

As a result of the concerted efforts of NICS personnel and law enforcement officials at all levels of government, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. At the same time, numerous persons prohibited by law from possessing a firearm have been denied a firearm. The following are some examples of instances within different prohibited categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

The NICS Has Assisted in Capturing Wanted Persons

The NICS has prevented more than 2,400 fugitives from purchasing firearms. In addition, the FBI's NICS examiners have contacted local, state, and federal law enforcement agencies to provide information which often resulted in the fugitives' apprehension. The following recent examples illustrate the success of the NICS in helping capture fugitives:

- In December 1999, an individual in Texas who was attempting to redeem a firearm, was found to be under indictment and had an outstanding warrant for a felony charge of indecency with a child involving sexual contact. NICS notified the Wichita Fall Sheriff's Office which would extradite the individual to the Big Lake Sheriff's who had issued the warrant.

- On November 30, 1999, an individual tried to purchase a firearm in Corinth, Mississippi. NICS identified the individual was wanted for escaping from a prison in Georgia. In obtaining the individual's address from the FFL, the NICS notified the Georgia Department of Corrections which contacted Mississippi law enforcement and the individual was captured.

- On November 30, 1999, an individual with an active warrant for several offenses in Maryland attempted to purchase a firearm in Kentucky. The subject was apprehended and is awaiting extradition to Maryland.

- On November 30, 1999, through a NICS transaction it was found that an employee of an FFL in Missouri was attempting to purchase a firearm. The employee had an active warrant in Jefferson County, Missouri. Since the FFL was out of jurisdiction for the Jefferson County Sheriff's Office, the Joplin Police Department was notified and the subject was taken into custody.

- On November 26, 1999, an individual with two active warrants for a probation violation on charges of controlled substance, drug trafficking and unlawful use of a weapon attempted to purchase a firearm. Within ten minutes of NICS initiating the transaction, the Clarksburg, West Virginia, Police Department obtained the individual's address and apprehended the subject.

- On November 23, 1999, an individual with an active warrant for a probation violation attempted to purchase a firearm. The NICS obtained the subject's address from the FFL and notified the Umatilla County, Oregon, Sheriff's Office. The individual was apprehended in a sting operation at the FFL within an hour of the NICS processing the transaction.

- On November 20, 1999, Oklahoma law enforcement agency confirmed an active warrant on an individual attempting to purchase a firearm. Authorities immediately responded and the individual was apprehended within 20 minutes.

- On October 11, 1999, the NICS notified El Reno, Oklahoma, law enforcement of an individual with an active warrant. The individual was apprehended. The Oklahoma law enforcement agency who worked with the NICS in apprehending the individual informed the examiner that law enforcement officers have apprehended several individuals due to the NICS program.

- On August 21, 1999, an individual wanted for military desertion from the United States Navy was apprehended by the Minnesota State Police the same day.

- On August 21, 1999, an individual with an active warrant was attempting to purchase a firearm. Law enforcement confirmed the warrant. Within one hour NICS was advised that the subject was apprehended while trying to purchase a firearm at another FFL.

- On August 21, 1999, a fugitive from justice was apprehended within an hour of NICS contacting the Minnesota state police as a result of an attempted gun purchase. This individual had a valid warrant with the United States Navy and was later extradited to the United States Naval Authorities.

- An individual with an active warrant attempted to purchase a firearm. The originating agency of the warrant was notified. NICS notified the originating agency and later received a call from the arresting agency thanking the FBI for their efforts. The subject had been apprehended and was being extradited back to Florida.

Mental Defectives Prevented from Purchasing a Firearm

- As a result of a NICS transaction, an escapee from a mental health facility, involuntarily committed for suicidal attempts, was apprehended by local authorities.

- An individual who had been involuntarily committed to a state hospital on three occasions for threats against elected officials in the state of Washington was denied the purchase of a firearm.

Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm

- An individual wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.

- An individual from Louisiana with a drug conviction within the past year and on probation was denied from buying a firearm. Information on his attempt to purchase a firearm was turned over to his probation officer.

Individuals With Criminal Domestic Violence History Prevented From Purchasing a Firearm

- On December 31, 1999, an individual attempted to purchase a firearm in Mississippi and was discovered to be using a false name. In researching the case, the NICS discovered the individual was under a domestic violence indictment in California. NICS notified the District Attorney's Office.

- An individual in Florida with an outstanding warrant for domestic battery and controlled dangerous substance (cocaine) was arrested.

Dishonorably Discharged Individuals Prevented From Purchasing a Firearm

- An individual who was charged with rape/sodomy of a child and was dishonorably discharged from the military was denied a firearm.

- An individual in the military was convicted of stealing by force and violence and dishonorably discharged was prevented from purchasing a gun.

Illegal Aliens Prevented From Purchasing a Firearm

- An individual who had been arrested on three separate occasions by United States Immigration and Naturalization Service (USINS) in Laredo, Texas, was apprehended.

USINS Deported Felons Prevented From Purchasing Firearms

- An arrest was made of a deportable individual by the Portland, Oregon, USINS and returned to Mexico.

Other Individuals Prevented from Purchasing a Firearm

- On July 16, 1999, NICS received a call from a department store in Jacksonville, Texas, regarding some juveniles looking to purchase explosive devices. The local authorities were notified and the youths were questioned. NICS received thanks for helping to prevent a potentially dangerous situation.

- An individual in Alaska was using a deceased brother's identification to attempt to purchase a firearm. The individual was apprehended for various charges and questioned regarding the death of his brother.

COMMENDATIONS

The NICS Program has received many commendations for denying firearms to ineligible persons as well as other NICS initiatives.

- Holt and Associates, Auctioneers from Colorado Springs, Colorado, stated: "We have had the opportunity to use your NICS Program Services. I am prompted to advise you that the reception was outstanding and that the personnel who assisted were most helpful, courteous, and did make our job much easier. We were conducting an estate auction that included a collection of firearms, and our buyers were from several states. This could have caused a great deal of difficulty for the buyers. I want you to know you have a great staff. In this busy world, too many people don't stop to say - thanks, good job."

- A licensed gun dealer in Kansas wrote to commend the NICS on its performance running checks for him at a recent gun show: "First of all, I would compliment you for the professionalism that your people extend to us....This past weekend I attended a gun show in Wichita, Kansas. During that period, I ran 40-50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of....Again, thanks for a job well done."

- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama, wrote a letter dated July 11, 1999 to the NICS Program Office complimenting two members of the NICS staff who attended the Alabama Court Clerks Conference regarding the receipt of dispositions. An excerpt from this letter follows:

  "...the two representatives were there to give a presentation on NICS and to answer questions from the clerks. As you probably know, the NICS program in Alabama has been received with a lack of enthusiasm and the reception given to the two representatives when they arrived on Thursday was cool. Despite this start, your two representatives worked diligently to change the situation and in just a day and a half they had made remarkable progress. Our clerks were sorry to see them leave so soon and they were invited back. The problems of dispositions for NICS in the State of Alabama are not over. However, the attitude has definitely changed and I anticipate that increased cooperation will be seen by your staff. Thank you for devoting some personal attention to this problem.

  The two representatives were as confident as any program representatives I have seen. They simply could not be flustered even by the most pointed question or comment. They did not let a potential negative situation overwhelm them but,

rather, handled it with tenacity and style...I would like to extend the compliments of the Alabama Judicial System to them."

RECOMMENDATIONS

Based on the first year of operation, it is clear that the ability of the NICS to stop prohibited persons from acquiring firearms would be improved by:

- more time to complete checks when records are not electronically available;
- a means to help states with the cost of performing as a POC state;
- a means to assist state courts with the costs of seeking disposition information;
- additional funds for NCHIP to improve NICS access to records; and
- longer retention of records period to enable the NICS Program Office to review examiner accuracy, assure system privacy, and detect fraud and misuse of the system. Currently, the retention period is 180 days. A notice of proposed rulemaking is being finalized that reduces the retention period to 90 days. The Advisory Policy Board concurs with the FBI to have a one-year retention of records.

CONCLUSION

The NICS has been working successfully for more than a year to ensure that prohibited persons do not acquire firearms from licensed gun dealers. It has prevented the acquisition of firearms by an estimated 179,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other local, state and federal law enforcement agencies, FFLs, and other users of NICS, and has ensured the timely transfer of firearms to individuals who are not prohibited by law from possessing a firearm.

Partnership with the states has been successful through the transition from design and development to the operation of the NICS. The cooperation with the states continues via conferences, seminars, and telephonic communications for future enhancements to the NICS.

An excellent, detailed baseline of statistical data has been collected which will help the NICS Program Office in evaluating and improving performance of the NICS. By assuring that effective audits of the system are conducted and by assuring that adequate time and resources are provided to complete thorough checks, the NICS will be able to perform more effectively in the future.

APPENDIX A: POINT OF CONTACT (POC) STATES AND TERRITORIES

- **Full Participants (15):** States which conduct NICS checks for all firearms purchases and for permits for handguns and long guns:

Arizona	Nevada
California	New Jersey
Colorado	Pennsylvania
Connecticut	Tennessee
Florida	Utah
Georgia	Vermont
Hawaii	Virginia
Illinois	

(NICS performs pre-pawn checks for Florida.)

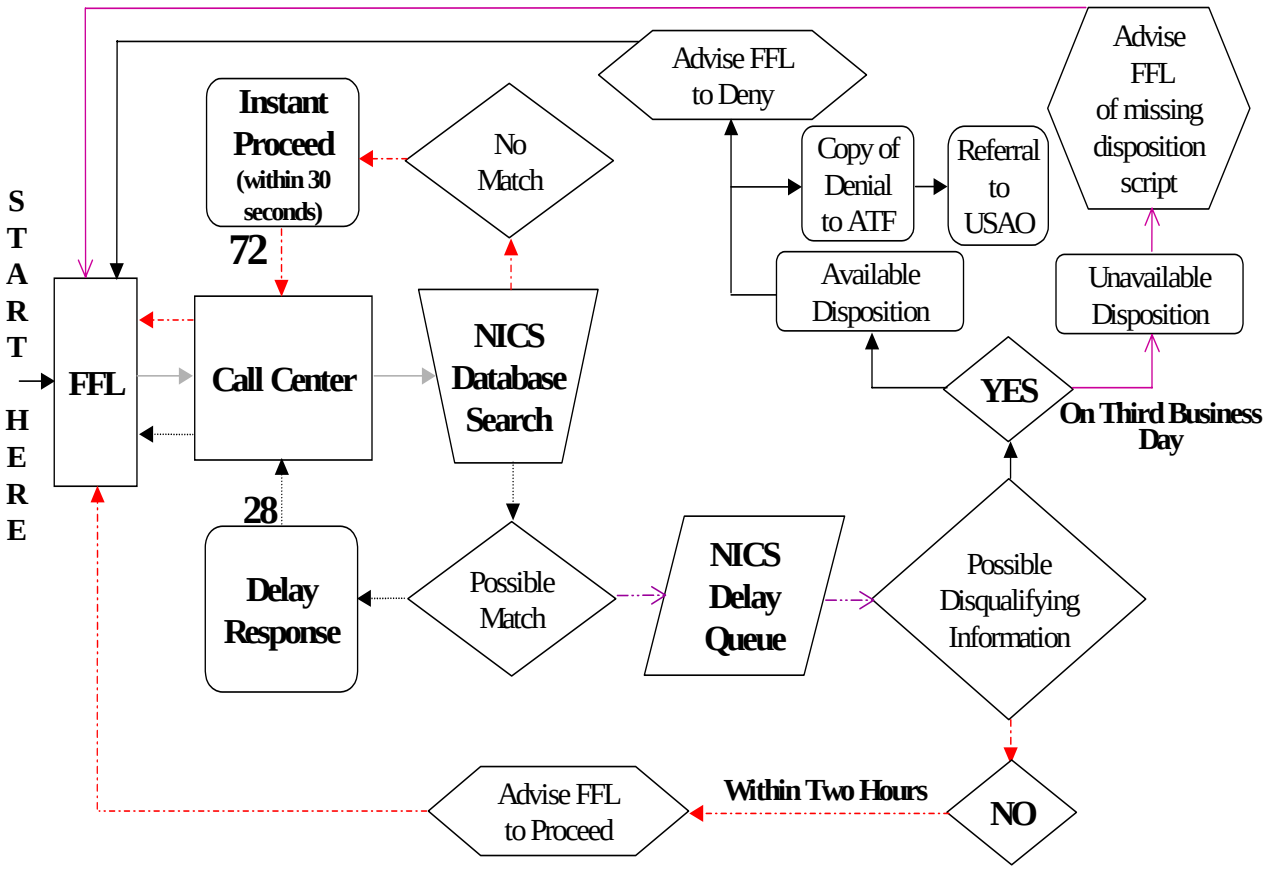
- **Partial Participants (11):** States which perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa	New York
Michigan	North Carolina
Nebraska	

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

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

- **Non-Participants (27):** The FBI performs NICS checks on both handguns and long guns for:

Alabama	New Mexico
Alaska	North Dakota
Arkansas	Ohio
Delaware	Oklahoma
Idaho	Puerto Rico
Kansas	Rhode Island
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Texas
Massachusetts	U.S. Virgin Islands
Minnesota	West Virginia
Mississippi	Wyoming
Missouri	Washington, D.C.
Montana	

APPENDIX B: NICS Transaction Flow