



National Instant Criminal Background Check System (NICS)



Operations 2008

FBI Mission

The mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

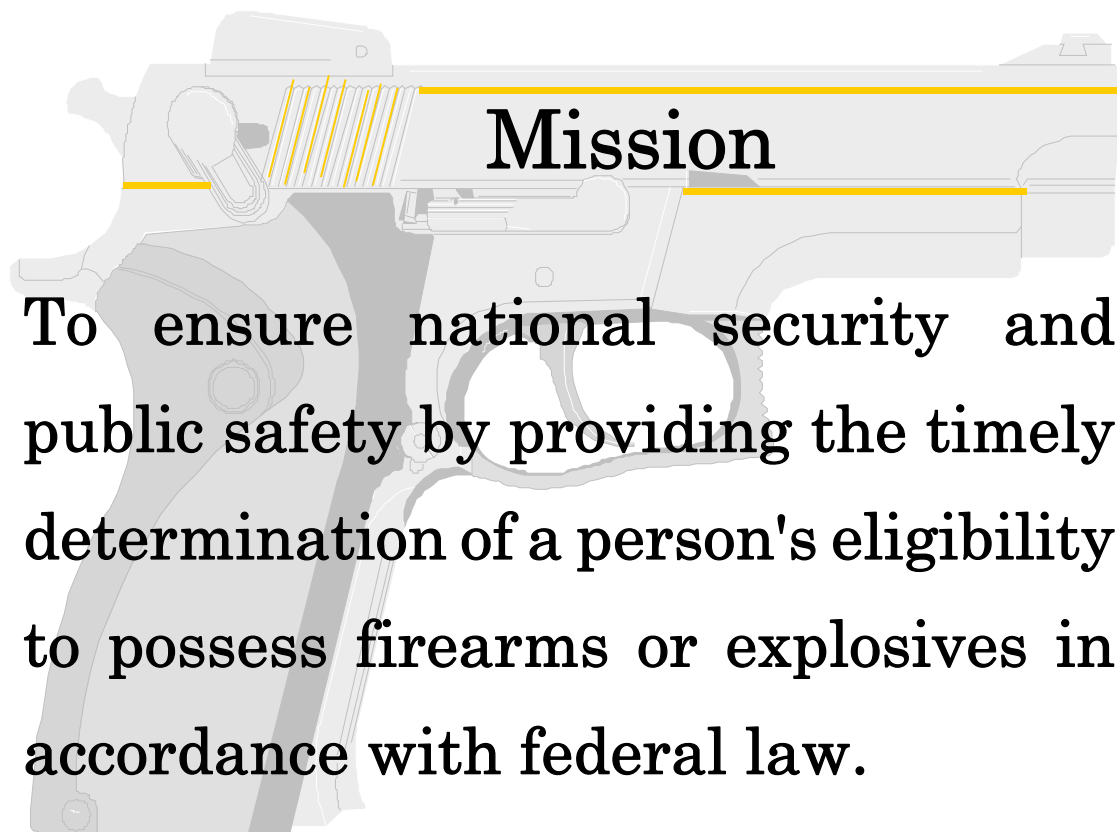
Science and Technology Branch Mission

The mission of the Science and Technology Branch is to facilitate the execution of the FBI's mission by applying innovative scientific, engineering, and technical solutions to support investigative and intelligence requirements. This is accomplished through the identification, creation, adaptation, and application of state-of-the-art tools and techniques supporting data and evidence collection and analysis, as well as law enforcement services.

Criminal Justice Information Services (CJIS) Division Mission

The mission of the CJIS Division is to reduce terrorist and criminal activities by maximizing the ability to provide timely and relevant criminal justice information to the FBI and to qualified law enforcement, criminal justice, civilian, academic, employment, and licensing agencies concerning individuals, stolen property, criminal organizations and activities, and other law enforcement related data.

National Instant Criminal Background Check System (NICS) Section



EXECUTIVE SUMMARY

The year 2008 marks the fifteenth anniversary of the signing of the Brady Handgun Violence Prevention Act of 1993 that implemented the National Instant Criminal Background Check System (NICS) on November 30, 1998. With over ten years of experience processing firearm background checks, the FBI Criminal Justice Information Services (CJIS) Division's NICS Section continues to focus on identifying, developing, and implementing improvements in support of the NICS Section's mission to provide the timely determination of a person's eligibility to receive firearms and/or firearms/explosives permits in accordance with federal and state law while denying those transactions for non-eligible persons. Striving to provide effective and efficient service to its users, highlights of the NICS operations in 2008 include the following:

- From November 30, 1998, to December 31, 2008, a total of 95,984,008 transactions were processed through the NICS. Of these, 48,159,005 transactions were processed by the NICS Section, and 47,825,003 transactions were processed by the Point-of-Contact (POC) states. Of the 12,709,023 background checks processed through the NICS in 2008, a total of 5,813,249 transactions were processed by the NICS Section, and 6,895,774 were processed by the POC states.
- From November 30, 1998, to December 31, 2008, the NICS Section has denied a total of 680,905 background check transactions. Of the program-to-date denials provided by the NICS Section, a total of 70,725 denials were rendered in 2008.
- In 2008, the NICS Section processed 71,599 explosives transactions. Of the explosives transactions processed in 2008, a total of 1,734 (approximately 2.42 percent) resulted in deny decisions.
- In 2008, the NICS Section processed 331,441 firearms and explosives transactions via the Internet-based NICS Electronic Check (E-Check). This number represents an approximate 28.4 percent increase over the number of NICS E-Check transactions processed in 2007.
- The number of records maintained in the NICS Index, as of December 31, 2008, totaled 5,483,941, an increase of 375,902 records over year-end 2007.
- In 2008, the NICS Section achieved a 91.62 percent Immediate Determination Rate (IDR), surpassing the United States Attorney General-mandated goal of 90 percent or better and the NICS Section's average IDR of 91.60 percent for 2007.
- In 2008, the NICS Section staff obtained approximately 41,000 final dispositions that were posted to criminal history records and disseminated over 16,000 dispositions to state agencies for maintenance at the state level. As of December 31, 2008, the NICS Section staff have obtained approximately 670,700 record-completing dispositions.

- The Voluntary Appeal File (VAF) permits the NICS Section to maintain information about persons to assist in explicating their eligibility to receive firearms. As of December 31, 2008, the VAF maintained a total of 9,226 entries with an active Unique Personal Identification Number (UPIN). Of these, a total of 3,094 were entered in 2008. From VAF program inception through December 31, 2008, a total of 12,681 background checks have been processed using a VAF UPIN.
- In 2008, the NICS availability averaged 99.97 percent, surpassing the NICS availability average of 99.92 percent for 2007.
- In 2008, a total of 3,031 firearm retrieval referral transactions were forwarded to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) by the NICS Section. In 2007, the NICS Section submitted 3,055 firearm retrieval referral transactions to the ATF.
- In 2008, the staff of the NICS Section, with the guidance and support of the CJIS Division's technical staff, identified, developed, and deployed various process and system changes to the NICS, such as:

February 2008:

- The redesign of the Waiting for Disposition (WFD) functionality was deployed. The WFD functionality was enhanced to assist the NICS Section's employees with obtaining missing dispositions from external agencies via features such as automatically grouping together all requests by specific transaction.
- The NICS was modified to capture and record transaction status updates with corresponding comments specific to state-initiated background checks implemented by the POC states.
- The NICS Index entry criteria was expanded to allow a contributing agency to denote a record holder's FBI record number (if available) in addition to multiple dates of birth.

May 2008:

- The NICS Index Prohibiting Category codes were updated to more accurately categorize and denote the types of federally prohibiting records maintained in the NICS Index.
- The NICS was upgraded to provide federal agencies with the capability to submit records to the NICS Index via batch load rather than one record at a time.
- The NICS was modified to require the NICS Section's employees to denote, in certain circumstances, additional denying record information, such as the age of a conviction or the expiration date of a protection order. The supplemental data is captured by the NICS and included with the deny transaction information forwarded daily to the ATF.

September 2008:

- The NICS was modified to allow agencies to submit NICS Index record modifications from any National Crime Information Center (NCIC) terminal. Previously, an agency had to submit record modifications via the same NCIC terminal from which the record was initially submitted to the NICS Index.
- To assist the NICS Section's employees when contacting a Federal Firearms Licensee (FFL) to provide the final status of a delayed transaction, the Ready for Callback (RFC) functionality was upgraded to allow employees to update FFL contact information as it is received, to flag certain transactions, and to display all RFC transactions in a priority order.
- The specific group of NCIC files searched by the NICS during a background check was expanded to include the records maintained in the NCIC's Missing Persons File (MPF). The MPF records could potentially be a source of firearms-disqualifying information.
- Transaction Priority Coding, which provides a visual indication to a NICS Section employee of the transactions requiring priority processing based on the transaction's creation date, was deployed.
- Numerous modifications to the VAF, such as providing the capability to conduct a background check from the VAF subject data screen, enlarging the comments window in the VAF database, requiring comments be denoted when activating or cancelling a VAF record from a pending status, the capability to copy and paste text in the VAF database, etc., were deployed to ensure accuracy and consistency in the maintenance of VAF information.
- To assist the ATF with workload allocation, a file containing all denied transactions, which is forwarded to the ATF on a nightly basis, was split into two components--one housing the newly denied transactions and the other housing the updated denied transactions.

October 2008:

- To reduce the amount of time spent conducting additional research when processing background checks and to ensure more timely final transaction decisions are rendered, the NICS Section deployed Internet accessibility at each employee's workstation.
- On November 30, 2008, the NICS celebrated its tenth anniversary. Providing ten years of efficient and effective service to enhance public safety and national security, a total of 94,460,582 background checks had been conducted via the NICS from its implementation on November 30, 1998, through November 30, 2008.

Table of Contents

FBI Mission	-i-
Science and Technology Branch Mission	-i-
Criminal Justice Information Services (CJIS) Division Mission	-i-
NICS Section Mission	-ii-
Executive Summary	-iii-
Brady Handgun Violence Prevention Act of 1993 Implemented the NICS	-1-
NICS Operations - 2008	-4-
NICS Transactions	-4-
NICS Busy Season - 2008	-6-
NICS Participation	-7-
Alternate Permits	-8-
NICS Denials	-9-
Firearm Retrieval Referrals	-11-
NICS Appeals	-11-
Voluntary Appeal File (VAF)	-12-
Explosives Background Checks	-12-
NICS E-Check	-13-
Performance of the NICS	-14-
NICS Availability	-14-
NICS Section Immediate Determination Rate (IDR)	-14-
NICS Section Average Answer Speed	-15-
NICS Section Transfer Process Abandonment Rate	-16-
NICS Section Tactical Planning	-18-
Improvements to the NICS	-19-
Redesign of the Waiting for Disposition (WFD) Functionality	-19-
Transaction Status Updates by POC State Agencies Captured by the NICS	-19-
NICS Index Capability to Capture/Display a Record Holder's FBI Number	-19-
PCA Code Update	-19-
Batchload Submissions to the NICS Index by Federal Agencies	-19-
Denying Record Data Captured by the NICS to Assist NICS Partners	-20-

Modification to Allow Agencies to Submit NICS Index Record Changes via any NCIC Terminal	-20-
Ready for Callback (RFC) Functionality Upgrade	-20-
NICS Search via the NCIC Expanded to Include Missing Persons File (MPF) Records	-20-
Transaction Priority Coding	-20-
Denying Record Selection Criteria Expanded	-21-
Firearm Retrieval Referral Code Selection Prompt	-21-
NICS Response Queue Indicator Modification	-21-
Access to Law Enforcement Online (LEO) E-mail Provided to NICS Section Employees via the NICS	-21-
NICS Section Outreach	-22-
NICS Index	-24-
NICS Improvement Amendments Act of 2007 (NIAA)	-25-
NICS Index PCA Changes in Support of the NIAA	-26-
FBI's Major Case Contact Center (MC3)	-30-

NICS 10th Anniversary



1998 - 2008

Brady Handgun Violence Prevention Act of 1993 Implemented the NICS

As a result of the passage of the Gun Control Act of 1968 (GCA), certain individuals, such as convicted felons, are prohibited from possessing firearms. To strengthen the federal firearms regulations, the Brady Handgun Violence Prevention Act (Brady Act), signed by President William J. Clinton in 1993, required the U.S.



Attorney General to establish the National Instant Criminal Background Check System (NICS) for Federal Firearms Licensees (FFLs) to contact by telephone, or other electronic means, for information to be supplied immediately as to whether the transfer of a firearm would be in violation of Section 922 (g) or (n) of Title 18, United States Code (U.S.C.) or state law.

Through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Department of Justice (DOJ); and local and state law enforcement agencies, the FBI developed the NICS. On November 30, 1998, the NICS, designed to immediately respond to background check inquiries for prospective firearm transferees, was implemented.

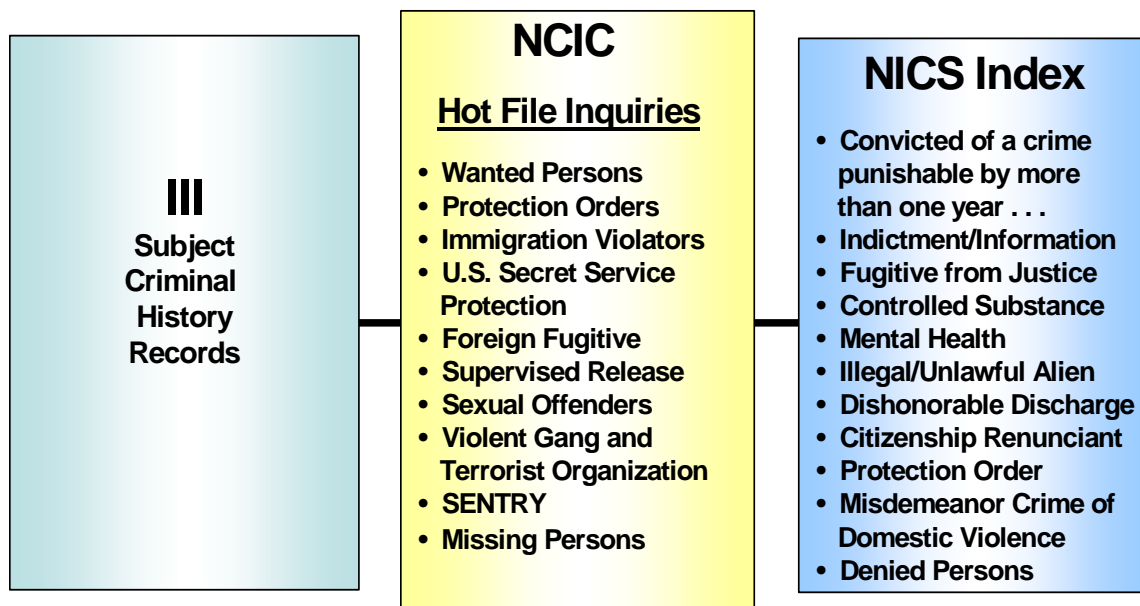
For an FFL to initiate a NICS check, the prospective firearms transferee must complete and sign an ATF Form 4473, Firearms Transaction Record. The ATF Form 4473, which collects the subject's name and descriptive data (e.g., date of birth, sex, race, state of residence, country of citizenship), elicits information that may immediately indicate to an FFL that the subject is a prohibited person, thereby negating the need to continue the processing of the background check. When an FFL initiates a NICS background check, a name and descriptor search is conducted to identify any matching records in three nationally-held databases managed by the FBI's Criminal Justice Information Services (CJIS) Division. The databases searched during the background check process (reference Figure 1) are:

Interstate Identification Index (III): The III maintains subject criminal history records. As of December 31, 2008, the III records accessed and searched by the NICS during a background check numbered 53,582,409.

National Crime Information Center (NCIC): The NCIC contains data on persons who are the subjects of protection orders or active criminal warrants, immigration violators, and others. As of December 31, 2008, the NCIC records searched by the NICS during a background check numbered 4,253,435.

NICS Index: The NICS Index, a database created specifically for the NICS, collects and maintains information contributed by local, state, tribal, and federal agencies pertaining to persons federally prohibited the transfer of a firearm. Typically, the records maintained in the NICS Index are not available via the III or the NCIC. As of December 31, 2008, the NICS Index records searched by the NICS during a background check numbered 5,483,941.

Figure 1
Types of Records Searched During a NICS Background Check



Additionally, a fourth search via the applicable databases of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) may be conducted. In response to a mandate issued by the U.S. Attorney General in February 2002, a search of the ICE databases must be conducted on all non-U.S. citizens attempting to receive firearms in the United States. In 2008, the NICS Section and the Point-of-Contact (POC) states (states that have implemented a state-based NICS program) requested 34,278 such queries of the ICE. Accordingly, from February 2002 to December 31, 2008, over 187,850 such queries of the ICE have been conducted.

When a background check processed by the NICS Section is provided a deny response, such as those based on an illegal/unlawful alien status via information provided by the ICE, the NICS

Section immediately notifies the ICE of the individual's deny status.

In the majority of cases, the results of a background check yield definitive information regarding subject eligibility within seconds to minutes of the data entry of a prospective firearm transferee's name and descriptive information into the NICS. However, not all inquiries can be provided a final status within the scope of the FFL's initial contact with the NICS. Many transactions are delayed because of incomplete criminal history records, e.g., a missing disposition or a missing crime classification status (e.g., felony or misdemeanor) which is needed in order to determine if a transaction may be proceeded or must be denied. Under federal law, an arrest record alone cannot preclude the transfer of a firearm unless independent state law provides otherwise.

In instances where a validly matched record indicates potentially prohibiting record information that is incomplete, such as a felony offense *arrest* or a possible misdemeanor crime of domestic violence, the NICS Section or POC state agency must search for the information needed to complete the record. This process often requires outreach to local, state, tribal, and/or federal agencies (e.g., arresting agencies, court systems). The Brady Act provides the NICS with three business days to conduct research in order to obtain the additional information. If the information is not obtained within the three-business-day time frame and a final transaction status cannot be rendered, the FFL has the option to legally transfer the firearm.

Individuals who believe they are wrongfully denied the transfer of a firearm based on a record matched during a NICS background check can appeal the deny decision. The "denying agency" will be either the FBI or the state agency serving as a POC for the NICS. In the event the denying agency is a POC state agency, the appellant can elect to appeal to the FBI.

The provisions for appeals are outlined by the NICS Regulations at Title 28, Code of Federal Regulations (C.F.R.), Part 25.10, and Subsection 103(f) and (g), and Section 104 of the Brady Act.

The Safe Explosives Act, which was enacted in November 2002 as part of the Homeland Security Act, requires that persons who export, ship, cause to be transported, or receive explosives material in either intrastate or interstate commerce must first obtain a federal permit or license after undergoing a NICS background check. The Safe Explosives Act became effective on May 24, 2003. Background checks for explosives permits are initiated by the ATF; however, they are processed through the NICS by the NICS Section.

Extensive measures are taken to ensure the security and the integrity of NICS information. Access to the data in the NICS is restricted to agencies authorized by the FBI under DOJ regulations. The U.S. Attorney General's regulations regarding the privacy and security of the NICS is available on the Internet at www.fbi.gov/hq/cjisd/nics/index.htm.

NICS OPERATIONS - 2008

NICS Transactions

The NICS, established by the U.S. Attorney General pursuant to the Brady Act, is maintained by the FBI's CJIS Division located in Clarksburg, West Virginia. According to the Brady Act, FFLs must contact the NICS to determine an individual's eligibility to purchase firearms pursuant to state and federal law. The NICS, from November 30, 1998, through December 31, 2008,

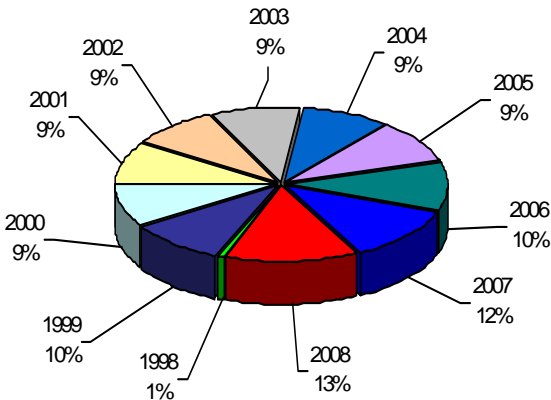
has conducted a total of 95,984,008 background checks. In 2008, a total of 12,709,023 background checks were submitted to the NICS. Of these, a total of 5,813,249 transactions were processed by the NICS Section, and the remaining 6,895,774 transactions were processed by the states that have implemented a NICS program (reference Figure 2).

Figure 2
NICS Transactions, November 30, 1998 through December 31, 2008

Year	Federal	State	Total		Program-to-date (PTD) Total
1998*	506,554	386,286	892,840		892,840
1999	4,538,020	4,600,103	9,138,123		10,030,963
2000	4,260,270	4,282,767	8,543,037		18,574,000
2001	4,291,926	4,618,265	8,910,191		27,484,191
2002	4,248,893	4,205,429	8,454,322		35,938,513
2003	4,462,801	4,018,787	8,481,588		44,420,101
2004	4,685,018	4,002,653	8,687,671		53,107,772
2005	4,952,639	4,000,306	8,952,945		62,060,717
2006	5,262,752	4,774,181	10,036,933		72,097,650
2007	5,136,883	6,040,452	11,177,335		83,274,985
2008	5,813,249	6,895,774	12,709,023		95,984,008
Total	48,159,005	47,825,003	95,984,008		

* November 30, 1998, through December 31, 1998

Since the implementation of the NICS in November 1998, the total transactional activity passing through the system has progressively increased. Of the background checks processed via the NICS PTD through December 31, 2008, the transactions processed in 2008, the largest background check processing year since

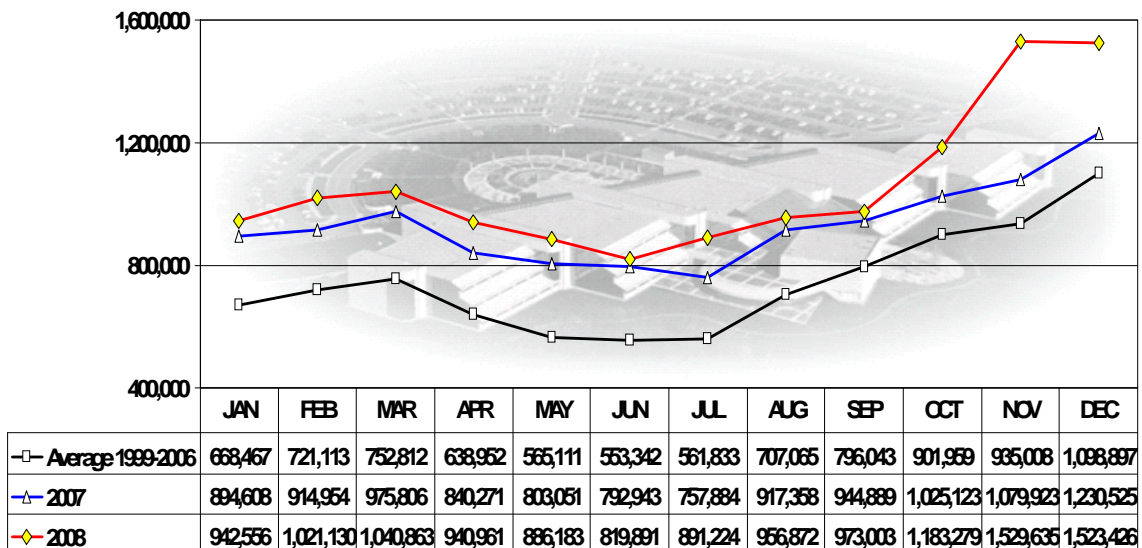


the implementation of the NICS, surpassed those processed in 2007 by approximately 15.26

percent. In comparison to prior years, the background checks processed via the NICS in 2008 account for approximately 13 percent of all checks submitted to the NICS as of December 31, 2008.

The NICS transactional activity is subject to influences brought about by various external factors. More specifically, firearms are an integral part of the retail market industry. Typically, as year-end holidays approach, retail market sales trend upwards as does the sale of firearms. Another factor influencing the NICS transaction activity is specific to the onset of state hunting seasons. Accordingly, the demand placed upon the NICS significantly and progressively increases and peaks. Other factors that may play a significant role in the influx of NICS transactions could be attributed to current events, legislative mandates, etc. Based on the aforementioned, significant increases in the number of incoming NICS transactions are typically more evident during the months of September through December (reference Figure 3).

Figure 3
NICS Demand PTD



NICS Busy Season - 2008

In 2008, the NICS Section experienced one of its most active busy seasons since the NICS was implemented on November 30, 1998. As of year-end 2008, the FBI reported a record day on November 28, 2008 (the day after Thanksgiving), for the highest number of background checks submitted to the NICS. On Friday, November 28, 2008, the following NICS high volume records were set:

- A total of 97,848 state- and federal-initiated transactions, an increase of approximately 47 percent over the number of transactions for the same day in 2007, were submitted to the NICS.
- A total of 33,433 state-initiated transactions, an increase of approximately 31 percent over the number of transactions for the same day in 2007, were submitted to the NICS.

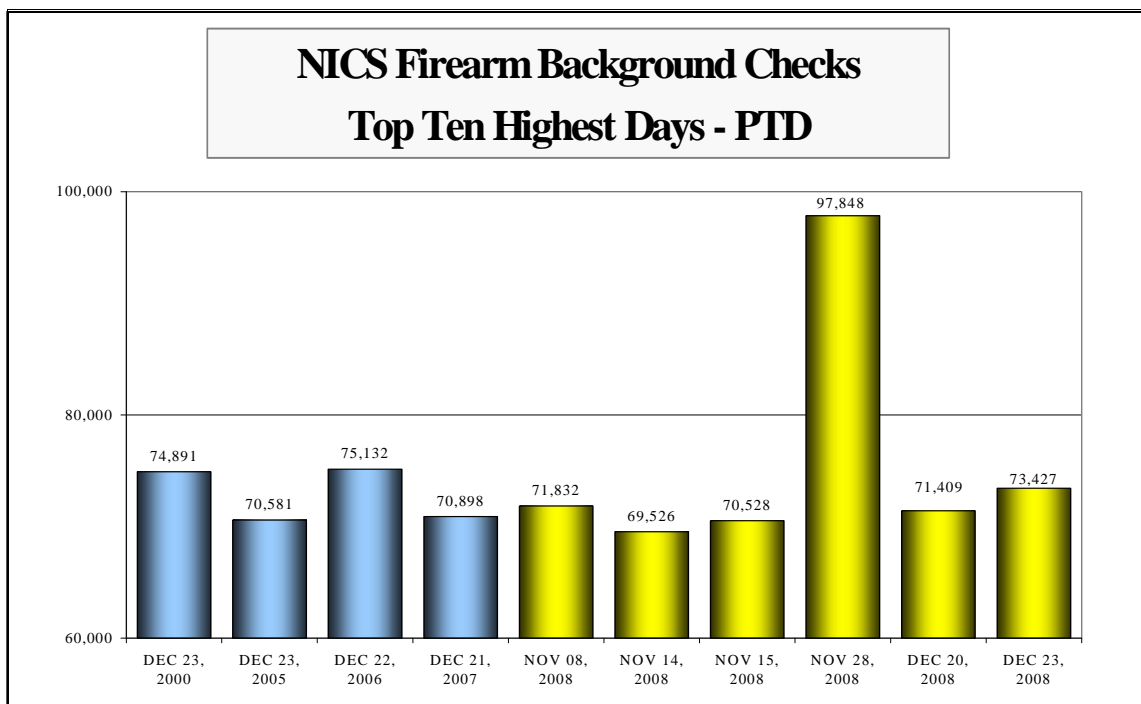
- A total of 64,415 FBI-initiated transactions, an increase of approximately 56 percent over the number of transactions for the same day in 2007, were submitted to the NICS.

Additionally, the NICS Section experienced an approximate 61 percent increase in the number of background checks submitted by the Non-POC and Partial-POC state FFLs to the FBI for processing for the week of November 24-30, 2008, when compared to the same week in 2007.

To further illustrate the magnitude of increase experienced by the NICS during the NICS 2008 Busy Season:

- Of the total transactions submitted to the NICS PTD, six of the top ten volume days occurred in 2008 (reference Figure 4).

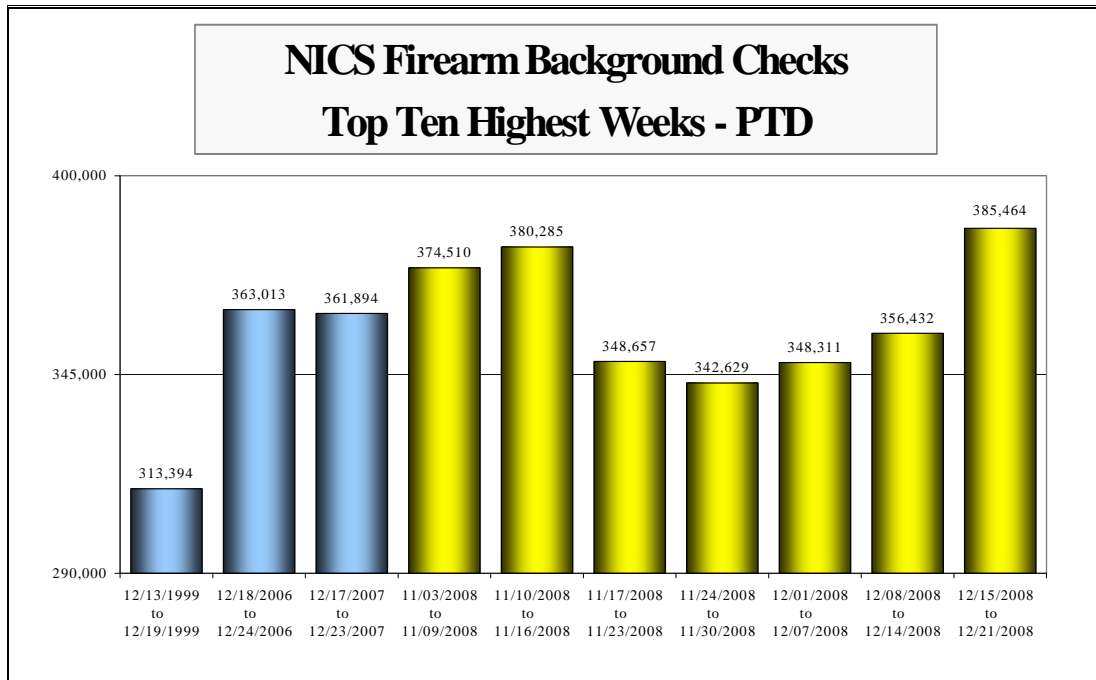
Figure 4
NICS Top Ten Volume Days PTD



- Of the total transactions submitted to the NICS PTD, 2008, seven of the top ten

volume weeks occurred in 2008 (reference Figure 5).

Figure 5
NICS Top Ten Volume Weeks, PTD



The customary operating hours of the NICS are 8 a.m. to 1 a.m., EST, 7 days a week, 364 days a year (the NICS is not available on December 25). To accommodate the "peak" business months, and in the spirit of customer service, the NICS Section typically extends the NICS' operating hours to the state POCs and other state agencies to help avoid potential congestion in the flow of transaction activity which could occur as a result of heightened levels of incoming background check inquiries during times of significantly higher transaction levels.

NICS Participation

As of December 31, 2008, the NICS Section provided service to approximately 39,000 FFLs conducting business in 29 states, 5 U.S. territories, and the District of Columbia. The FFLs

operating in these states serviced by the NICS Section, otherwise known as Non-POC states, contact the NICS either telephonically or through the NICS Electronic Check (E-Check) via the Internet to initiate the required background checks. The majority of the calls from the FFLs in the Non-POC states are received and initially processed via one of the two NICS Section Contracted Call Centers.

The FFLs operating in the 13 states that have chosen to process all background check inquiries for the state's FFLs, otherwise known as the Full-POC states, contact a state-designated agency, either telephonically or via the NICS E-Check, to initiate a NICS background check. The state-designated agency processes the background check and returns the results to the state's FFLs.

However, the renewal of an alternate permit requires a background check be conducted via the NICS as part of the permit renewal process.

In 2008, there was one change in alternate permit status. As of July 1, 2008, alternate permit status for the state of Nevada ceased. The states affording an ATF-qualified alternate permit status, as of December 31, 2008, are indicated in the NICS Participation Map located on page 8.

NICS Denials

Under the Brady Act, a deny decision from the NICS indicates the prospective firearms transferee or another individual with a similar name and/or similar descriptive features was matched with either federally prohibiting criteria or state-prohibiting criteria.

The federally prohibiting criteria, pursuant to 18 U.S.C., § 922 (g) and (n), follows:

- Persons who are convicted in any court of a crime punishable by imprisonment for a term exceeding one year, or any state offense classified by the state as a misdemeanor and punishable by a term of imprisonment of more than two years;
- Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year;
- Persons who are fugitives from justice (e.g., the subject of an active criminal warrant);
- Persons who are unlawful users of or are addicted to any controlled substance;
- Persons who have been adjudicated as mental defectives or have been involuntarily committed to any mental institution;
- Persons who are aliens and are illegally/unlawfully in the United States;

- Persons who have been discharged from the Armed Forces under dishonorable conditions;
- Persons who, having been citizens of the United States, have renounced their U.S. citizenship;
- Persons subject to a court order that restrains them from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury; and
- Persons convicted in any court of a misdemeanor crime of domestic violence.

When a NICS background check matches a record holder to the prospective firearms transferee, the NICS Section determines if a federal prohibitor exists; however, if a federal prohibitor does not exist, the NICS Section employee processing the background check must further review the record match(es) to determine if any applicable state law renders the prospective firearms transferee prohibited. In perspective, state law can be more restrictive than federal law; however, it cannot be less restrictive.

From the inception of the NICS on November 30, 1998, through December 31, 2008, the NICS Section has rendered 680,905 firearms denial decisions (reference Figure 7). Of these, 70,725 denial decisions were provided in 2008.³

Historically, and in 2008, the leading reason for NICS Section denials is a disqualifying felony or misdemeanor conviction. The reasons predicated deny decisions rendered by the NICS Section (with corresponding prohibiting category [PCA] codes) are referenced in Figure 7.

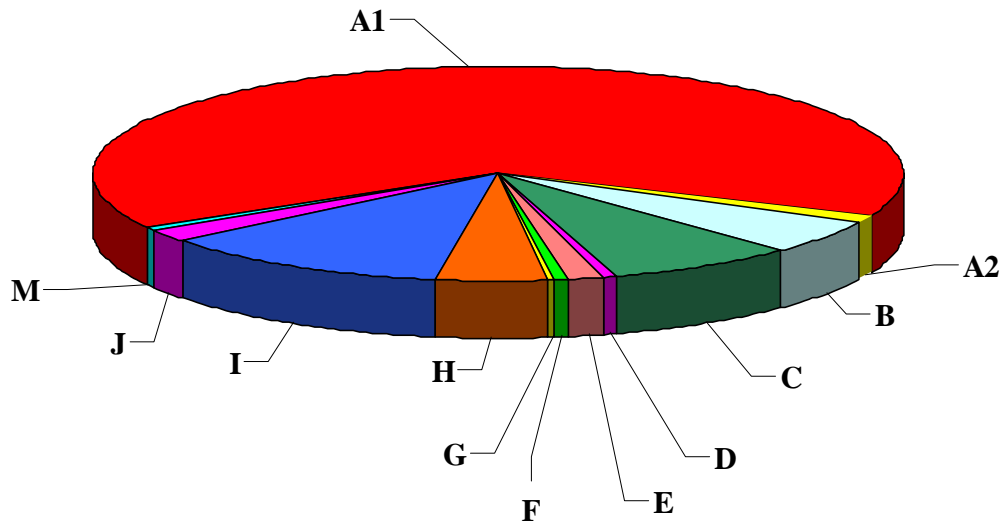
³ State denial data can be accessed via the DOJ's Bureau of Justice Statistics Web site at www.ojp.usdoj.gov/bjs/pubalp2.htm.

Figure 7
Reasons Why the NICS Section Denies PTD

Federal Denials

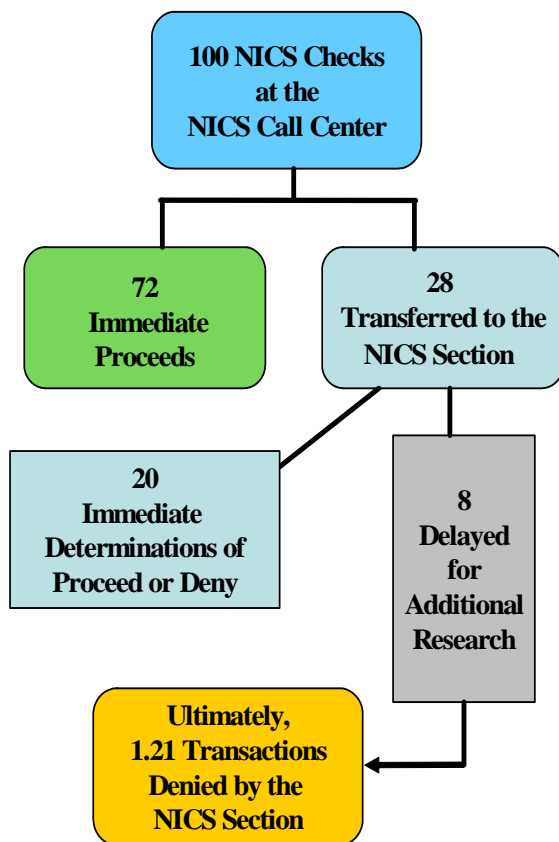
Reasons Why the NICS Section Denies - PTD

<u>PCA Code</u>	<u>Prohibited Category Description</u>	<u>Total</u>	<u>Percent of Total</u>
A1	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	447,958	65.79%
A2	Under Indictment/Information	2,217	0.33%
B	Fugitive from Justice	37,752	5.54%
C	Unlawful User/Addicted to a Controlled Substance	51,354	7.54%
D	Adjudicated Mental Health	3,888	0.57%
E	Illegal/Unlawful Alien	9,006	1.32%
F	Dishonorable Discharge	400	0.06%
G	Renounced U.S. Citizenship	37	0.01%
H	Protection/Restraining Order for Domestic Violence	29,997	4.41%
I	Misdemeanor Crime of Domestic Violence Conviction	81,638	11.99%
J	State Prohibitor	11,864	1.74%
M	Federally Denied Persons	4,794	0.70%
Total Federal Denials		680,905	100.00%



Firearm Retrieval Referrals

Pursuant to the NICS Regulations, 28 C.F.R., Part 25, Subsection 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. In 2008, approximately 8 percent of all transactions processed by the NICS Section resulted in a delay status (reference chart below).



In instances when a NICS transaction is delayed, the Brady Act provides three business days for research and outreach in attempts to obtain record-completing/clarifying information needed to determine a final transaction status of either proceed or deny. If the NICS is unable to obtain the needed information and determine a proceed or a deny status within the three-business-day time frame, the FFL can legally transfer the firearm.

Because of the NICS Section's commitment to public safety and national security, the search for the needed disposition information continues beyond the time frame allowed by the Brady Act. In many instances, the information is subsequently obtained and a final status determined; however, if the final status (determined after the lapse of three business days) results in a deny decision and the NICS Section is advised by the FFL that the firearm was transferred, the ATF is notified a prohibited person is in possession of a firearm. In 2008, the NICS Section referred 3,031 firearm retrieval scenarios to the ATF.

NICS Appeals

In 2008, approximately 1.21 percent of the firearm background checks processed by the NICS Section received a final transaction status of deny. Pursuant to the Brady Act, any person who believes they were wrongfully denied the transfer of a firearm based on a record returned in response to a NICS background check can request an appeal of the decision. According to the NICS Regulation,⁴ an appeal is defined as "a formal procedure to challenge the denial of a firearm transfer." Pursuant to 28 C.F.R., Part 25, Section 25.10, "an individual may request the reason for the denial from the agency that conducted the check of the NICS (the 'denying agency,' which will be either the FBI or the state or local law enforcement agency serving as a POC)." In the alternative, an individual denied by a POC state can elect to submit an appeal to the NICS Section.

The NICS Section processes appeal requests in the order they are received. Due diligence is afforded with the processing of each appeal case as the NICS Section's mission is dedicated to ensuring eligibility to persons deemed as lawful firearm transferees while denying the transfer of firearms to persons who are prohibited from their possession.

⁴ Reference the *Federal Register*, Volume 63, No. 210, October 30, 1998, Rules and Regulations.

In 2008, the NICS Section received a total of 13,396 appeal requests, an increase of approximately 12.7 percent over the appeals received by the NICS Section in 2007. Of these, a total of 1,048 of the appeal requests received (approximately 8 percent) were submitted by persons denied by POC state agencies.

In numerous instances, an appellant is required to submit fingerprints to establish proof of identity. Additionally, appellants can and are encouraged to submit any documentation they may have to support their challenge of the accuracy of the record predicated their deny decision. In 2008, the NICS Section received 4,427 fingerprint submissions plus 3,682 disposition and/or record-clarifying documents from appellants to assist the NICS Section with appeals resolution. Based on the NICS Section's comprehensive outreach and research efforts in concert with fingerprint and/or documentation submissions by appellants, in 2008, approximately 23 percent of appealed deny transactions were overturned and proceeded.

The leading reason for the overturned deny decisions in 2008 was specific to the appellant's fingerprints not matching the fingerprints of the subject of the firearms-disqualifying record.⁵ Other reasons deny decisions are overturned on appeal pertain to criminal history records that are not up-to-date or the inaccurate setting of Identification for Firearms Sales (IFFS) flags⁶ on criminal history records, among others.

Voluntary Appeal File (VAF)

Many criminal history and related records are not complete or up-to-date. As a result, eligible firearm transferees may be subject to lengthy delays or receive transaction denials subsequently

⁵ The NICS is a name-based background check system.

⁶ IFFS flags are set by state agencies to indicate that the particular criminal history record exhibits a federal firearms prohibition.

overturned on appeal. Often the record-completing information located by the NICS Section employees cannot be used to update a criminal history record or an appellant's fingerprints confirm they are not the subject of the prohibiting record that was matched based on initially received name and descriptors. In the latter, the subject's deny decision may be overturned and proceeded. However, because the NICS is required to purge all information regarding proceed transactions within 24 hours of notification to the FFL, in many instances the process must be repeated when said transferee attempts subsequent firearm purchases and is again matched to the same prohibiting record.

To assist many of these eligible firearm transferees to receive accurate and timely transaction determinations with subsequent firearm purchases, the VAF was implemented in July 2004. Lawful purchasers who have been delayed or denied a firearm transfer may request the NICS Section maintain specific information about them to facilitate future firearms transactions. All applicants approved for entry into the VAF receive a Unique Personal Identification Number (UPIN) which must be provided to the FFL during subsequent firearm background checks. The VAF is checked by the NICS during the background check process. In 2008, a total of 3,094 lawful firearm transferees received an active UPIN status and were entered into the VAF.

Because of the availability of the VAF, over 12,000 transactions have received a more immediate background check determination, thus supporting the mission of the NICS Section.

Explosives Background Checks

The Safe Explosives Act requires a NICS background check be conducted as part of the licensing process for any person who transports, ships, causes to be transported, or receives explosives materials in either intrastate or interstate commerce. There are two categories of explosives licenses, one for responsible persons

and employee possessors and the other for a limited permit.

All ATF-issued explosives permit applicants are required to undergo a NICS background check. The Employee Possessor background checks are submitted directly to the NICS by the ATF via the NICS E-Check for processing by the NICS Section. The Responsible Persons background checks are processed by the NICS Section after the results of fingerprint identification processing have been completed and forwarded by the CJIS Division's Biometric Services Section. All explosives background check results are forwarded to the ATF. The ATF makes the determination as to subject eligibility to receive an explosives permit.

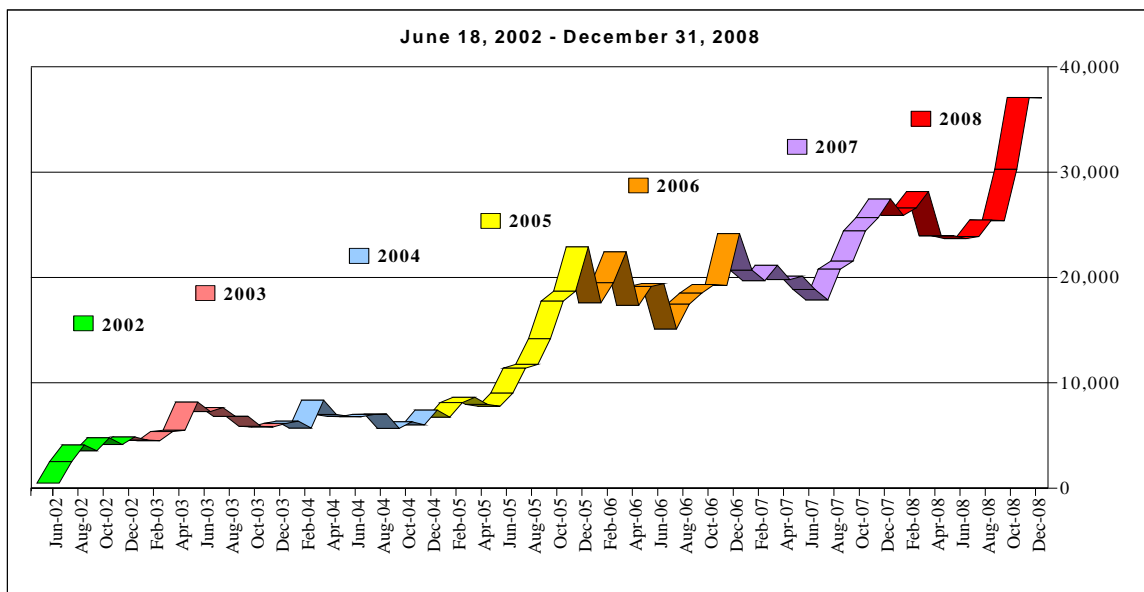
Since the processing of the first explosives background check in 2003, and through December 31, 2008, the NICS Section has processed a total of 321,086 explosives background checks. Of these, the NICS Section processed 71,599 explosives background checks in 2008. Of the explosives checks processed by the NICS Section in 2008, a total of 1,734 (or 2.42 percent) were denied.

NICS E-Check

The FFLs serviced by the NICS Section contact the NICS via the NICS Section's Contracted Call Centers or through the Internet via the NICS E-Check. The NICS E-Check, which utilizes Public Key Infrastructure technology, provides FFLs the capability of conducting unassisted background checks electronically through a secure access via the Internet.

As of December 31, 2008, there were approximately 2,011 FFLs enrolled with the NICS via the NICS E-Check, and the number of users (FFLs and their employees) accessing the NICS E-Check was approximately 2,400. Additionally, as of December 31, 2008, a total of 1,143,117 firearms and explosives background checks were processed via the NICS E-Check. Of the PTD transactions processed via the NICS E-Check, a total of 331,441 transactions were processed in 2008, a 28.4 percent increase over the number processed in 2007 (reference Figure 8). Of the transactions processed via the NICS E-Check in 2008, a total of 262,324 transactions were specific to firearms inquiries.

Figure 8
Growth of the NICS E-Check Transactions PTD



Performance of the NICS

NICS Availability

In order to operate as designed, the NICS is dependent on the availability of the NCIC and the III. The unavailability of either of these systems during the background check process can impact the performance of the NICS even though the NICS is fully operational. The NICS Section, with the ongoing assistance and technical support of the CJIS Division's Information Technology Management Section, works 24/7 to ensure the availability of the NICS in addition to the NCIC and the III assuring optimal system performance.

For 8 of the 12 months in 2008 (reference Figure 9), the NICS reported a 100 percent level of system availability. Factoring in the remaining 4 months of NICS service, the average system availability for the NICS in 2008 was 99.97 percent.

Figure 9
NICS Availability - 2008

2008:	
January	99.91%
February	100%
March	100%
April	100%
May	99.89%
June	99.89%
July	100%
August	100%
September	99.99%
October	100%
November	100%
December	100%

NICS Section Immediate Determination Rate (IDR)

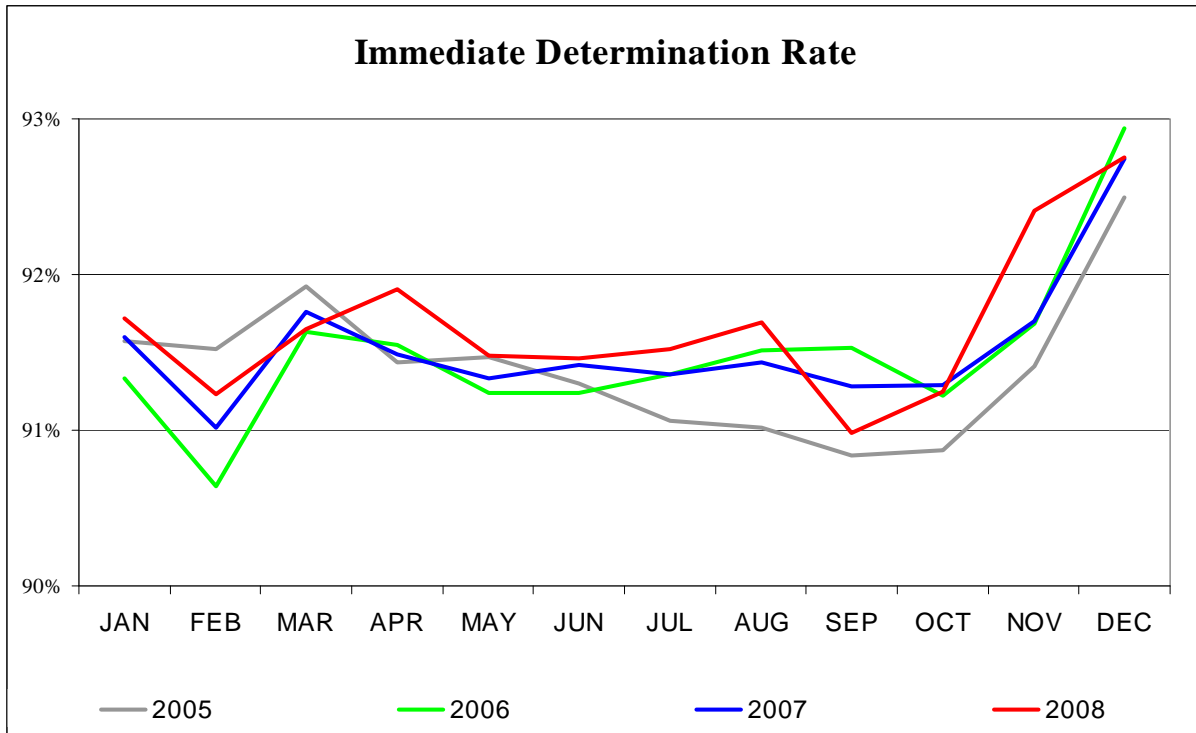
The FFLs serviced by the FBI connect with the NICS via one of the two NICS Section's Contracted Call Centers. The customer service representatives at the NICS Contracted Call Centers enter the prospective firearm transferee's name and descriptive information provided by the FFL into the NICS to implement the background check search.

If no records are matched by the NICS, the NICS Contracted Call Center staff advise the FFL the transfer may proceed. If a background check search returns a match in any of the databases searched during the background check process, the FFL is placed on hold, and the call is transferred to the NICS Section at the CJIS Division for review in an attempt to determine the subject's firearms eligibility status while the FFL is still on the telephone.

The rate of calls immediately proceeded at the NICS Contracted Call Centers plus the rate of transaction determinations (proceed or deny) provided by the NICS Section's employees while the FFL is still on the telephone comprise the NICS IDR.

Committed to surpassing the 2002 mandate from the U.S. Attorney General requiring the NICS Section to maintain a 90 percent or better rate of immediate determinations, the NICS Section's IDR in 2008 averaged 91.62 percent (reference Figure 10).

Figure 10
NICS Section IDR 2005 - 2008

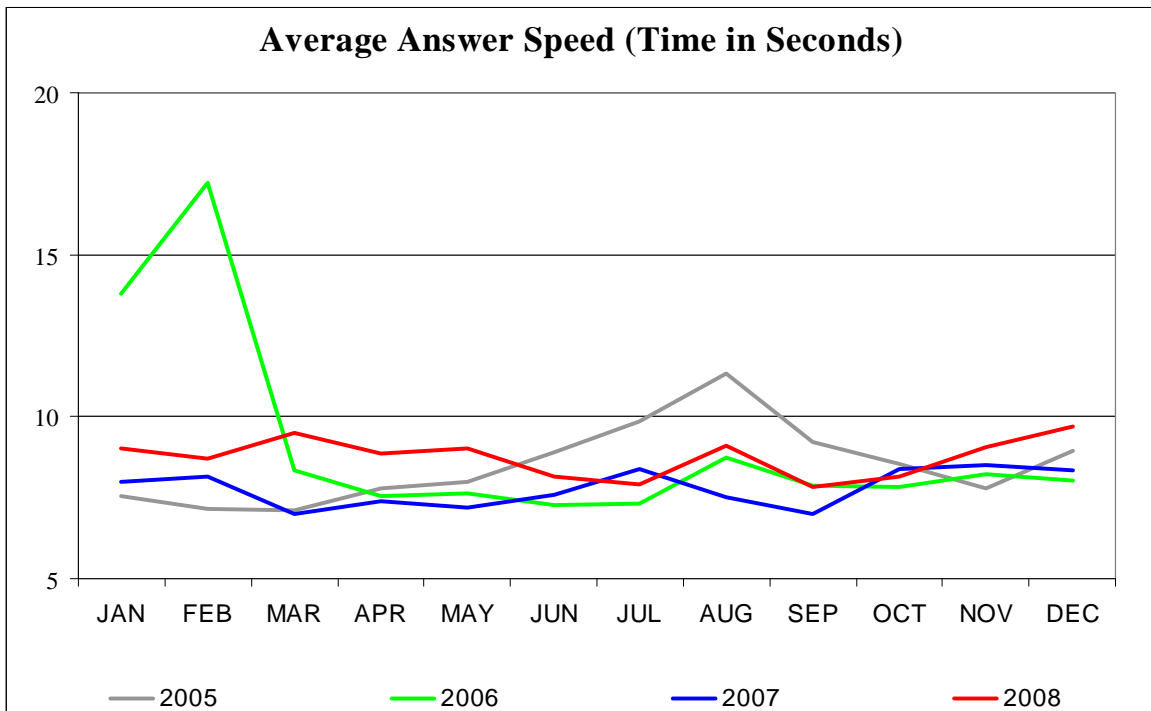


NICS Section Average Answer Speed

With a continued focus on customer service, the NICS Section strives to address all calls transferred from the NICS Contracted Call Centers in an expeditious manner. Depending on various factors, such as the time of the day, week, or year, the demand placed upon the background check system and the NICS Section may have a direct bearing on service levels. Many types of call center operations target an answer speed at 80 percent of calls being answered within 20 seconds. However, the NICS Section continuously seeks to be more responsive, more efficient, and more focused on customer service,

thus the NICS Section targets all Transfer Process calls answered within nine seconds. Based on historical data specific to transaction and call volumes, the NICS Section is able to forecast anticipated levels of staffing needed to effectively process incoming work in quest of providing timely service to the NICS' users. Accordingly, in 2008, the NICS Section's Transfer Process answer speed averaged all calls being answered within approximately 8.75 seconds (reference Figure 11), thus, continuing to meet a long-standing internal service-oriented goal.

Figure 11
NICS Section Average Answer Speed 2005 - 2008

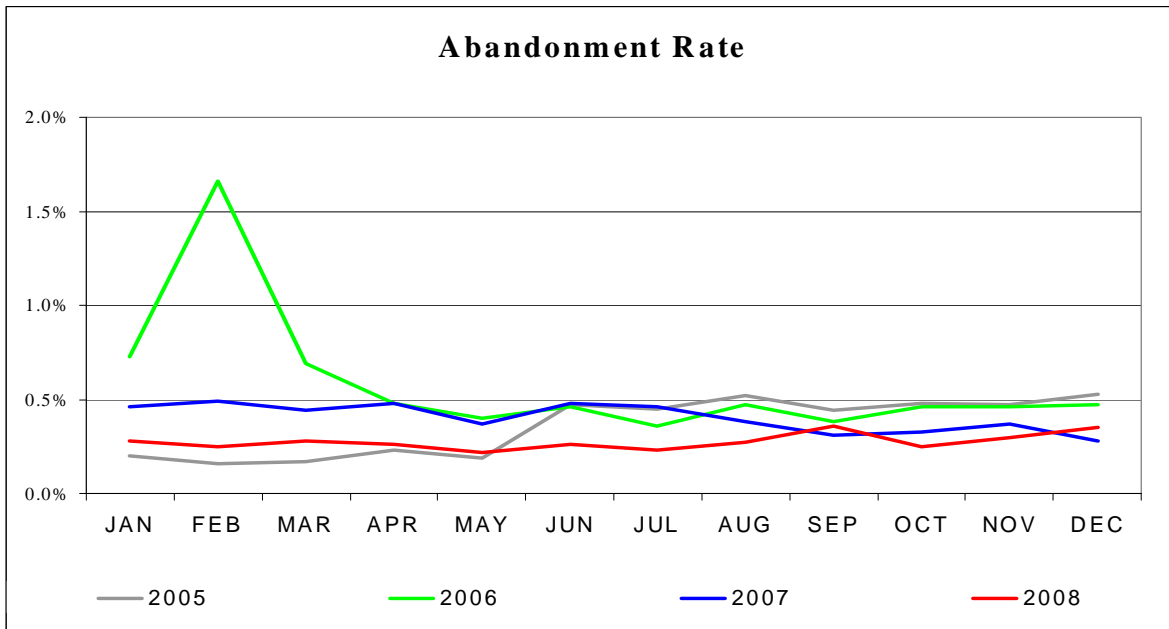


NICS Section Transfer Process Abandonment Rate

When a transaction initiated by the NICS Contracted Call Center is matched to any record during a background check search, the FFL is placed on hold, and the call is transferred directly to the NICS Section for further processing. As previously stated, the average amount of time a caller spends on hold waiting to continue the call and the processing of their transaction is approximately 8.75 seconds. Depending on the level of incoming calls, the amount of time can fluctuate. As such, there are times when a caller will prematurely terminate, or "abandon," a call.

Many of the circumstances that prompt a caller to terminate a call are not within the control of the NICS Section. The NICS Section makes every effort to address each call as quickly as possible. Because all calls are valuable, an ongoing goal of the NICS Section is to contain the level of abandoned calls to less than 1 percent. Continuing its historically established service performance trend, the NICS Section surpassed its goal and averaged a 0.28 percent Abandonment Rate in 2008 (reference Figure 12).

Figure 12
NICS Transfer Process Abandonment Rate, 2005 - 2008



NICS Section Tactical Planning

To assure the long-term growth and viability of the NICS, the staff and management of the NICS Section believe strategic planning is key to success. Realizing the many benefits an optimally effective and efficient system contributes to the furtherance of public safety, the NICS Section places great emphasis not only on current goals but also with planning for the future.

Each year, the NICS Section selects objectives in support of identified goals, and through ongoing tactical planning efforts, frames forward-looking strategies aimed to move the program closer toward optimal performance. The following information describes some of the successes accomplished by the NICS Section specific to tactical planning efforts in 2008:

NICS Section Tactical Plan



In numerous instances, the NICS Section employees must conduct research to locate information needed to render a final transaction status. Often, disposition information not maintained in the NICS-searched national databases is available via the Internet. However, utilizing this resource often required employees to expend great amounts of time seeking an available Internet terminal to conduct needed research. In October 2008, the NICS Section deployed Internet accessibility at each employee's workstation. By reducing the time spent conducting additional research, a more timely decision is rendered which, in turn, helps to ensure customer satisfaction.



Background check information specific to transactions provided a deny status by the NICS Section are forwarded to the ATF on a nightly basis. The ATF reviews the denial transactions to determine further action (e.g., firearm retrieval or prosecution). To assist the ATF with determining workload/resource needs, the NICS Section, in September 2008, split the aforementioned file into two separate and distinct categories, one for newly denied transactions and the other for updated denied transactions. Accordingly, the NICS Section remains dedicated to assisting the partners and stakeholders of the NICS.



To ensure continued quality, the NICS Assessment Unit (NAU) performs continual internal evaluations of system and process performance. In 2008, the NAU championed a culture specific to promoting employee growth in order to meet tomorrow's challenges. Throughout 2008, the NAU fostered a comprehensive campaign focusing on employee motivation and work processing. Via measures, such as through the acknowledgment of employee processing achievements, the NAU created a site on the NICS information network to promote communication throughout the NICS Section regarding various topics of interest, e.g., completed assessments, quality review tips, etc. Also, the NAU, via the aforementioned site, provides links to various operational tools in support of the NICS Section's Quality Policy and to emphasize the tremendous value the work of all NICS Section employees plays in the success of the NICS.



The NICS Section's existing call center contract was scheduled to expire in January 2009. To secure the best services needed to maintain the high quality level of service for which the NICS is known, the NICS Section engaged in comprehensive negotiations with contracting officials. To ensure continuity of operations and to reinforce existing contingency measures, the NICS Section will utilize the services of a third call center location to be fully operational in 2009.

Improvements to the NICS

With a continued priority on providing the NICS users with a high level of quality service, and in pursuance of the goals and objectives identified by the NICS Section specific to strategic planning, the NICS Section, in 2008, implemented numerous changes to the NICS. Highlights of those changes and improvements to the NICS follow:

February 2008:

- *Redesign of the Waiting for Disposition (WFD) Functionality:* When processing delayed background check transactions, the NICS Section employees must seek final disposition information from agencies external to the NICS Section. Pursuant to the Brady Act, the NICS has three business days to obtain the final disposition information needed to determine a person's eligibility to purchase firearms. Because of this time limitation, numerous criminal justice agencies are solicited simultaneously for the needed information.

Previously, the WFD displayed all WFD actions in order of the entry date. This resulted in NICS Section employee's having to expend time scrolling through all WFD entries in order to locate all such entries specific to a particular record for review.

To enhance the process associated with obtaining needed disposition information from external agencies, the existing WFD functionality was upgraded to allow the NICS to group together, in date order, all actions taken specific to a particular record. Accordingly, all entries specific to a particular record being sought are located at a glance; thus, a NICS Section employee does not have to expend valuable time scrolling through numerous records to filter for the specific information needed.

- *Transaction Status Updates by POC State Agencies Captured by the NICS:* When a POC state updates the status of a state-initiated transaction, the new status is captured by and indicated in the NICS, and the transaction's comments are automatically updated to indicate the status update effected by the POC state agency.
- *NICS Index Capability to Capture/Display a Record Holder's FBI Number:* The NICS Index entry application was expanded to allow a contributing agency to denote an FBI record number (if available) in addition to multiple dates of birth. The additional information, when provided by a record contributor, will display with the NICS Index data when matched by the NICS and returned to the user.

May 2008:

- *PCA Code Update:* As a result of the passage of the NICS Improvement Amendments Act of 2007 and resulting reporting requirements, the NICS Index PCA codes were updated to more accurately capture and categorize the types of federally prohibiting records maintained in the NICS Index, including a new series of sub-codes that separate and categorize the records maintained within the Denied Persons File. As of May 19, 2008, each unique federally prohibiting category is represented by a specific all-inclusive PCA code that (1) allows the contributor to denote the specific applicable federal prohibitor upon which the record's deny status is predicated which, in turn, allows for more accurate reporting and/or tracking, and (2) in many instances, provides a NICS user with a more definitive reason for the record's prohibiting status where permitted by state law.
- *Batchload Submissions to the NICS Index by Federal Agencies:* The NICS was upgraded to provide federal agencies the capability to submit records to the NICS Index via a

batchload process. This enhancement provides efficiencies to the NICS' federal partners by allowing numerous records to be submitted to the NICS Index at one time rather than submitting one record at a time.

- *Denying Record Data Captured by the NICS to Assist NICS Partners:* Information specific to all transactions denied by the NICS Section is forwarded to the ATF on a daily basis. In the spirit of partnership and to assist the ATF with workload matters, the NICS was modified to require the NICS Section employees denote, in certain circumstances, additional denying record information, e.g., the age of a conviction or the expiration date of a protection order. The supplemental data is captured by the NICS and included with the deny transaction information forwarded daily to the ATF.

September 2008:

- *Modification to Allow Agencies to Submit NICS Index Record Changes via any NCIC Terminal:* A system enhancement to provide record contributing agencies with the capability to submit NICS Index record modifications to the NICS from any NCIC terminal was deployed. Previously, when a state agency wanted to modify one of their submissions to the NICS Index, the state agency had to effect the change from the same NCIC terminal from which they initially submitted the record to the NICS Index.
- *Ready for Callback (RFC) Functionality Upgrade:* If an FFL cannot be contacted at the time the status of a delayed transaction is determined, the transaction is placed in the NICS RFC queue. The NICS Section employees perform callback duties daily to ensure FFLs are provided with final transaction statuses as expeditiously as possible and within three business days from the date the transaction was created. To assist the NICS Section in performing this duty, the RFC functionality was enhanced to:
 - permit access to the NICS RFC queue by the NICS Contracted Call Centers to assist the NICS Section with the processing of proceed transactions placed into RFC status. Security measures do not permit Call Center personnel to view the content of criminal history records;
 - provide the NICS Section employees with the capability to capture and display information indicating the hours an FFL anticipates availability to receive callback information when an "unable to notify" indicator is set;
 - provide the NICS Section employees with the capability to flag transactions wherein communication with the FFL cannot be established;
 - display RFC transactions in a priority order (the older the transaction, the higher the priority); and
 - provide a visual indication to the NICS Section employees that there are other RFC transactions for the FFL currently being serviced.
- *NICS Search via the NCIC Expanded to Include Missing Persons File (MPF) Records:* The NICS was modified to receive and display NCIC MPF records that are matched by name and descriptors to a prospective firearms transferee during a background check. Previously, MPF records were not returned to the NICS during the background check process; however, it was determined MPF records could potentially provide information to indicate the existence of a firearms prohibition.
- *Transaction Priority Coding:* The NICS Transaction Inquiry Results application was modified to indicate the "age" of a transaction. The color-coded transaction age provides an identifiable visual indication to a NICS Section employee which transactions should

receive priority processing based on the transaction's creation date (e.g., the older the transaction, the higher the priority).

- *Denying Record Selection Criteria Expanded:* When a background check transaction is denied by the NICS Section, the record predicated by the transaction's deny status (e.g., III record, NICS Index record) is denoted by the NICS Section employee processing the transaction and captured in the NICS. All denied transactions are forwarded to the ATF on a nightly basis.
- *Firearm Retrieval Referral Code Selection Prompt:* To assist the ATF with work prioritization, the NICS was modified to automatically prompt a NICS Section employee to determine, after providing a transaction deny status to an FFL, if the firearm was transferred. If the firearm was transferred, the NICS Section employee is required by the NICS to select the appropriate deny description code based on the priority codes as ranked by the ATF.

October 2008:

- *NICS Response Queue Indicator Modification:* On a daily basis, the NICS Section employees request numerous types of records needed to process background check transactions. To hasten the processing of delayed background check transactions, the NICS was modified to provide a visual display to indicate the receipt of a requested record to the NICS Section employee currently processing the transaction.
- *Access to Law Enforcement Online (LEO) E-mail Provided to NICS Section Employees via the NICS:* The access and sharing of information by e-mail via LEO was made available to employees via the NICS. With this upgrade, the NICS Section employees can send and receive e-mail via LEO at their workstation without having to physically seek a LEO terminal located elsewhere in the NICS Section.

NICS Section Outreach

Shortly after the implementation of the firearms background check program, the NICS Section launched a nationwide outreach initiative to connect with local, state, tribal, and federal agencies regarding the public safety value of



sharing criminal history and related records with the NICS. Various acts of gun violence throughout the last several years have served to remind law enforcement and judicial agencies, and the general public of the tremendous importance of making record information, such as

complete criminal history records and Brady-prohibiting mental health adjudications, among others, available on a national level. In the furtherance of public safety and national security, the NICS Section continues to foster a proactive role regarding the submission of record information to the CJIS systems searched during a NICS background check.

To accomplish the aforementioned, the NICS Section supports a multi-faceted outreach program. Engaging with local, state, tribal, and federal agencies regarding the NICS mission, and how up-to-date criminal history and related records also benefit society and law enforcement efforts at many levels, the NICS Section fosters working relationships with various agencies to eliminate the barriers impeding the availability of information at a national level. The following information outlines some of the highlights of the NICS Section's commitment in this endeavor:

- *National Consortium for Justice Information and Statistics (SEARCH) Conference:* In January 2008, the NICS Section participated

in a conference sponsored by SEARCH, an organization created by and for the states to promote information sharing among local, state, and federal justice agencies. With participation by state-appointed SEARCH members and those representing judicial and educational venues, the NICS Section presented information pertaining to the NICS, the NICS Improvement Amendments Act of 2007, and the importance of complete record information.

- *National Center for State Courts (NCSC) Conference:* In February 2008, NICS Section employees met with officials from the NCSC and the Office of Full Faith and Credit. The focus of the meeting was specific to the identification of methods to improve the attainment of court documentation that captures and indicates the information needed to determine the applicability of Misdemeanor Crime of Domestic Violence (MCDV) requisites;
- *Law Enforcement Information and Records Association (LEIRA) Conference:* In March 2008, NICS Section employees participated in the LEIRA Conference which promotes standardization of records management by the personnel of law enforcement agencies, court systems, and various criminal justice agencies; and
- *E-Courts Conference:* In December 2008, NICS Section employees exchanged information regarding court operations and practices, and obstacles faced by courts with records management.

The NICS Section also provides guidance and support to the NICS' users and partners, in addition to various agencies, through other means and:

- offers its expertise to local, state, tribal, and federal agencies, e.g., assistance with drafting

legislation to allow the sharing of records that are subject to privacy laws, etc.;

- offers technological guidance regarding system and connectivity matters; and
- provides information to support the sharing of information in a variety of ways, such as through:
 - the Internet via LEO managed by the FBI;
 - training Webcasts via the Internet;
 - annual forums, such as the NICS Annual User Conference and the NICS Report, Educate and Associate Criminal History Conference: and
 - various publications and reports.

Outreach efforts also provide the NICS Section with opportunities to enhance and strengthen relationships with external agencies espousing the furtherance of public safety, such as with the Department of Justice's Project Safe



Neighborhoods, or various other organizations, such as the National Rifle Association and the National Shooting Sports Foundation.

As outreach often takes on an educational element, the NICS Section offers continual support to local, state, tribal, and federal agencies by offering a myriad of training opportunities. The NICS Section identifies, develops, and provides various training and information-sharing regimens to the NICS' users and numerous law enforcement, judicial, and criminal justice agencies when requested.

The NICS Section offers a catalogue of comprehensive training services specific to topics such as the firearm background check and related processes, the Brady Act and the GCA, the interpretation and application of federal prohibiting criteria, the challenges of effectively and efficiently determining if state laws are firearms prohibiting, the NICS appeal process, and others. As a result, in 2008, the NICS Section traveled to 56 cities in 25 states, and provided 76 training sessions to over 1,650 professionals, such as probate judges, court clerks, law enforcement officers, state terminal agency controllers, program technicians, special agents, training instructors, auditing personnel, sheriffs, and others.

As a result of the commitment of the NICS Section and the cooperation of numerous local, state, tribal, and federal agencies specific to information sharing, PTD over 670,700 dispositions obtained by the NICS Section employees have been posted to criminal history records. Of these, approximately 40,400 dispositions were obtained in 2008.

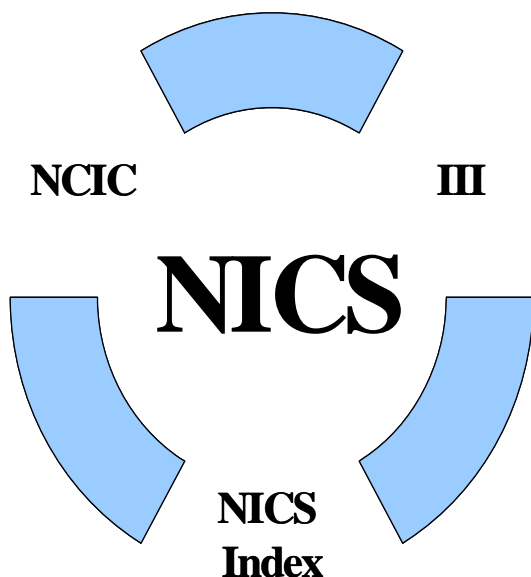
Additionally, a total of approximately 75,448 dispositions obtained by the NICS Section employees PTD were shared with the states to assist with records maintenance at the state level. Of these, over 16,000 dispositions were obtained in 2008.

“Anytime law enforcement works together, it is a step closer to a safer society.”

NICS State Support Team Training, Des Moines, Iowa <April 2008>

NICS Index

When a NICS background check is conducted, the name and descriptive information of a prospective firearms transferee is searched against the name and descriptive information of the subjects of records maintained in the databases searched by the NICS. During a NICS background check, in addition to the NCIC and the III, a search of the NICS Index is conducted.



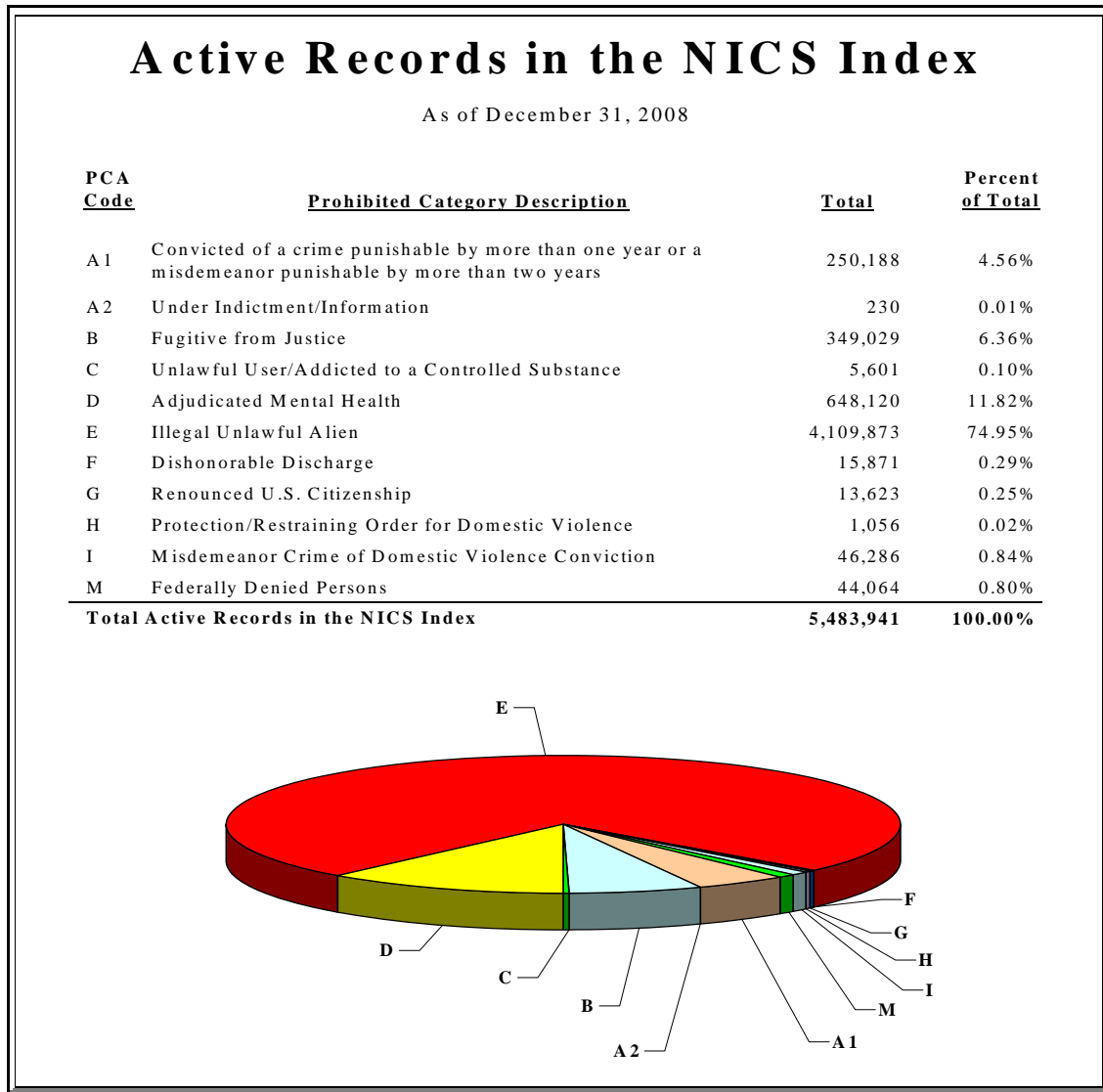
The NICS Index is a system of records developed by the FBI exclusively for the NICS that collects and maintains records voluntarily submitted by local, state, and federal agencies that exhibit a federal firearms prohibition for the subject. Typically, the records submitted to the NICS Index are not available via the NCIC or the III, or may be available but cannot be updated in a manner to readily indicate to a user the existence of a federal firearms prohibition. Making such records available via the NICS Index provides the user with an immediate indication the record, when validly matched to the prospective firearm transferee, has already been validated to be federally prohibiting. This "pre-validation," in

turn, often eliminates an otherwise lengthy review, research, and evaluation process to determine record-prohibiting status and, ultimately, subject eligibility to purchase/possess firearms. Since the implementation of the NICS in November 1998, the NICS Section has dedicated numerous resources toward the population of the NICS Index specific to:

- training and education;
- participation and interaction at various conferences and seminars;
- establishing liaisons within the NICS Section who, being knowledgeable regarding the NICS processes, are available to provide real-time assistance;
- offering legal services and guidance, such as specific to the drafting of legislation for states in pursuance of making mental health information available to the NICS; and
- offering technical guidance and support.

Advocating the value of making federally prohibiting records available at the national level has been an ongoing goal of the NICS Section for the last ten years. With a continued commitment to increased awareness regarding the public safety benefits of providing federal firearms prohibiting information for availability during the background check process, the NICS Section employees and federal and state agencies submitted, on average, approximately 41,000 records per month in 2008 to the NICS Index. As of December 31, 2008, a total of 5,483,941 records were maintained in the NICS Index, an increase of 375,902 records (or approximately 7.4 percent) from the year-end NICS Index tally in 2007 (reference Figure 13).

Figure 13
Active Records in the NICS Index - December 31, 2008



NICS Improvement Amendments Act of 2007 (NIAA)

On January 8, 2008, President George W. Bush signed into law the NIAA, Public Law 110-180, passed by Congress on December 19, 2007. The NIAA amends the Brady Act and seeks to improve criminal history and Brady-prohibiting record reporting. Prior to the NIAA, state agencies contributed records to the NICS Index on a voluntary basis. Even though the number of

records maintained in the NICS Index has progressively increased over the last several years since the implementation of the NICS, it is evident there is a tremendous need for federal and state agencies to identify all records deemed to be federally prohibiting for firearms purchase/possession and make those records available to the NICS.

The NIAA seeks to improve the NICS by:

- requiring federal agencies to provide relevant information to the U.S. Attorney General (hence the NICS) specific to persons who are federally disqualified the transfer of a firearm pursuant to the Brady Act with a focus on information pertaining to persons with federally prohibiting mental health adjudications or commitments; and
- providing incentives to states and state court systems to submit complete information to the NICS on persons federally prohibited as well by authorizing new grant programs for state agencies to improve information sharing with the NICS and by imposing penalties for states that do not comply with the NIAA's record completeness goals.

The NIAA, defining the types of records that must be reported by the states and federal agencies to the NICS, is intended to mitigate the gaps in information that impede the NICS from realizing its full potential in identifying those persons prohibited by law from the receipt of firearms. Accordingly, the NIAA seeks to improve the quantity of records submitted to the NICS and the quality of criminal history and Brady-prohibiting record reporting practices.

NICS Index PCA Changes in Support of the NIAA

The records submitted to the NICS Index are sorted and maintained in one of several PCA files corresponding to Brady-established federal firearms prohibiting criteria, such as the Illegal/Unlawful Alien File or the Dishonorable Discharge File. When submitting a record to the NICS Index, the contributing agency must denote the appropriate PCA indicating the record's federal firearms prohibiting status. When the NICS receives the record submission, it automatically places the information in the PCA file denoted by the submitting agency.

In addition to the aforementioned PCAs, the Denied Persons File (DPF) was also established. The DPF collects and maintains any type of federally prohibiting information entered into the NICS Index at the discretion of the contributor, such as disqualifying mental health information that cannot be labeled as such based on state privacy laws, information obtained during the research of records matched during a background check that is not maintained in the NCIC or the III, or information that is not specific to one of the available PCAs. Consequently, and unlike the other PCAs comprising the NICS Index, the records maintained in the DPF category may relate to any of the federal firearms prohibitors.

In response to the passage of the NIAA and to assist state agencies with the submission of information to the NICS Index while allowing for the accurate reporting of statistics, the NICS Section restructured the NICS Index PCAs and corresponding codes. Accordingly, effective May 19, 2008, the files housing the NICS Index record submissions increased from five to ten all-inclusive file categories with each category corresponding to each of the ten existing federal firearms prohibitors. The newly aligned NICS Index PCAs and identifying codes deployed by the NICS Section (reference Figure 14) on May 19, 2008, are:

- *Criminal History - Felony/Misdemeanor Conviction File (A1)*: Persons who have been convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years.
- *Under Indictment/Information File (A2)*: Persons who are under an indictment or information.
- *Fugitive from Justice File (B)*: Persons who are the subject of an active criminal warrant.
- *Controlled Substance Abuse File (C)*: Persons who are an unlawful user of or addicted to any controlled substance.

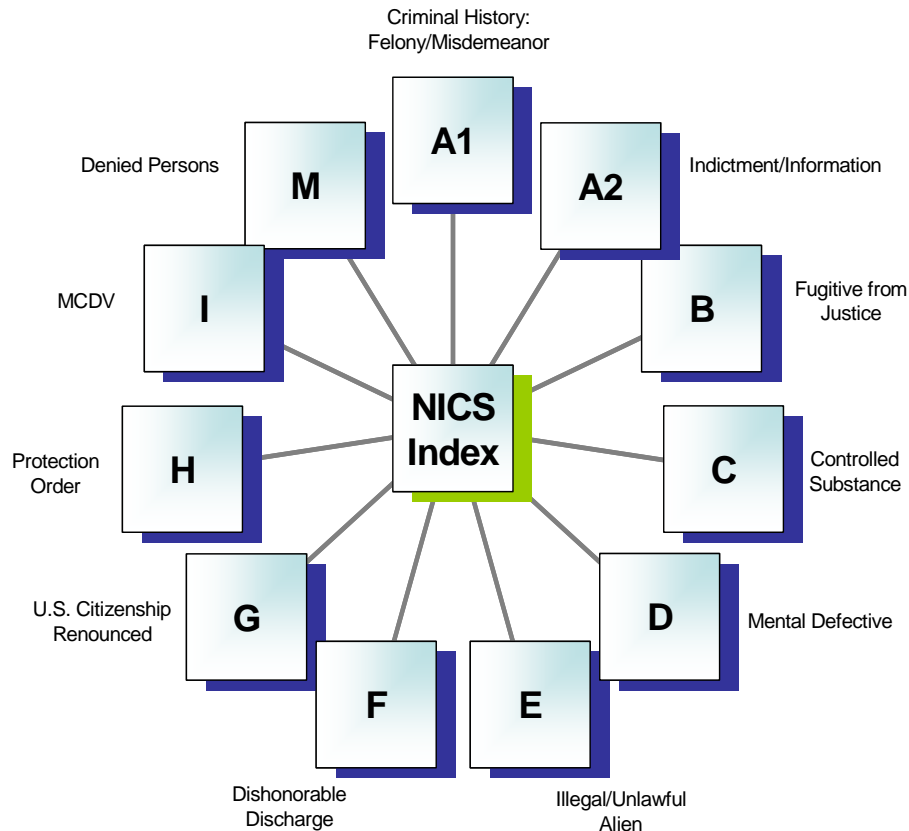
- *Mental Defective File (D)*: Persons who have been adjudicated as a mental defective or have been involuntarily committed to a mental institution or have been deemed incompetent to handle their own affairs.
- *Illegal/Unlawful Alien File (E)*: Persons who are aliens and are illegally/unlawfully in the United States.
- *Dishonorable Discharge File (F)*: Persons who have been discharged from the Armed Forces under dishonorable conditions.
- *Citizenship Renunciant File (G)*: Persons who have renounced their U.S. citizenship.
- *Protection/Restraining Order File (H)*: Persons who are subject to a court order

restraining them from harassing, stalking, or threatening their child, an intimate partner, or a child of such partner.

- *MCDV File (I)*: Persons who are convicted in any court of an MCDV.

Because of the coding differences specific to the new PCAs and their corresponding codes, the approximate 700,000 records amassed in the NICS Index' DPF prior to the aforementioned system change could not be electronically sorted and redistributed to the appropriate category. Accordingly, continued maintenance in the DPF was afforded until each contributor could effect a manual review and evaluation of each of their submissions and, ultimately, move the information to the applicable PCA category.

Figure 14
Revised NICS Index PCA Codes - 2008

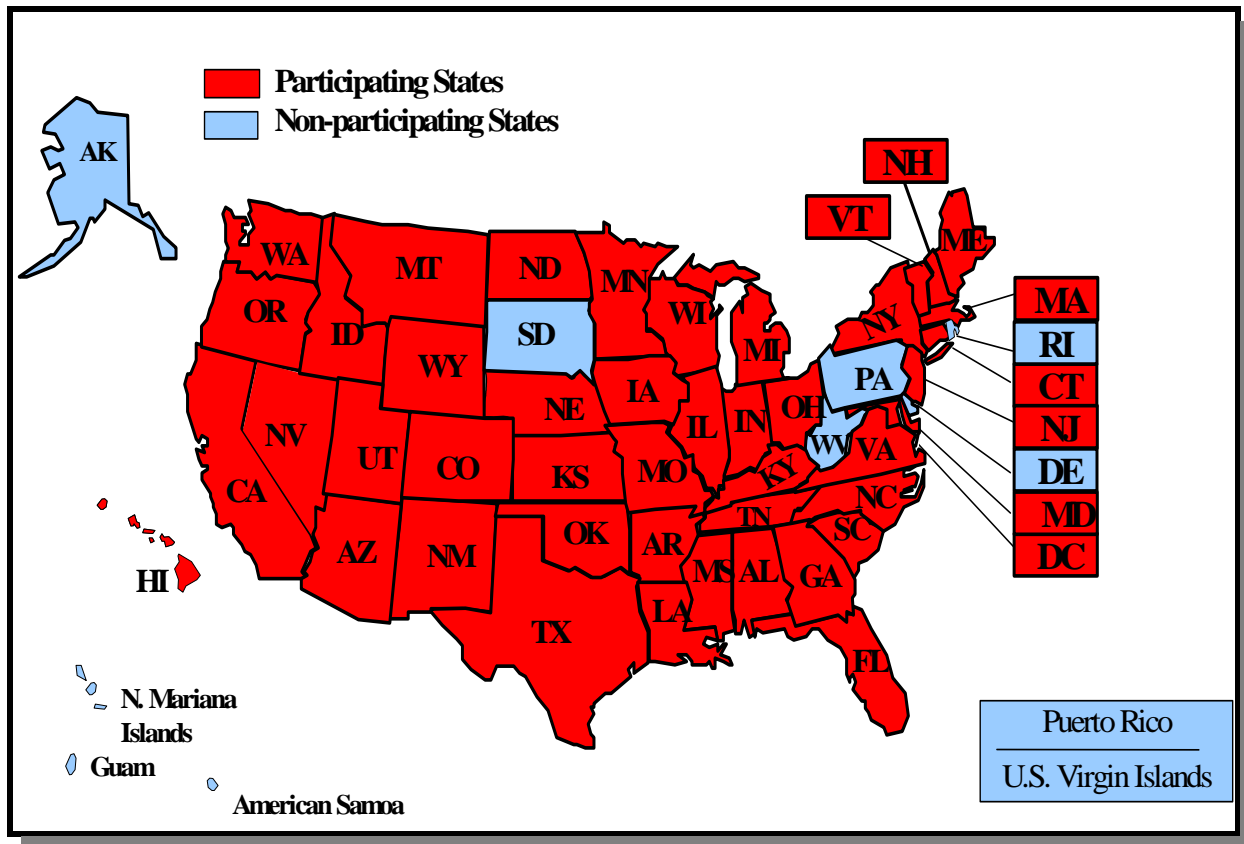


Anticipating the levels of NICS Index record information will continue to increase with the impending requirements of the NIAA in addition to the intensive outreach efforts of the NICS Section in marketing the value of the NICS Index, it becomes more crucial to appropriately categorize the records maintained. As such, the NICS Section staff continues to work with the NICS POCs and state agencies in the aforementioned endeavor. As of December 31, 2008, approximately 93 percent of the records previously maintained in the DPF prior to

May 19, 2008, were redistributed to a more appropriate file within the NICS Index.

Throughout 2008, the staff of the NICS Section worked with the states and various federal agencies to promote the submission of all federally prohibiting information to the NICS Index. As a result, several states not participating in the submission of records to the NICS Index at year-end 2007 had initiated participation by year-end 2008 (reference Figure 15).

Figure 15
 NICS Index Participation as of December 31, 2008

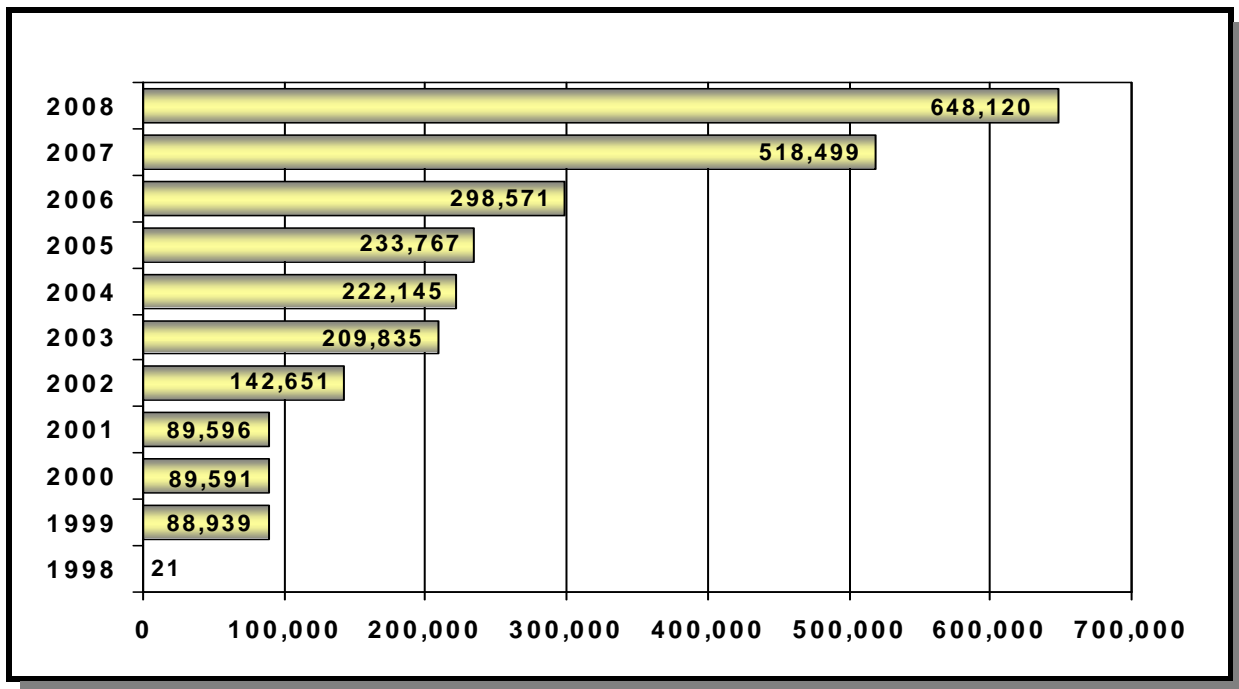


Maximizing the information maintained in the databases searched during a NICS background check is not only essential to ensuring that firearms background checks are thorough and comprehensive, it also benefits law enforcement and public safety efforts at many levels. The NICS is a critical tool in keeping firearms out of the hands of criminals and others prohibited pursuant to federal or state law from receiving/possessing them; however, the NICS is only as effective as the information provided to it.

In today's society, the NICS Index is a valuable tool in providing immediate firearm prohibiting

records, such as those pertaining to persons with a prohibiting mental health history. As of December 31, 2008, the number of records maintained in the NICS Index' Mental Defective File (reference Figure 16) had increased to a total of 648,120. For the NICS to operate optimally as envisioned requires the active cooperation of federal and state agencies alike. As the submission of complete criminal history and related records to the NICS Index and the other databases searched by the NICS support public safety and national security, the NICS Section's determination in support of its mission continues.

Figure 16
NICS Index Total Mental Health Growth PTD



FBI's Major Case Contact Center (MC3)

To support its mission to "uphold the law through the investigation of violations of federal criminal law, to protect the United States from foreign intelligence and terrorist activities, and to provide leadership and law enforcement assistance to federal, state, local, and international agencies," the FBI recognized the importance of optimal communication. In September 2005, the FBI called upon the NICS Section to establish a national networked integrated contact center to receive and document information proffered by the public specific to the sharing of information related to major case investigations, special or national events, catastrophic incidents, etc., or in instances where strengthened communications are essential.

In 2007, the MC3 was designated as the alternate means for FBI employees to report personnel status during or after a crisis event. When activated to collect information specific to personnel accountability, the MC3 provides a centralized source for all FBI employees and contractors to contact to establish accountability specific to their location or needs.

The MC3 is activated at the direction of FBI Executive Management and has the capability to support multiple simultaneous critical incidents or major case investigations. The exchange of information from the public to the MC3 is achieved through the use of a toll-free telephone line. The numerous tip lines activated via the MC3 in 2008 include:

- Murder investigation of Maria Lauterbach and alleged involvement of U.S. Marine Corporal Cesar Armando Laurean: Activated from January 15, 2008, to January 31, 2008.
- John Doe #13 child pornography investigation related to the Endangered Child Alert Program Initiative: Activated from February 15, 2008, to February 22, 2008.
- Personnel Accountability Exercise in cooperation with the Richmond FBI Field Office: Activated from May 7, 2008, at 8 a.m. to May 7, 2008.
- Investigation of Possible Serial Killer, Nicholas T. Sheley: Activated from July 1, 2008, to July 2, 2008.
- St. Louis Metropolitan Towing Public Corruption Investigation: Activated from August 11, 2008, to August 28, 2008.
- Lynchburg Child Abduction/Homicide (Jennifer Short) Investigation: Activated from August 15, 2008, to August 27, 2008.
- Personnel Accountability for FBI employees at the New Orleans Field Office due to impending hurricanes: Activated from August 30, 2008, to September 2, 2008.
- John Doe 8 and John Doe 13 investigations related to the Endangered Child Alert Program Initiative: Activated from September 15, 2008, to September 19, 2008.
- Skip Brinkley Murder Investigation: Activated from September 23, 2008, to September 24, 2008.
- White Powder Letters: Activated from October 23, 2008, to October 29, 2008, and activated again from December 19, 2008, to December 20, 2008.
- Express Scripts Extortion Investigation: Activated from November 11, 2008, to November 17, 2008.
- 1987 Child Abduction and Murder Investigation (Julie Magliulo): Activated from November 19, 2008, to November 26, 2008.