



# NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

## OPERATIONAL REPORT 2003-2004



# **FBI NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)**

## **MISSION STATEMENT**

**To ensure national security and public safety by providing the timely determination of a person's eligibility to possess firearms or explosives in accordance with federal law.**

## **EXECUTIVE SUMMARY**

The FBI Criminal Justice Information Services (CJIS) Division's NICS Section, in 2003 and 2004, witnessed many significant improvements and achievements in the furtherance of its mission to *ensure national security and public safety by providing the timely determination of a person's eligibility to possess firearms or explosives in accordance with federal law* by developing and implementing system improvements to consistently provide its users with a highly effective and efficient level of quality service. Highlights of the 2003/2004 NICS accomplishments include the following:

- From inception of the NICS on November 30, 1998, through December 31, 2004, a total of 53,107,772 background checks have been conducted through the NICS. Of these, 26,993,482 were processed by the NICS Section and 26,114,290 were processed by the NICS Point-of-Contact (POC) states.
- From November 30, 1998, to December 31, 2004, the NICS Section has denied a total of 406,728 firearm transfers and witnessed a steady decrease in the national denial rate. The NICS denial rate (based on NICS Section statistics only) decreased from 1.43 percent reported in 2002 to 1.37/1.36 percent in 2003 and 2004 (respectively).
- In 2003 and 2004, the NICS Index was increased by an additional 788,654 record entries. From program inception in November 1998 through December 31, 2004, the NICS Index has witnessed an increase in the number of *available and immediately* prohibiting records by approximately 300 percent. As of December 31, 2004, there was a total of 3,664,847 records in the NICS Index.
- The NICS Section increased its Immediate Determination Rate from the 91 percent previously reported to almost 92 percent by year end of 2003 and remained consistent at that level through year end of 2004.
- In 2003 and 2004, there were 3,594 and 3,668 firearm retrieval cases referred to the Bureau of Alcohol, Tobacco, Firearms and Explosives. As a result of the refinement of processes, procedures, employee performance and expertise, proportionately, the percentage of firearm retrieval referrals continues to decrease which serves to enhance public safety by minimizing the potential for prohibited individuals to illegally be in possession of a firearm.
- The Explosives Background Check Initiative, pursuant to the Safe Explosives Act, enacted on November 25, 2002, was developed and implemented with the processing of the first explosives background check in February 2003. As of December 31, 2004, a total of 65,593 explosives background checks had been processed by the NICS Section.

- To provide the NICS Section with the tools necessary to perform in an optimally efficient manner, the development of a NICS Efficiency Upgrade was implemented in early 2003. By providing accessibility to many systems and work functions via an employee's workstation, the staff of the NICS Section will be able to perform more efficiently. Phase 1 of this system upgrade was implemented in May 2005.
- During the first quarter of 2003, the "Fax-on-Demand" feature of the enhanced facsimile server was implemented. This feature provides users and other interested individuals, through electronic dial-up access, with the capability to order documents, e.g., forms, brochures, etc., without the need for human intervention and potential lengthy waiting periods.
- The NICS availability remained consistent at approximately 99 percent for 2003 and 2004. In April 2003, the NICS witnessed a 100 percent level of system availability.
- In April 2003, the automated Mass E-Mail feature of the NICS E-Check was implemented. This system enhancement automatically and electronically provides information pertaining to user certificates, system notifications, etc., to all Federal Firearms Licensees (FFLs) registered with the NICS E-Check in a quick and efficient manner.
- In an effort to provide optimal "information sharing" opportunities through the reciprocal exchange of information and ideas with its POC state counterparts, the NICS Section implemented the POC Chat Room. The first chat session, held in August 2003, was facilitated via the Law Enforcement Online Web site and is offered periodically on a wide array of topics of mutual interest and importance.
- In the third quarter of 2003, the POC Support Team was established. A team of knowledgeable and proficient NICS Liaison Specialists joined in a team effort to provide the POC states with a resource for information-sharing opportunities and support in various fields of expertise. As of December 31, 2004, the POC Support Team had facilitated over 40 information-sharing sessions in 26 locations to over 1,750 participants.
- In January 2004, the NICS Section, collaboratively with the CJIS Division's technical staff, implemented a system enhancement designed to extract and transmit information (submitted via firearm permit fingerprint cards) needed to accurately conduct an Immigration Alien Query. This system enhancement enables the NICS Section to automatically submit to the United States Immigration and Customs Enforcement (ICE), Department of Homeland Security, the required search request messages currently mandated by federal law for non-U.S. citizens on behalf of the submitting states.

- In order to accommodate Spanish-speaking users, the NICS Section implemented a NICS E-Check system enhancement that will display the NICS E-Check screens, instructions, responses, etc., in Spanish. The Spanish screen formats feature of the NICS E-Check was developed and tested in 2003, and subsequently implemented by the NICS Section in January 2004.
- In response to a November 17, 2003, directive issued by the United States Department of Justice (DOJ), the NICS Section, collaboratively with the CJIS Division's technical staff, initiated the development of procedural and technical requirements for the facilitation of the NICS Section's processing of background check transactions that result in a hit on a National Crime Information Center Violent Gang and Terrorist Organization File record. The initiative was successfully implemented on February 3, 2004, and by year end (as of December 31, 2004), a total of 3,086 hits had been reviewed and evaluated by the NICS Section and the POC states.
- As a result of the Fiscal Year 2004 Consolidated Appropriations Bill ("Omnibus" Bill), the NICS Section, in collaboration with the CJIS Division's Information Technology Management Section, identified and effected all system requirements and modifications needed for compliance with the 24-hour destruction requirement mandated in the legislation. The destruction of identifying information associated with allowed transactions within 24 hours of notification to an FFL was implemented by the deadline of July 21, 2004. Steps were also taken to ensure that all necessary audit work in connection with allowed transactions is completed within 24 hours.
- As a result of the NICS Final Rule, Title 28, Code of Federal Regulation (C.F.R.), Part 25, effective July 20, 2004, the NICS Section: (1) effected all necessary system requirements for generating individual FFL audit logs; (2) established a new definition for "open" transactions; and (3) implemented the addition of two new message types which provide the POC states with the capability to submit additional state determinations to the NICS.
- Pursuant to the NICS Final Rule, Title 28, C.F.R., Part 25, the NICS Section implemented the Voluntary Appeal File (VAF). The VAF allows the NICS Section to maintain information about a non-prohibited individual to assist in the speedy review and determination that a person's eligibility to receive firearms for future transactions. The first VAF case was processed in November 2004. As of December 31, 2004, 151 applications had been received; of these, 14 applicants were entered into the VAF and the remainder were being processed.
- Focusing on the quest for overall program efficiency and effectiveness, the NICS Section implemented a Streamlining Initiative in July 2004. As a result of this initiative, many of the NICS processes were streamlined and/or enhanced resulting in a more effective and efficient daily NICS work regimen.

- In August 2004, the Firearm Retrieval Referral Team was eliminated. This function was assumed by the NICS Legal Instruments Examiners (NICS Examiners) who now process the firearm retrieval transaction. The 11 NICS Examiners who staffed the Firearm Retrieval Referral Team, in addition to their Supervisor, resumed Delay Queue, Transfer Process, and Customer Service duties.
- In August 2004, the NICS Explosives Team was eliminated and the duties and responsibilities associated with processing explosives transactions were placed with the NICS Index Team. By increasing the duties and responsibilities of the NICS Index Team, the 13 NICS Examiners staffing the NICS Explosives Team, in addition to their Supervisor, resumed Delay Queue, Transfer Process, and Customer Service duties full time.
- In September 2004, an "Overflow" Team was implemented. By allowing for the overflow of incoming calls to be routed *directly* to members of the "Overflow" Team, the need for intermittently pulling NICS Examiners from the Delay Queue to process telephone calls was eliminated. Utilization of the "Overflow" Team concept permits more NICS Examiners to focus on Delay Queue processing while multitasking. The initial assessment of the impact of the "Overflow" Team suggests an additional availability of approximately three Full-Time Equivalents (FTEs) for processing transactions. Improved customer service (e.g., calls answered in a more timely manner) was additionally realized.
- To parallel the processes employed by the NICS Section's Transfer Process via the telephone, the NICS E-Check Transfer Process was developed and ultimately implemented on September 21, 2004. The NICS E-Check Transfer Process will provide the NICS Section employees with the capability to conduct a speedy review of incoming NICS E-Check transactions in an attempt to determine a final status in an expeditious manner. Within a few months, the number of transactions processed through the NICS E-Check (via the Transfer Process) had increased by 6 percent.
- In September 2004, the NICS processed its 50 millionth background check since implementation in November 1998.
- In October 2004, the NICS Section, with guidance provided by the DOJ, implemented a newly revised Missing Disposition Instruction (MDI) process. By providing the MDI notification to the FFLs with front-end transaction processing (during the FFL's initial call), the NICS Section is no longer required to expend an approximate 80 hours a day processing back-end (outgoing) MDI telephone calls to the FFLs. The initial assessment of the impact suggests an additional availability of approximately seven FTEs for processing Delay Queue work.

- In the Fall of 2004, specialized software, designed to enhance the forecasting, tracking and work scheduling of over 400 NICS Section employees, was installed and its use implemented. The new scheduling software increases the efficiency of workload management, thereby allowing the NICS Section to provide optimal service to its users.
- In the spirit of protecting national security and public safety by reviewing and analyzing available records in accordance with the provisions of the Brady Handgun Violence Prevention Act of 1993, the NICS Section, as of December 31, 2004, had obtained over 480,950 dispositions for posting/updating to criminal history records.

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Background

The Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103-159, required the U.S. Attorney General to establish a 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 on whether the transfer of a firearm would



# The NICS



violate Section 922 (g) or (n) of Title 18, United States Code or state law. The Brady Act requires the system to:

- Assign a unique identification number (NICS transaction number [NTN]) to each transaction;
- Provide the FFL with the NTN; and
- Destroy all records in the system that result in an allowed transfer (other than the NTN and the date the NTN was created).

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 system which became operational on November 30, 1998.

The NICS was designed to immediately respond to background check inquiries for prospective firearm transferees. For an FFL to initiate a NICS check, the prospective firearm transferee must complete and sign an ATF Form 4473 which includes subject descriptive data on a prospective transferee and asks questions intended to capture information that may immediately indicate to an FFL that the subject is a prohibited person, thereby negating the need to continue with the transfer and the background check process. 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. These databases are the:

- *Interstate Identification Index (III)* - contains an expansive number of criminal history records. The records maintained in the III, accessed during a NICS background check, as of December 31, 2004, numbered over 46,000,000.
- *National Crime Information Center (NCIC)* - contains information on protection orders, wanted persons, deported felons, and others. The NCIC records searched by the NICS during the background check process, as of December 31, 2004, numbered over 3,015,000.
- *NICS Index*<sup>1</sup> - contains records contributed by local, state, and federal agencies pertaining to individuals *federally* prohibited the transfer of a firearm. The records maintained in the NICS Index, as of December 31, 2004, numbered over 3,664,000.

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<sup>1</sup> The NICS Index, built specifically for the use of the NICS, contains record information pertaining to individuals federally prohibited from the transfer of a firearm that are not located in the III or the NCIC databases.

Also, a fourth search, via the applicable databases of the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE), may be conducted pursuant to federal law. However, and in response to a mandate issued by the U.S. Attorney General in February 2002, a search of the ICE databases is conducted on *all non-U.S. citizens* attempting to receive firearms in the United States. In 2003 and 2004, the NICS Section and its Point-of-Contact (POC) state counterparts requested over 49,750 such queries of the Department of Homeland Security's ICE.

In the majority of cases, the results of background check inquiries provide definitive information explicating subject eligibility within seconds to minutes of the data entry of a prospective firearm transferee's descriptive information into the NICS. A much smaller percentage of the inquiries are, however, delayed due to missing or incomplete information, e.g., final dispositions, necessary in order to make a final determination as to whether the firearm transfer may be proceeded or must be denied.

Currently under federal law, the NICS cannot preclude the transfer of a firearm based on arrest information alone unless independent state law otherwise specifies; however, only a few states fall into this category. Therefore, in instances where a valid matching record discloses potentially disqualifying record information (e.g., a felony offense arrest or a possible misdemeanor crime of domestic violence, etc.) that reflects missing or incomplete information, the transaction facilitator will search for the information needed to complete the record. This process often requires outreach to local and state agencies, e.g., court systems, sheriff's agencies, etc. In these instances, the Brady Act provides three business days for the purpose of obtaining additional clarifying information with which to make a determination as to the prospective transferee's eligibility. 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; however, the FFL is not required to do so.

Additionally, those individuals who believe they were wrongfully denied the transfer of a firearm based on a record returned in response to a NICS background check may submit a request to appeal their denial decision to the agency that conducted the check. The "denying agency" will be either the FBI Criminal Justice Information Services (CJIS) Division's NICS Section or the local or state law enforcement agency serving as a POC for the NICS. However, in the event the "denying agency" is a POC state, the individual may elect, in the alternative, to direct their appeal request, in writing, to the NICS Section. The provisions for appeals are outlined by the NICS Regulation 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 requires that persons who transport, 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 background check. The Act was enacted in November 2002 as part of the Homeland Security Act, and became effective on May 24, 2003. Background checks for explosives permits, under the Safe Explosives Act, are now processed through the NICS by the

NICS Section. The Explosives Background Check Initiative is discussed further and in-depth later in this report.

Extensive measures are taken to ensure the security and the integrity of NICS information. Access to 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 NICS information are available on the Internet at [www.fbi.gov/hq/cjisd/nics/index.htm](http://www.fbi.gov/hq/cjisd/nics/index.htm).

# Section I

## The NICS 2003/2004 Operations

### Number of NICS Transactions

Since inception of the NICS on November 30, 1998, and throughout the year ending on December 31, 2004, a total of 53,107,772 background check transactions have been conducted through the nation's firearms and explosives background check system. Of these transactions, 26,114,290 were processed through the POC states, while 26,993,482 were processed through the NICS Section (reference Table 1).

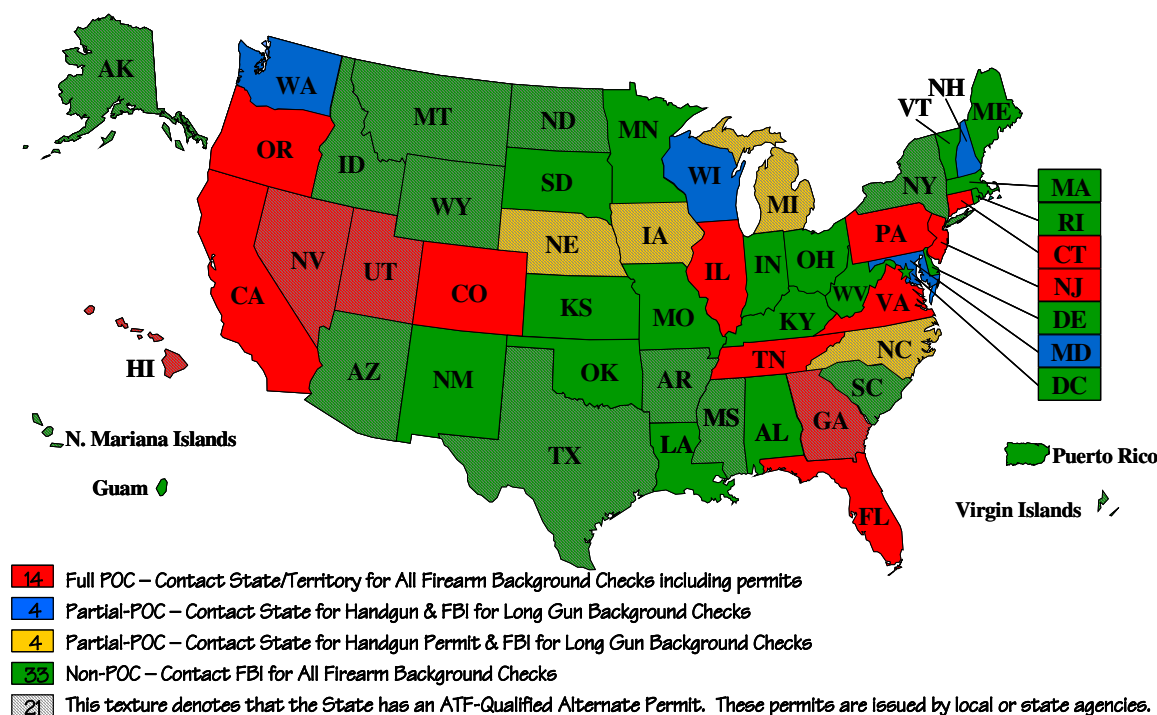
Table 1  
The NICS Yearly Transaction Levels 1998 through 2004 - Comparison

	1998-1999	2000	2001	2002	2003	2004
<b>Federal</b>	5,044,574	4,260,270	4,291,926	4,248,893	4,462,801	4,685,018
<b>State</b>	4,986,389	4,282,767	4,618,265	4,205,429	4,018,787	4,002,653
<b>Totals</b>	10,030,963	8,543,037	8,910,191	8,454,322	8,481,588	8,687,671
<b><i>Program-to-date Total</i></b>						<b>53,107,772</b>

Under the NICS regulations, the FFLs communicate with the NICS by contacting either the NICS Section or a state-designated POC. All states may, *at any time*, choose to implement their own Brady NICS Program by designating a local or state law enforcement authority within its boundaries to serve as an intermediary between its FFLs and the NICS in a POC capacity. Since the beginning of the NICS and currently, several states have implemented and maintain their own Brady NICS program separate and distinct from the NICS Section.

As of December 31, 2004, and at the current time, the NICS Section provides full service to the FFLs conducting business in 28 states, four territories and one district, while 14 states have agencies acting on behalf of the NICS in a full-POC capacity by conducting their own state background checks by electronically accessing the NICS. Eight states are currently sharing responsibility with the NICS Section by acting as a partial POC. Partial-POC states have agencies designated to conduct checks for handguns and/or handgun permits, while the NICS Section processes all of their long gun transactions. The NICS Participation Map (Figure 1) depicts each state's participation level with the NICS as of December 31, 2004.

Figure 1  
NICS Participation Map as of December 31, 2004



Several changes in state participation have occurred since the inception of the NICS in November 1998 and are outlined in Table 2. However, during 2003 and 2004, two changes in state participation level occurred. On October 1, 2003, the state of Indiana ceased to operate as a partial POC for the NICS and requested that the NICS Section provide full service to its FFLs initiating firearm background checks. Additionally, New York's participation level with the NICS was redefined, in September 2004, to reflect non-POC status.

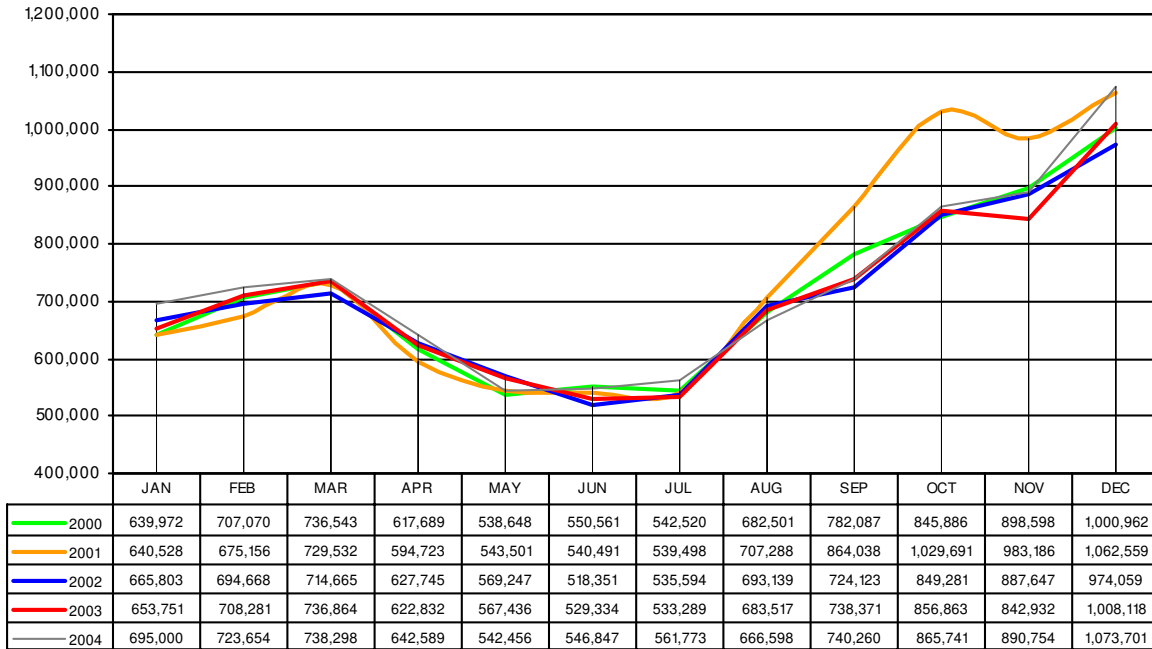
Table 2  
Changes in the NICS State Participation

State	Joined as Full POC	Discontinued as Full POC	Joined as Partial POC	Discontinued as Partial POC	Date
Colorado				●	March 1999
Colorado	●				July 1999
South Carolina		●			October 1999
Oregon	●				December 2000
Vermont		●			February 2002
Arizona		●			August 2002
Indiana				●	October 2003
New York				●	September 2004

The NICS Demand

Since its inception, the NICS has experienced a consistent and predictable increase in transactional activity associated with the onset of state hunting seasons and the year-end holidays. As firearms are part of the retail industry, substantial increases in firearm sales historically, and typically, begin in late summer and progressively gain momentum through the month of December, much in the same manner as the hunting and holiday shopping seasons trend. This period of time, when the number of firearm transactions is at an increasingly heightened level (as illustrated in Figure 2), is referred to as the NICS' "peak season."

Figure 2  
Annual Comparison of NICS Activity - 2000 through 2004



The NICS available hours of system operation are 8 a.m. EST to 1 a.m. EST, 364 days a year (the system is not available on Christmas Day). However, to accommodate the escalating transactional influx typically associated with each year's "peak season," the hours of system availability are customarily expanded to provide longer periods of access to the POC and various state agencies. This additional operating time aids in deterring potential "bottlenecking" which can accompany demand and activity levels associated with eminent "peak season" volumes.

### Staffing to Meet Peak

In order to successfully accommodate the increase of transactions during "peak season" and, in turn, provide optimal customer service to the NICS users in "peak" as well as "non-peak" times, the NICS Section allocates its resources by utilizing a workload forecast model. The NICS Section's workload forecast model is able to provide the data needed to determine the necessary adjustments to ensure adequate staffing for workload maintenance, both at the NICS Section and its contracted call centers. The NICS Section's staffing model, designed to calculate the number of NICS Legal Instruments Examiners (NICS Examiners) required for each business day (through a series of formulas and calculations), also evaluates current schedules to determine any anticipated or potential deficiencies. Similar to the retail industry, approximately 40 percent of all contacts are



received on Friday and Saturday with the majority between the hours of 11 a.m. and 7 p.m. Logically, during times of greater demand, staffing levels are adjusted in order to accommodate an increased workload.

The NICS Section is constantly seeking new programs and processes in order to maximize its resources to provide optimal customer service. Therefore, after a lengthy study and several analyses of comparable software packages aimed to enhance the workload forecasting process, the NICS Section acquired software also designed to more efficiently generate forecasts of contact volumes and promulgate patterns of hours, days, weeks, months, etc., into the future. While the newly acquired software offers advanced applications for various aspects of business operations, e.g., projecting an impact to workload when unique operational anomalies occur, etc., deployment in the Fall of 2004 initially concentrated on the promulgation of work scheduling. The new software, which uses historical call volume, transaction volume, and time study data to develop a mathematical model to predict future volumes and average employee process times, has enhanced the NICS Section with the tools to more effectively develop staffing forecasts and concise work schedules. This, in turn, serves to increase the efficiency of workload management and *provide optimal customer service* regardless of level of transactional activity. In essence, the software allows the NICS Section to devote more time doing the work and less time planning it.

#### NICS Section Denials

Since the implementation of the NICS on November 30, 1998, and through year-end 2004, a total of 406,728 firearm transactions have been denied *by the FBI NICS Section*. During this time period, the POC states were not required to report final eligibility determinations (e.g., denials) to the NICS. However, with data provided by the states and local agencies that conduct their own background checks, the Bureau of Justice Statistics (BJS) has estimated that approximately 445,000 firearm transactions have been denied for the period of November 30, 1998 through December 31, 2003<sup>2</sup>. Although not available at the current time, statistics for denials rendered by the states and local agencies for 2004 is anticipated to be released by the BJS in October 2005. Referencing Table 3, the denial rates for the NICS Section as well as the states has steadily declined.

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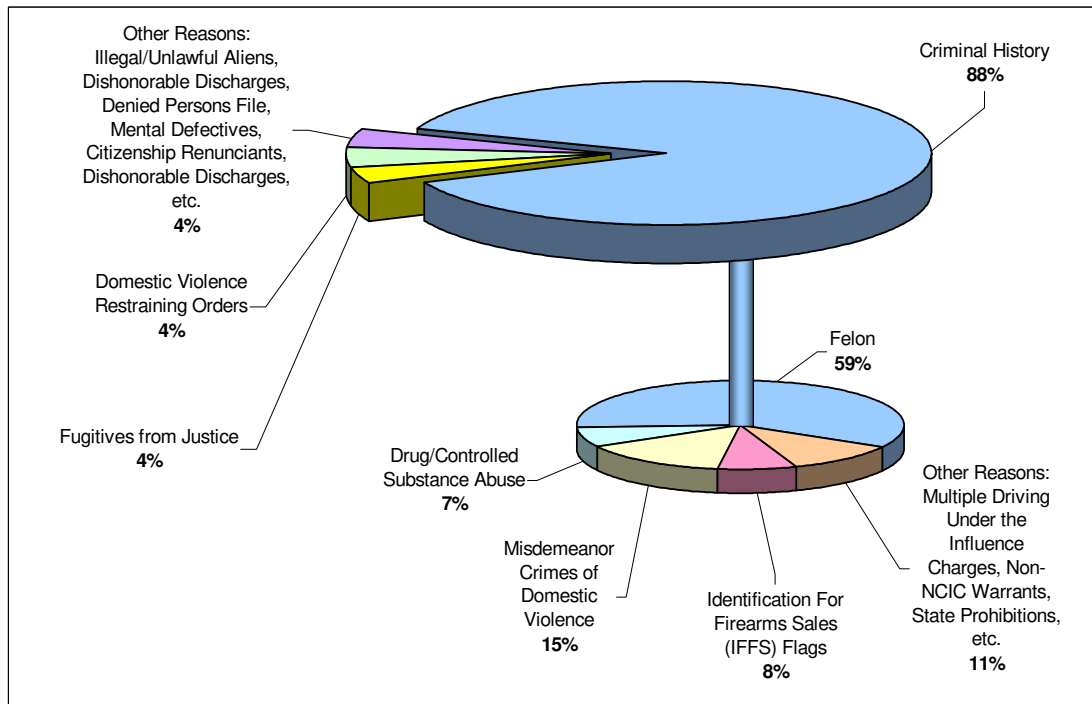
<sup>2</sup> Reference the BJS publication entitled "Background Checks for Firearm Transfers, 2003" which can be accessed via the BJS Web site at [www.ojp.usdoj.gov/bjs/pubalp2.htm](http://www.ojp.usdoj.gov/bjs/pubalp2.htm).

Table 3  
The NICS Denial Rate

Year	Number of Transactions Conducted		Number of Denials Rendered		Denial Rate Percentage	
	NICS Section	POC States	NICS Section	POC States	NICS Section	POC States
1998 - 1999	5,044,574	4,986,389	89,836	133,000	1.78	3.0
2000	4,260,270	4,282,767	66,808	86,000	1.57	2.5
2001	4,291,926	4,618,265	64,500	86,000	1.50	2.3
2002	4,248,893	4,205,429	60,739	75,000	1.43	2.1
2003	4,462,801	4,018,787	61,170	65,000	1.37	1.9
2004	4,685,018	4,002,653	63,675	N/A	1.36	N/A
Program-to-Date	26,993,482	26,114,290	406,728	N/A	1.51	N/A

Figure 3 provides statistics showing the reasons for FBI NICS Section denials. The leading reason for NICS Section denials, both historically and in 2003/2004, is the existence of a felony record. Comparably, the BJS also reports that from 1999 to 2003, the majority of denials rendered by state and local agencies was the result of the applicants' felony convictions or indictments.<sup>3</sup>

Figure 3  
The NICS Denial Distribution



*(Based on FBI NICS Section Statistics only)*

### System Availability of the NICS

As the FBI realizes that optimal customer service is paramount to the success of any organization or program, maintaining a high level of system availability remains a guiding principle of the NICS Section. Past years have evidenced many improvements and technical upgrades that were identified, developed, and implemented via the NICS Section to expand system

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<sup>3</sup> Reference the BJS publication entitled, "Background Checks for Firearm Transfers, 2003" which can be accessed via the BJS web site at [www.ojp.usdoj.gov/bjs/pubalp2.htm](http://www.ojp.usdoj.gov/bjs/pubalp2.htm).

availability to the NICS' user base. Correspondingly, the FBI has also implemented enhancements to the NICS' partnering systems<sup>4</sup> as well.

The CJIS Division oversees the operations and maintenance of the systems that interface with the NICS which collectively are termed the CJIS System of Systems (SoS). The CJIS SoS is comprised of the NCIC, the NICS, and the Integrated Automated Fingerprint Identification System (IAFIS). The IAFIS can be further broken down into three segments which are the:

- III (containing millions of criminal history records);
- Automated Fingerprint Identification System; and,
- Identification Tasking and Networking System.

The CJIS SoS provides fingerprint identification capabilities, criminal history services, wanted person checks, and firearm background check inquiries as required by the Brady Act. The information available through the CJIS SoS facilitates law enforcement operations and public safety initiatives across the United States in addition to aiding in determining eligibility for those individuals attempting to receive firearms and/or firearms/explosives permits. As such, the NICS *is dependent on the information provided by the FBI's interfacing systems* in order to operate as designed and to complete each query of the system in an expeditious manner.

All segments of the CJIS SoS function both independently and interdependently, and rely on complex interconnected indices and tables to operate properly *and* to ensure a highly reliant level of confidence in the data provided to its users. Therefore, the loss of one database *may* impact the delivery of information in other parts of the system. For the NICS to operate properly, both the NCIC and the III databases, in addition to the telecommunications services that respond to provide the transmission of such data, must be fully operational.

To ensure accuracy, whenever any of the interfacing systems are technically unable to support a complete background check, the FBI may place the NICS in an "out-of-service" mode. Pursuant to the established NICS procedural guidelines, if one of the databases is off-line, the NICS searches the remaining active databases and provides a partial response.<sup>5</sup> When the off-line database is restored to operational availability, the search is finalized and a complete response is

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<sup>4</sup> Reference the 2001-2002 NICS Operations Report for further details pertaining to previously reported CJIS initiatives for FBI-maintained systems.

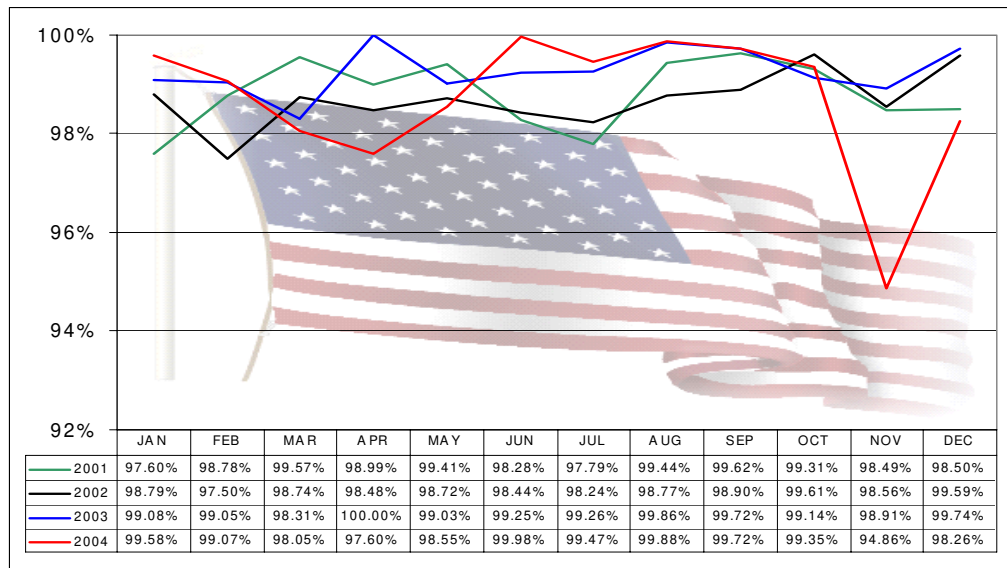
<sup>5</sup> For example, if the NCIC database is off-line and unavailable, the results of the background check search of the NICS and the IAFIS (the other systems comprising the CJIS SoS) will be provided to the requestor, ergo a *partial* response. When the NCIC is restored to operational status, the NCIC search will then be conducted and the resulting response will be returned to the requestor, ergo completion of the response.

provided to the end-user. Therefore, it is very possible that while the operational system of the NICS is functioning properly at a given time, one of the other segments comprising the overall CJIS SoS is experiencing technical difficulties, placing the system in an "out-of-service" or "slow-to-respond" mode. Such instances not only affect the level of service provided by the NICS Section to its users, but also affects the POC states' capability to provide optimal service to their users as well.

Intrinsic to any organization is the goal to achieve a 100 percent service availability level. For the first two years of the NICS, the overall service availability averaged just below 97 percent. Previously reported improvements to FBI systems increased the averaged NICS service availability to 99 percent in 2001 and consistently again in 2002 (reference Figure 4). While time and experience provide opportunities for operational improvement, each system upgrade and enhancement moves the NICS closer to its goal of 100 percent service availability.

As of December 31, 2003, the availability of the NICS averaged 99.28 percent. Continuing its service availability trend, the NICS Section (and the CJIS SoS) slated an ultimate and "goal-setting" 100 percent service availability level to its customers in April 2003.

Figure 4  
The NICS Availability 2001-2004



Correspondingly, in 2004, the availability of the NICS averaged at approximately 99 percent. Upon examination of the 2004 monthly averages in comparison to the yearly cumulative total, seven months (or over one-half of the 2004 collection period) resulted in an

average of over 99 percent availability for the NICS, thus continuing the trend previously established by prior years. Of the seven months averaging over 99 percent NICS availability in 2004, February was the only month reporting any system unavailability based on NICS-related issues. Upon further review of the FBI CJIS Division Availability Report for 2004, only 31 percent of the NICS unavailability experienced in February was based on issues actually associated with the NICS. Absent the system-related and/or technical issues experienced by the NICS partnering systems (e.g., the III, the NCIC, etc.), optimal system availability was, in essence, provided by the NICS in the other six of the seven months being addressed.

Upon review of the remainder of the 2004 collection period, over 84 percent of the system unavailability experienced by the NICS was based on system-related issues or difficulties with the NICS' partnering systems, in particular, the III. In October 2004, the CJIS Division moved the III database from its previous architecture to that of a "superdome" environment. The "rehost" of the system supporting the III (explained in further detail in Section II) to a newer information technology system precipitated various technical issues which prompted periodic events of system unavailability to partnering systems such as the NICS. However, with the III's regain of stability in its newer and more robust environment in November 2004, the NICS availability increased upwards past 98 percent for December 2004. The NICS ultimately returned an average level of system availability of almost 99 percent for 2004.

#### NICS Section Immediate Determination Rate

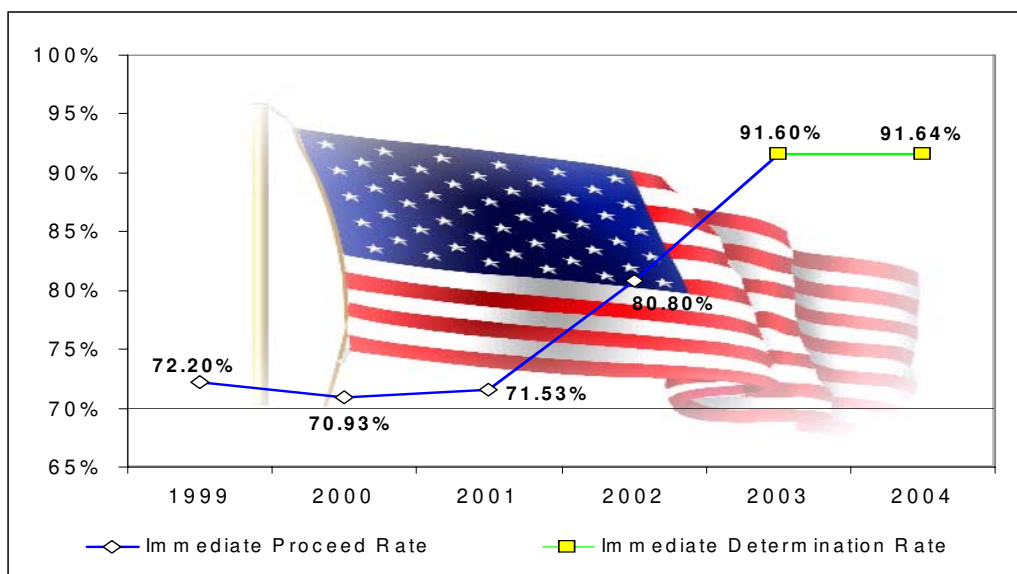
As the NICS process embodies several interconnected but separate and distinct operating systems to achieve its stated purpose, the propensity for problems and technical difficulties does present ongoing challenges. Although minimal issues continue with service availability, the quality of service provided to the NICS customers remains outstanding. From program inception in November 1998 through December 31, 2001, approximately 72 percent of the (then) 13,596,770 firearm background checks processed at the federal level were immediately proceeded by the NICS at the NICS Section's Call Center level. In essence, this means that out of every 100 transactions, 72 transactions were proceeded for the transfer of a firearm within seconds of the initial call from the FFL at the point of transfer.

The NICS was established so that any FFL can contact the system for information to be supplied *immediately* as to whether the transfer of a firearm would be in violation of federal or state law. With this in mind, the NICS Section continually strives, via improved methods, processes and system upgrades, to improve the rate by which the subjects of background check transactions can receive an immediate response as to subject eligibility. In 2001 and during 2002, pursuant to a directive by the U.S. Attorney General, additional processes and system enhancements, e.g., the NICS Section's Transfer Process, were identified as a means to increase the NICS Section's Immediate Determination Rate (IDR) (previously termed the NICS Immediate Proceed Rate).

Under the Transfer Process, all background check requests received by and delayed at the NICS Section's Call Centers are transferred to the NICS Section for a speedy review while the FFL is still on the telephone. This process provides the NICS Section employees, who have secure access to sensitive and confidential information, the opportunity to effect a speedy review of the transaction and, in many instances, provide an immediate decision of either proceed or deny while still within the FFL's initial call. Previously, all background check requests resulting in a match to any record returned via the NICS search were placed in a delay status, forwarded to the NICS Section, and the call concluded.

These system enhancements witnessed a dramatic increase in the IDR to 91 percent. Given the refinement of internal processing standards, the NICS Section was able to increase the IDR to almost 92 percent by year-end 2003 and remain consistent at that level through year-end 2004 (reference Figure 5).

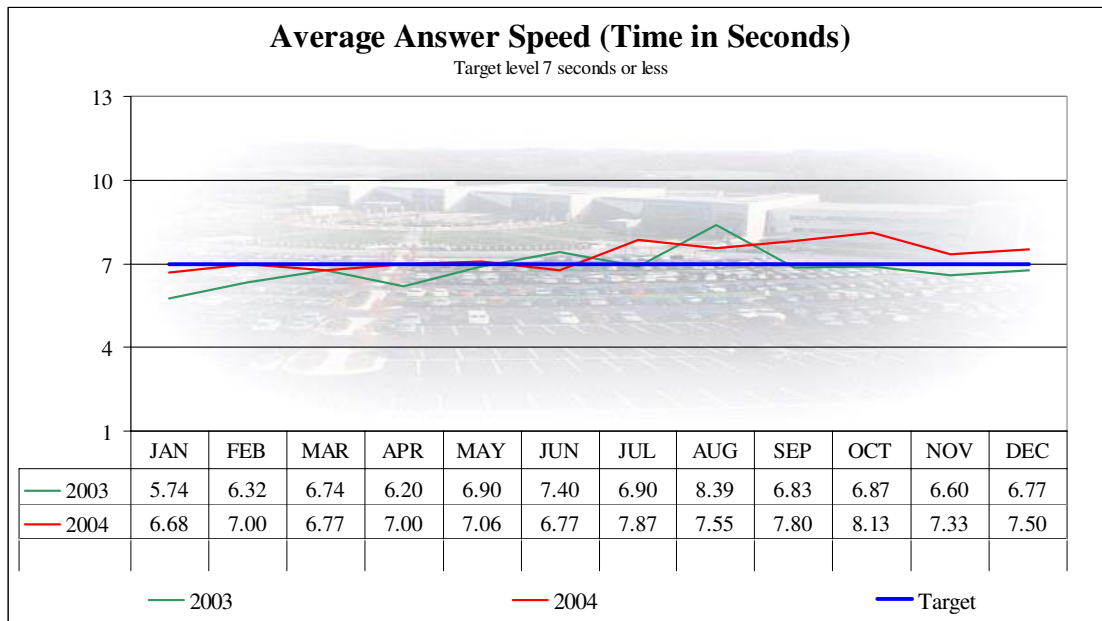
Figure 5  
The NICS Immediate Proceed/Determination Rate 1999 - 2004



Despite occasional issues with interfacing systems, etc., the NICS Section continues to exceed performance expectations and remain consistent in continually providing exceptional service to its users. The effectiveness and efficiency of any organization is often represented in measurements contingent with the ability to deliver consistent customer service that is aptly aligned with business goals. Successes cannot be achieved without first identifying, defining and applying comparable, (e.g., industry standard) service and performance levels and then aspiring to accomplish higher goals.

For example, a few of the measures that exhibit the NICS Section's commitment to excellence in the service that it delivers to its user community is reflected in average service level assessments, such as "answer speed." The NICS Section's "answer speed" during the Transfer Process refers to the amount of time in seconds that a caller waits before the call is answered by a NICS Section employee. Depending on various factors, e.g., time of the year, week, day, etc., the transactional influx may be greater, thus placing a greater demand on the system which may affect various service levels. While comparable industry standards may gauge an average "answer speed" at approximately 80 percent of all calls being answered within 20 seconds, the NICS Section strives to achieve better and has set its target average "answer speed" to *all* incoming Transfer Process calls being answered *within 7 seconds*. In 2003, and consecutively in 2004 (reference Figure 6), the NICS Section averaged an approximate "answer speed" of 7 seconds for all calls (received via the Transfer Process). By this measure, the NICS Section far exceeded comparable industry standards.

Figure 6  
NICS Section's Transfer Process Average Answer Speed 2003/2004



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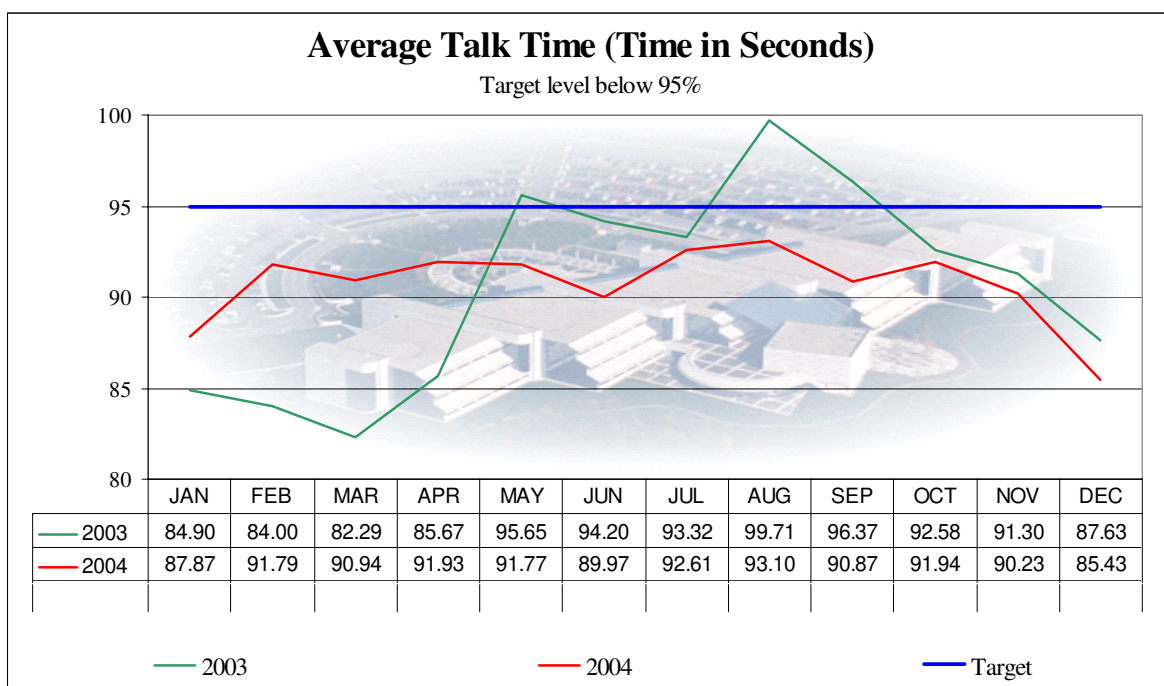
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of the NICS Section's optimal service it provides to its users is relative to "talk time." The NICS Section's average "talk time" during the Transfer Process refers to the amount of time spent on providing service from the time the call is answered until the call is terminated/disconnected. The mission of the NICS is to provide the *timely* determination of a person's eligibility to possess



firearms or explosives in accordance with federal law. With this philosophy in mind, a timely determination requires minimal time spent in completing a background check during the FFL's initial telephone call. Based on various factors, absent a comparable industry standard, the NICS Section established a target average "talk time" of *less than 95 seconds*. In 2003 and consecutively in 2004 (reference Figure 7), the NICS Section, on average, exceeded its target, and achieved an average Transfer Process "talk time" of 91 seconds, below its originally internally established goal.

Figure 7  
NICS Section's Transfer Process Average Talk Time 2003/2004



A NICS Milestone

The NICS processed its *50 millionth transaction* at 11:24 a.m. on September 20, 2004, at the NICS Section in Clarksburg, West Virginia. The 50 millionth NICS transaction was initiated by an FFL conducting business in the state of Texas. The prospective firearm transferee was validly matched to the subject of a criminal warrant issued for aggravated assault that had been entered into the NCIC on September 19, 2004. The NICS Examiner, following standard procedure, contacted the local sheriff's office (the originating agency that entered the warrant into the NCIC) to confirm the status of the warrant and was advised that the warrant was active. The subject had been arrested on various charges including aggravated kidnaping and aggravated

assault with a deadly weapon. This individual, denied the transfer of a firearm, was subsequently arrested by the local county sheriff's office on September 23, 2004.

Records Searched via the NCIC including the Violent Gang and Terrorist Organization File (VGTOF)

The NCIC, a nationwide, computerized database of criminal justice information, is one of three databases searched by the NICS during the background check process. The records maintained in the NCIC are supplied by local, state, federal, and international law enforcement agencies. Prior to February 3, 2004, eight specific "person" files were delineated as requisite in the NCIC search for all prospective firearm transferees. Those NCIC person files are as follows:

- *Foreign Fugitive File* - contains records on persons wanted by another country for a crime that would be a felony in the United States.
- *Immigration Violator File* - contains records comprising three file categories:

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- *Convicted Sexual Offender Registry* - contains records on individuals who have been registered as sexual offenders or violent sexual predators.

Another of the files checked by a query of the NCIC includes records of persons identified as known or possible members of terrorist organizations and violent gangs. The NCIC VGTOF, which contains information that is exclusively for the use of criminal justice agencies, was designed to provide law enforcement/investigating personnel with a means to exchange information on members of violent criminal gangs and/or terrorist organizations. Since implementation of the NICS in November 1998, the results of the VGTOF search were not included in the NICS search results as the VGTOF records typically do not reflect federal or state firearm prohibitions.

On November 17, 2003, the DOJ issued a directive requiring the delay of all NICS transactions matched to a VGTOF record. The delay would provide the NICS Section or a POC state agency the time to coordinate with investigative personnel to determine whether prohibiting information was available on the VGTOF record subject that had not yet been posted in the automated databases searched by the NICS. The NICS Section immediately initiated the development of a system enhancement to include the results of the VGTOF search in the NICS background check combined response. The development of the NCIC VGTOF processing initiative continued throughout 2003 and, with the assistance and guidance of the CJIS Division's technical staff, was successfully implemented on February 3, 2004.

From February 3, 2004, to December 31, 2004, a total of 3,086 hits to the NCIC VGTOF were generated via the NICS background check process. Of these, 1,514 hits were generated by background check transactions processed by the NICS Section and 1,572 were processed by the POC states. The POC states are not required to report final determinations to the NICS<sup>6</sup>; therefore, statistics representative of the results of the VGTOF matches generated via POC state transactions are not available. Of the 1,514 hits to the VGTOF for transactions generated via the NICS Section, 99 were determined to be valid matches based on the comparison of the prospective transferee's descriptive information to the descriptive information of the subject of the matched VGTOF record. Twenty of the valid matches processed by the NICS Section were denied based on federal prohibitive criteria obtained through routine research and processing.

In response to an audit conducted by the Government Accountability Office in 2004, regarding the processing of VGTOF-matched background check transactions, the following changes were initiated by the NICS Section:

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<sup>6</sup> With the passage of the NICS Final Rule, 28 C.F.R., Part 25, effective July 20, 2004, the POC states are required to transmit state determinations to the NICS as soon as possible.

- The VGTOF processing regimen has been updated to include a clarification that the NICS Section employees may contact the FFL/licensing authority<sup>7</sup> to obtain a subject's address upon request of an FBI Field Office; and
- To ensure consistency in processing, the NICS Section will, effective July 2005, assume the processing of all transactions (FBI initiated *and* state initiated) resulting in a hit on a VGTOF record.

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<sup>7</sup> Transactions are conducted for firearm and/or explosives permits.

## Section II Enhancing the NICS

### The NICS Efficiency Upgrade Project

To provide the NICS Section employees with a single point of access to the databases and tools necessary to perform tasks in an optimally efficient manner, the NICS Efficiency Upgrade Project was envisioned. The project was originally released for development in December 2002, and subsequently, on March 7, 2003, the "concept of operations" outlining the project was drafted by the Lockheed Martin Corporation pursuant to the specifications and requirements of the NICS Section.

At the current time, the only functionality provided to the NICS Examiners by the current graphic workstation *is* the NICS. The NICS Section employees utilizing these workstations (over 400) must expend a great deal of time physically leaving their workstations to access other systems (e.g., the NCIC and the IAFIS/III, e-mail along with access to shared drives and Internet access via a Law Enforcement Online [LEO] Internet Local Area Network terminal) in order to perform research on firearm-related transfers/transactions. As there are limited terminals accessible to the NICS Section employees, lengthy waiting periods can ensue and ultimately impede otherwise expeditious transaction processing and resolution.

In development during 2003 and 2004, the proposed system, termed Personal Computer (PC) Client, will create a new front-end interface to the NICS by integrating a Web server tier to the existing NICS architecture and a PC Client Human-Machine Interface. This architecture is widely supported by a variety of platforms, both in hardware and software, and will permit the NICS Section employees to access more than one system from the same terminal. This will allow the replacement of the current aging NICS workstations with low-cost desktop computers.

In addition to consolidating system access into one workstation, the NICS Efficiency Upgrade Project also aims to resolve some of the current NICS user workstation shortcomings by adding the capability to perform simple office automation tasks such as word processing and spreadsheet/tabular calculations. Adding e-mail and administrative broadcasting will enhance group communications while a report server will allow the NICS Section staff to generate individual reports rather than by formal request involving waiting periods via a System Administrator; and document services will be enhanced by swiftly and efficiently providing currently stored images. With the implementation of PC Client, the NICS Section employees will be able to perform more efficiently than ever before.

The PC Client enhancement is being developed and tested in consecutive stages. Phase 1 design functions were completed and tested in the summer of 2003. The implementation of Phase 1 is currently scheduled for June 2005. Phase 1 will provide access to and current functionality of the NICS; a Windows-based application; NCIC query capability; time translation functionality; and lastly, the III subject search capability. The development of Phase 2 of PC Client (e.g., the addition of document services, report services and training services, the integration of the facsimile server into the NICS, etc.) will continue beyond the deployment of Phase 1 with testing and implementation anticipated later in 2005.

### The NICS - III Rehost

To accommodate the future long-term growth of the NICS and secure operational efficiencies, in early 2003, a study was conducted to identify appropriate/recommended hardware to facilitate moving the NICS and, correspondingly, the related systems comprising the CJIS SoS platform to that of a single vendor "superdome," a new state-of-the-art information technology system. The operational system of the NICS and the other CJIS Division's systems previously deployed different computer platforms. The "rehost" project replaced the Division's computer platforms with that of a superdome environment which allowed the CJIS Division to consolidate the platforms of the Division into a single computer vendor. This movement integrated the maintenance capability via one group of specialized technicians as opposed to different technicians for each individual system. The movement of the III, and subsequently the NICS, to the superdome environment:

- Made the operational system of the NICS more robust;
- Enhanced overall communications between all of the systems searched during the background check process;
- Reduces costs and timeliness related to the maintenance of several systems individually versus several systems interconnected via the application of one platform for all; and
- Provides one *specialized* maintenance group for the systems as a whole versus several individual maintenance components for each system.

The III rehost was initiated with installation completed on October 3, 2004; however, the move ("rehost") of the system supporting the III database to that of the superdome environment prompted various hardware and software issues which intermittently triggered system outages to partnering systems, such as the NICS, beginning October 28, 2004, and continuing into November 2004. The CJIS Division, utilizing all available resources, isolated various problems linked to specific hardware and software deficiencies and effected resolution without the loss of record information. Towards mid-November, the number of outages experienced by the NICS lessened as the III regained stability within its new operating environment.

The rehost of the NICS is scheduled for completion in April 2005. Integrating the NICS within the same operating platform as that of the III (in addition to other CJIS Division systems) has created a more robust partnership between the systems which will, in turn, serve to enhance the overall effectiveness and efficiency of CJIS Division systems including the NICS.

### The NICS E-Check

Currently, in those states that have declined to serve as a POC for the NICS, the FFLs contact the NICS Section to initiate a background check by using a toll-free telephone number. However, the Brady Act and the NICS Regulations, 28 C.F.R., Part 25, provided for the development of other electronic means for contact as an alternative to the telephone. Therefore, early in the NICS development, the NICS Section planned to provide the FFLs with an "electronic access" to the NICS for the purpose of initiating NICS background checks. This function, ultimately named the NICS E-Check which provides the FFLs with the capability to initiate an *unassisted* NICS background check for firearm transfers via the Internet, was implemented in August 2002. The FFLs utilizing the NICS E-Check also continue to have the ability to telephonically access the NICS via the NICS Section's contracted Call Centers to conduct firearm background checks.

Some of the additional *benefits* associated with utilizing the NICS E-Check that have been realized are: (1) the reduction of the NICS Section's Contracted Call Center traffic and contractor costs; (2) offering provisions for a more accurate search since the originator will enter the data directly, thus increasing data integrity; (3) the ability to retrieve NICS background check results 24 hours a day, 7 days per week; (4) the ability to print completed NICS background check search requests for record keeping purposes; (5) increased usability in overcoming language barriers; (6) increased usability of the NICS for the hearing and speech impaired; (7) the ability to receive informational mass e-mails from the NICS Section; and (8) the availability to receive messages regarding the NICS operational status.

From the implementation of the NICS E-Check in August 2002, through December 31, 2004, over 4,000 FFLs have been enrolled<sup>8</sup> and 122,771 transactions, an increase of approximately 24 percent from 2003, have been conducted via the Internet-based electronic access to the NICS. In addition to providing the FFLs currently serviced by the NICS Section with the capability to conduct unassisted searches, the NICS E-Check provides an effective and efficient mechanism for processing background checks in conjunction with other initiatives such as the Safe Explosives Act.

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<sup>8</sup> The FFLs gain access to the NICS E-Check via an established certification process. Approved certification remains active for a one-year period only and is subject to renewal. Renewal is at the discretion of the FFL.

On November 25, 2002, the Safe Explosives Act which amended Title XI of the Organized Crime Control Act of 1970 was signed into law. The Safe Explosives Act created a new category of explosives permit—a "limited permit"—designed for the *intrastate* purchase of explosives.<sup>9</sup> Collaboratively, the NICS Section and the ATF decided to facilitate the explosives-related background checks via the NICS E-Check. Background checks for *possessors* are conducted via the ATF's submission of the required descriptive data into the NICS E-Check; however, the submission of a permit fingerprint card to the CJIS Division initially for identification processing and subsequently to the NICS Section for the required background check are required for *responsible persons*. Regardless of how submitted, *all* NICS responses for explosives-related background checks are retrieved by the ATF via the NICS E-Check.

As with every other aspect of the NICS, improved service is always a priority. Some of the enhancements developed and/or implemented by the NICS Section in 2003 and 2004 for the NICS E-Check were:

- ***Mass E-Mail:*** In April 2003, the Mass E-Mail feature for the NICS E-Check was implemented. Mass E-Mail is an automated feature by which the NICS Section can provide the end-user with information, e.g., pertaining to user certificates, system notifications, etc., in a quick and efficient manner.
- ***Spanish Screen Formats:*** In order to accommodate Spanish-speaking users, the NICS E-Check was enhanced to display the NICS E-Check screens, instructions, data fields and responses, etc., in Spanish. The Spanish screen formats witnessed much of its development and testing in 2003 and was ultimately implemented on January 13, 2004. Several FFLs have expressed many accolades regarding the availability of this new feature because of previous language barriers.
- ***E-Check Transfer Process:*** To parallel the NICS Section's Transfer Process which provides for the speedy review of delayed transactions during the FFL's initial telephone call, the NICS Section, with the guidance and assistance of the CJIS Division's Information Technology Management Section (ITMS) for development, ultimately implemented on September 21, 2004, the E-Check Transfer Process via the Internet. Within a few months, the number of transactions processed via the E-Check Transfer Process had increased by 6 percent.

#### Future Initiatives for the NICS E-Check

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<sup>9</sup> Reference Section V for further details and information.



Some future initiatives relating to the services provided by the NICS E-Check currently in the planning and/or developmental stages are:

- ***Access for the FFLs Operating in the POC States:*** This option will provide the FFLs operating in the POC states with the capability to initiate transactions via the NICS E-Check. The NICS E-Check would then route the NICS response to the state-designated POC agency for further review and completion.
- ***Automated Missing Disposition Instruction (MDI):*** Pursuant to established procedures, in the event that a final transaction status cannot be rendered due to the inability to obtain missing disposition information, such notification must be provided to the FFL who conducted the background check. This future system feature will allow the notification to be made available on and retrieved from the NICS E-Check, thereby negating the need for the NICS Section to telephonically contact the FFL.
- ***Single-Store Certification:*** Access to the NICS E-Check is restricted through computer software and certification authority established via an Internet-based registration process. As the NICS E-Check denies access to any individual whose identification is not known to the system, each person employed by an FFL who requires access to the NICS for the purpose of initiating background checks must possess an individual active digital certificate. To enhance the processes involved with the activation/deactivation, etc., of individually issued certificate holders for a single FFL, the NICS Section is evaluating the feasibility of single-store certification. Contingent upon security approval, the single-store digital certificate will require that the corporation (acting as an FFL for the NICS) be responsible for the controls, e.g., registration and security issues, pertaining to the administrative access to the NICS by their employees.
- ***Input/Output Interfacing:*** This modification will allow for an automated ATF Form 4473 to be imported and searched through the NICS without duplication of data entry by the user.
- ***Enhanced FFL Reporting:*** By creating an output file, this feature will provide an FFL with the capability to capture and maintain background check transaction data pertaining to their clientele indefinitely within their own computer systems.

Additional information relating to the NICS E-Check can be obtained by visiting [www.nicsezcheckfbi.gov](http://www.nicsezcheckfbi.gov) or by contacting the NICS Section via the NICS Customer Service at 1-877-444-NICS.

Automated Immigration Alien Query (IAQ) Process for Firearm Permit Fingerprint Card Submissions

Many states (both POC *and* non-POC) issue firearm-related permits. Many of these states, in support of permit issuing requirements and policies, submit permit fingerprint cards to the CJIS Division for identification processing.<sup>10</sup> At the current time, and as a courtesy to submitting states and upon request only, the NICS Section conducts permit-related background checks *contingent with the submission of subject fingerprints* to the CJIS Division. Until the latter part of 2003, the CJIS Division was unable to electronically capture and transport all of the required information needed by the NICS Section's staff in order to determine a subject's citizenship status and, if applicable, submit an IAQ on those subjects deemed to be non-U.S. citizens. Therefore, in order to be compliant with the federal mandate requiring that an IAQ be conducted on *all* non-U.S. citizens,<sup>11</sup> the application and completion of this step of the background check process was the responsibility of the state processing the permit application. To enhance this process, the NICS Section, collaboratively with the CJIS Division's technical staff, developed and implemented a system enhancement to allow for the capture and transmission of the required information needed by the NICS Section staff in order to determine an individual's citizenship status and, if applicable, automatically submit the required IAQ message to the ICE in order to complete the permit fingerprint card process. This system enhancement was tested in 2003 and successfully implemented in January 2004.

The NICS Section recognizes the importance of customer service as an absolute necessity and strives to continually and consistently provide assistance to the states and various external agencies whenever possible. In this spirit, the aforementioned courtesy was originally availed to a few states shortly after the implementation of the NICS in November 1998 and was intended to provide assistance on a limited basis; however, the number of states subsequently requesting this same processing assistance has grown to significant proportions. In 2003, the NICS Section processed over 62,000 background checks via the submission of permit fingerprint cards to the CJIS Division on behalf of the submitting states. In 2004, this number increased by approximately 46 percent with the NICS Section processing over 90,000 such background checks.

Although the NICS Section strives to provide optimal customer service whenever possible, there may be limitations to services which can be provided with current resources. The NICS Section consistently reviews and evaluates expenditure of its resources given the parameters of existing budgetary and staffing constraints in addition to federal mandates to ensure maximum efficiency and effectiveness of the NICS. Therefore, due to the escalating increase in the volume of permit fingerprint-related background checks being conducted by the NICS Section on behalf of submitting states, it may be necessary to regulate and/or limit the availability of this and other supplementary services.

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<sup>10</sup> All criteria for compliance pursuant to CJIS Division requirements must be satisfied in order for a state to be authorized to submit fingerprints for this purpose.

<sup>11</sup> In response to a directive from the U.S. Attorney General on February 13, 2002, mandating that an IAQ be conducted on all non-U.S. citizens via the applicable databases of the ICE, the NICS Section, on July 23, 2002, implemented a fully automated IAQ process. Further information concerning this initiative is outlined in the 2001-2002 NICS Operations Report via the Internet at [www.fbi.gov/hq/cjisd/nics/index.htm](http://www.fbi.gov/hq/cjisd/nics/index.htm).

## State Record Identifier/NICS Denial Notification

With the implementation of the NICS in 1998, all POC states were provided with the capability to transmit a NICS Denial Notification (NDN) to the system. The NDN is a message that:

- notifies the NICS that a previously conducted transaction resulted in a denial;
- provides the record number for the denial; and
- enables the NICS to retain the transaction information according to established record retention criteria.

Although the POC states were not required in the past to submit final transaction determinations to the NICS, some did; however, not all such transaction denials are based upon record information obtained within the NICS results response, e.g., a warrant that only exists in a state-held database. Therefore, in some instances, the basis for a POC state-initiated transaction denial is not readily visible to the NICS Section. Previously, an NDN could only be generated by recording a denial record number of either:

- A NICS Index Record Identifier (NRI);
- An NCIC Identification Code; or,
- An FBI number.

However, to supplement this process, the NICS Section developed and implemented an additional method allowing the POC states to effect a "deny" determination by selecting a State Record Identifier (SRI), which pertains to state-held records only. In May 2003, official notification of the availability of this system enhancement was provided. As of December 31, 2004, over 6,450 NDNs reflecting an SRI code had been submitted to the NICS.

## Fax-on-Demand

In November 2002, the NICS Section installed an enhanced facsimile (fax) server. The enhanced fax server, automating the process for the receipt of facsimile transmissions submitted by external agencies in response to research/outreach efforts, helped to create a more robust faxing system and streamlined the distribution of incoming faxed information. By way of a sorting distribution mechanism, this enhancement eliminated the time expended on manual fax collection, thereby allowing the NICS Section staff more time to devote to expeditiously processing transactions.

At the current time, the NICS Section processes, on average, approximately 12,215 transactions a day. Of these, approximately 8 percent are delayed, many of which require additional and/or clarifying disposition information. Therefore, having an efficient fax system in place in order to obtain needed and often crucial information is vital in maintaining operational efficiency standards. As of December 31, 2003, approximately 814,719 pages encompassed the 193,929 facsimile transmissions received via the enhanced fax server. Likewise, one year later, as

of December 31, 2004, another 948,132 pages encompassed the 218,060 facsimile transmissions submitted via the NICS Section's fax server.

Another system enhancement termed "*Fax-on-Demand*" was implemented within the first quarter of 2003 as an integral component operating from the fax server platform. The "*Fax-on-Demand*" feature permits the FFLs and other interested parties (e.g., individuals interested in the NICS Section's appeal process), through dial-up access, to automatically order informational documents without the need for human intervention, thus eliminating excess waiting periods. Once the user enters the applicable information prompted by the system, the item(s) requested (e.g., appeal brochure, FFL enrollment form, etc.) is automatically transmitted to the fax number provided. Access to this service is available by telephonically dialing 1-800-550-6427.

### The NICS Index Search Capability

Each record within the NICS Index is annotated with a NRI. At times, requests for information pertaining to a NICS Index record submission, modification, or deletion are made. In many of these instances, a record's NRI is not always available. When an NRI is not available, the assistance of a NICS System Administrator is required to facilitate a very time consuming and laborious search to locate a specific record entry.

In order to assist the NICS Section staff in determining the successful submission and entry of eligible records into the NICS Index, the NICS Section implemented a system improvement on May 21, 2003 enabling designated employees with the capability to conduct a NICS Index name search. The enhancement allowed for greater ease of record location by the NICS Section staff administering and maintaining the 3,664,292 (as of December 31, 2004) record entries in the database in a timelier manner.

To further improve process efficiency and effectiveness, the NICS now automatically assigns an agency record identifier code to all entries into the NICS Index that reflect a data source as the NICS Section. This added improvement to the NICS, which further streamlines the processes related to the NICS Index search capability, was implemented on September 21, 2004.

### The NICS Streamlining Initiative

Focusing on quality and performance, the NICS Section created an opportunity for its employees to recommend improvements to the NICS operations. Through employee identification of potential changes to the NICS daily work processes that would serve to streamline and/or enhance the NICS work regimen, the NICS Streamlining Task Force was implemented in August 2004. The NICS Streamlining Task Force was comprised of NICS employees representing various and diversified job functions, e.g., Supervisors, Program Analysts, and NICS Examiners. The mission of the Task Force facilitating the NICS Streamlining Initiative was to determine the feasibility of the many ideas and suggestions tendered by the NICS Section staff. Those ideas determined to be feasible were further reviewed, researched, and evaluated for:

- Added value to the program;
- Potential savings in time or funding; and/or
- Overall improvement to the NICS program's efficiency and effectiveness.

The NICS Section continually reviews and evaluates expenditures of its resources to ensure maximum operating efficiency. As such, planning for a secure and viable future is central to continued success. As a result of the NICS Section's Streamlining Initiative, several suggestions and ideas, approved for implementation, have enhanced overall program performance. Some of the implemented changes that have distinctly impacted the NICS Section are:

- In August 2004, the Firearm Retrieval Referral Team was eliminated. This function was assumed by the NICS Examiners who now process a firearm retrieval transaction. The 11 NICS Examiners staffing this team, in addition to their Supervisor, resumed Delay Queue, Transfer Process, and Customer Service duties.
- In August 2004, the NICS Explosives Team was eliminated and the duties and responsibilities associated with processing explosives transactions were placed with the NICS Index Team. By increasing the duties and responsibilities of the NICS Index Team, the 13 NICS Examiners staffing the NICS Explosives Team, in addition to their Supervisor, resumed Delay Queue, Transfer Process, and Customer Service duties full time.
- In September 2004, an "Overflow" Team was implemented. By allowing for the overflow of incoming calls to be routed *directly* to members of the "Overflow" Team, the need for intermittently pulling NICS Examiners from the Delay Queue to process telephone calls was eliminated. Utilization of the "Overflow" Team concept permits more NICS Examiners to focus on Delay Queue processing while multitasking. The initial assessment of the impact of the "Overflow" Team suggests an additional availability of approximately three Full-Time Equivalents (FTEs)<sup>12</sup> for processing transactions. Improved customer service (e.g., calls answered in a more timely manner) was additionally realized.
- In October 2004, the NICS Section, with guidance provided by the DOJ, implemented a newly revised MDI process. By providing the MDI notification to the FFLs with front-end transaction processing (during the FFL's initial call), the NICS Section is no longer required to expend an approximate 80 hours a day processing back-end (outgoing) MDI

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<sup>12</sup> A "full-time equivalent" is a measure associated with staffing.

telephone calls to the FFLs.<sup>13</sup> The initial assessment of the impact suggests an additional availability of approximately seven FTEs for processing Delay Queue work.

## Future Initiatives for the NICS

### *Determining NICS' Requirements:*

The NICS Section recognizes that the continued success of any organization depends on a good working relationship between the independent components that cumulatively comprise its "system." In order to conform with evolving business and operational needs, and to repeatedly meet or exceed continued excellence in service, the NICS Section has identified and effected many upgrades and system enhancements to the NICS since its inception in 1998. The NICS Section continually monitors the NICS to ensure that system upgrades are in place to meet ongoing demands.

Years of operational experience have demonstrated that the pace of technological change is so swift and the need for services increases so relentlessly that the NICS Section must continually enhance its system to meet the demands placed upon the background check system. Therefore, a comprehensive independent study will be conducted on the NICS infrastructure and interrelated work processes comprising daily business. The anticipated results of the study are intended to:

- Identify any and all efficiencies and changes to the system that will increase overall performance and productiveness;
- Provide the NICS Section with guidance as to how the NICS should be operating for optimal effectiveness and efficiency;
- Identify how the NICS Section and the POC states can more effectively use its automated system to conduct firearm and explosives background checks;
- Provide recommendations for potential change and improvement to the current NICS' architecture; and
- provide the NICS Section with the necessary information to determine if the NICS database requires reorganization.

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<sup>13</sup> Prior to October 2004, if a call was transferred from a NICS Contracted Call Center to the NICS Section and did not receive a final transaction status of either proceed or denied during the call, the transaction was placed in a delay status and the NICS Section employee attempted to locate the information needed to complete the transaction (within the three-business-day time frame provided pursuant to the Brady Act). However, if the NICS Section employee was unable to make a final determination at the end of the three-business-day time frame, the FFL was contacted (back-end processing), advised of the transaction's open status, and provided a date upon which the firearm could be transferred (if allowed by state law).

*Automated Search of the Voluntary Appeal File (VAF)<sup>14</sup>:*

Currently, the VAF database must be manually searched during the background check process. The manual search of the VAF database is prompted by a VAF participant's presentation of a unique personal identification number (UPIN) to the FFL at the time of the background check. If the prospective firearm transferee (also a VAF participant) does not avail their UPIN to the FFL, a manual search is not prompted and the VAF participant may experience further denials or delays when attempting to receive firearms. Integration of the VAF database into the NICS automated search will enable the NICS to identify a VAF participant and, thus, will ensure expeditious processing of transactions for the VAF participants and correspondingly avoid unnecessary denials or delays for lawful firearm transferees.

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<sup>14</sup> Detailed information pertaining to the VAF is provided in Section III.

## Section III The NICS Regulation

In an ongoing  
effort to identify

potential changes that would improve and/or enhance the NICS and the overall background check program, the DOJ, via a Notice of Proposed Rulemaking (NPRM)<sup>15</sup> dated July 6, 2001, published<sup>16</sup> for public comment and further consideration five proposals for changes in the NICS Regulation. The proposed changes outlined in the NPRM sought to balance the legitimate privacy interests of law-abiding firearm transferees and both the FBI's and the DOJ's obligation to enforce the Brady Act and the Gun Control Act. After an extensive comment and review period, a NICS Final Rule<sup>17</sup>, 28 C.F.R., Part 25, effective on July 20, 2004, was published with the following provisions:

### Prompt Destruction of Records of Allowed Transactions

The NPRM, which was introduced in July 2001, proposed to amend the NICS Regulation (Title 28, C.F.R., §25.9 [b]) by providing a general rule requiring the *prompt* destruction of record information in the NICS Audit Log<sup>18</sup> pertaining to allowed transfers. However, after the closing of the NPRM's comment period, the U.S. Congress passed and President George W. Bush signed into law a requirement that addressed the time within which the NICS is required to destroy certain information regarding allowed transactions. Section 617 of Public Law 108-199, the Fiscal Year 2004 Consolidated Appropriations Act (or the Omnibus Bill), signed into law on January 23, 2004, requires that the NICS destroy any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm *no more than 24 hours* after the FFL has been notified of the approval. The law provided that its record-destruction requirement was to be implemented no later than July 21, 2004.

In anticipation of the implementation of the impending 24-hour destruction requirement,

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<sup>15</sup> The Federal Register avails notices to the public of the proposed issuance of rules and regulations establishing federal law. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking process prior to the approval of the *final rules*.

<sup>16</sup> Reference the *Federal Register*, Vol. 66, No. 130, Friday, July 6, 2001.

<sup>17</sup> Reference the *Federal Register*, Vol. 69, No. 141, Friday, July 23, 2004.

<sup>18</sup> A chronological record (log) of system (computer) activities (e.g., all NICS background check transactions) that provides for the reconstruction and examination of the sequence of events and/or changes in an event.



the NICS Section conducted review, research and analysis of the impact to be incurred by the NICS Section and the POC states. By partnering with the CJIS Division's ITMS, detailed provisions for accomplishing the technical and resulting related functional changes required by the NICS to meet the terms of the legislation by the mandated deadline were detailed and subsequent development was initiated.

Throughout the months prior to the implementation of the 24-hour destruction requirement, the NICS Section remained in continual liaison with its POC state counterparts and provided guidance and support regarding various issues of concern relating to state operations, e.g., system programming and essential hardware/software, billing practice adjustments, resource allocation, quality assurance issues, etc. Additionally, the FBI provided technical assistance and offered its expertise regarding a wide variety of issues via several teleconferences, through extensive information-sharing sessions during the 2004 annual NICS User Conference, through the dissemination of informational updates and surveys, and through the LEO.

With the signing of the Omnibus Bill, the FBI was afforded 180 days to bring the NICS into compliance. As a result of the partnership fostered by the NICS Section, the ITMS, and the POC states, the 24-hour destruction requirement was implemented prior to the deadline of July 21, 2004.

#### Individual FFL Audit Logs

The ATF conducts inspections of FFLs. During an inspection, the ATF compares an FFL's "bound book"<sup>19</sup> entries to the FFL's current inventory and the information captured by the FFL's recorded ATF 4473 Forms. Prior to the July 20, 2004, Final Rule, the information selected for audit by an ATF Inspector was denoted on an inspection-specific worksheet which was later forwarded to the NICS Section for comparison to corresponding records contained in the NICS. This was a valuable tool in determining compliance to rules and regulations, and to ensure the accuracy and integrity of the information being reviewed. However, this method only provided the ATF with the results of the comparison after the ATF Inspector had exited the FFL's establishment rather than during the inspection.

The NICS Final Rule, requires:

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"Open" transactions have been classified as those noncanceled transactions wherein the FFL has not been notified of a final determination for the background check. Historically, these types of transactions have been referred via a variety of terms, e.g., delayed transactions, default proceed transactions, implied proceed transactions, conditional proceed transactions, etc. The creation of a standardized term to denote the transaction category type created under the NICS Final Rule provides consistency in its application by all users with regards to the intent of the category. Hence, an "open" transaction denotes those background checks that have not been finalized with a definitive proceed or deny determination but rather are delayed and pending further review, research and/or evaluation. Typically, in such cases, additional information is needed in order to determine a final status for the transaction. Pursuant to the NICS Final Rule, the NICS will be able to maintain records of "open" transactions until either:

- A final determination is reached and has been communicated to the FFL resulting in the transaction status being changed to either a proceed or a denied status; or
- 90 days have elapsed from the date that the background check was initiated.

In compliance with the terms of the NICS Final Rule, the new definition of the "open" transactions classification was adopted on June 29, 2004.

#### Require the POC States to Transmit State Determinations to the NICS

The NICS Final Rule provides that the POC states must transmit electronic NICS transaction determination messages to the FBI for the following transactions:

- Open transactions that are not resolved before the end of the operational day on which the check is requested;
- Denied transactions;
- Transactions reported to the NICS as open and later changed to proceed; and
- Denied transactions that have been overturned.

Receiving information regarding the POC denials will: (1) allow the FBI to preserve record information pertaining to prohibited individuals in the POC states; and (2) allow the FBI to refer all denials, not just those rendered by the NICS Section, to the ATF for investigation. Also, receiving a notification of an "open" POC transaction will allow the FBI to retain information about the POC-initiated transaction for up to 90 days, or until the transaction is finalized, in the same way that the NICS Section will retain information about "open" transactions. The aforementioned could also assist the NICS Section when processing appeals (and appeal-related inquiries) submitted to the FBI by a POC state resident.

To support the changes outlined in the NICS Final Rule, the FBI implemented two new message notification types: (1) the NICS Delayed Notification (NLN) and (2) the NICS Proceed Notification (NPN). Combining the NLN and NPN with the two previously existing message types (the NDN and the NICS Denial Overturned Notification) provides the POC states with the capability to effectively modify the status of their state-initiated transactions, and to send to the NICS an electronic message denoting the status of the specified transactions as required in the NICS Final Rule. The addition of the two new transaction message notification types was implemented by the FBI on June 29, 2004, well within the specified deadline imposed by the legislation implementing the NICS Final Rule. Due to programming and other changes required, some POC states have not been able to comply with this requirement; however, the terms of the NICS Final Rule provide that all POC states must continue to work with the NICS Section to satisfy the requirement as soon as possible.

In November 2004, the NICS Section surveyed its POC states to determine their progress towards compliance with the NICS Final Rule's requirement relating to the submission of final background check transaction statuses to the NICS. Of the 18 POC states (full and/or partial) surveyed, seven were in compliance and submitting transaction determinations via all message notification types to the NICS. The remaining 11 states surveyed had not yet reached compliance due to:

- a lack of resources and/or funding;
- the impending acquisition and/or installation, testing, etc., of equipment; or
- ongoing, impending, or scheduled system/technological system/equipment upgrades.

It is apparent in the progress noted to date that the POC states are committed to ensuring that full compliance is effected in an efficient and effective manner.

#### The NICS VAF

The NICS Section provides a valuable service to the public by resolving or clarifying questions of eligibility for individuals who believe that they were wrongfully denied the transfer of a firearm due to information returned by the NICS in response to the background check process. If an individual has been denied the transfer of a firearm and believes that further consideration is warranted, they may submit an appeal request for further consideration regarding their denial decision. Whereas the definition delineated in the NICS Regulation stipulates an "appeal" to mean a formal procedure to challenge the *denial* of a firearm transfer, many individuals also request to know why they were *delayed* when attempting to receive a firearm. Although the NICS Regulation only provides for the resolution of *denied* transactions via an appeal process, the NICS Section, in the interest of providing customer service, also addresses inquiries concerning delayed transactions.

When the name and descriptive information of a prospective firearm transferee generates a valid match to a record returned by the NICS during the background check process, further review must be conducted to determine if the matched record exhibits disqualifying information. At the NICS Section, if a final determination of either proceed or deny cannot be rendered within the parameter of the FFL's initial telephone call, the transaction is placed in a delay status.<sup>20</sup>

Typically, out of every 100 background checks processed via the NICS Section, approximately eight transactions are delayed for further review, research, and evaluation in order to determine a final transaction status. Persons experiencing delayed transactions that result in a proceed determination may encounter a similar delay during future NICS background checks. The NICS Section works to update criminal history records so that an individual may not be delayed in the future; however, at times, the information cannot be updated for various reasons.

In accordance with the NICS Final Rule, all personal identifying information related to an allowed (proceed) transaction is destroyed within 24 hours of the proceed notification to the FFL. Therefore, any records and supporting documentation/information pertaining to a prospective firearm transferee's background check that resulted in a proceed (allowed) transaction would be destroyed and no longer available for review. This can result in repeated delays for certain persons as the NICS Section has to repeat its research on subsequent background checks.

Pursuant to the NICS Final Rule, the VAF was established to house information, e.g., fingerprint cards, documentation, voluntarily submitted by a nonprohibited person to assist the NICS in determining the person's eligibility to receive a firearm in connection with future background checks. The voluntarily provided information is entered into a separate file that is checked during the background check process to aid in the prevention of erroneous denials and/or delays. Under the NICS Final Rule, the NICS, with the individual's written consent, has the authority to maintain such information in order to reduce the number of requests it receives for the reasons underlying the delay or the denial of a firearm transfer.

To be considered for entry into the VAF, a potential firearm transferee must:

- Complete and sign an applicant statement (provided with the VAF brochure);
- Submit, in writing, a statement explicating why they believe they would be subject to future erroneous denials or extended delays;
- Submit a set of fingerprints rolled by local law enforcement; and
- If applicable, provide a copy of any documentation that may assist the NICS Section in processing their request.

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<sup>20</sup> Pursuant to the Brady Act, when a transaction is delayed, the NICS is afforded up to three business days to locate the information needed to effect a final determination for the transaction. If a determination cannot be rendered within the three-business-day time frame, the FFL has the option to legally transfer the firearm; however, the NICS Section continues to attempt to obtain the needed information and render a determination.

It is important to note the following:

- Entry into the VAF will not result in an immediate proceed response for subsequent transfers. A NICS check will be conducted for all subsequent transfers with the results based on the information generated at the time of the check, including any information maintained in the VAF.
- The subject of a VAF record can, at any time, request that their information be removed from the VAF.
- If the FBI finds a disqualifying record on the individual after their entry into the VAF, the FBI may remove the individual's information from the file.

The first VAF case was processed in November 2004. As of December 31, 2004, 151 requests for entry into the VAF have been received by the FBI. Of these, 14 applicants were entered into the VAF while two applications were rejected. Of the 14 successful entries into the VAF, 12 were for individuals whose name and/or descriptive information was similar to that of another individual who either was the subject of prohibiting criteria or potentially prohibiting criteria, etc.; the other two pertained to individuals whose criminal history records, although nullified for NICS purposes, could not be updated. The bulk of the remaining applications submitted to the FBI were in the processing stages. As a result of their entry into the VAF, several lawful firearm transferees are able to receive a proceed response without an extended delay or denial.

Why Disposition  
Information is  
Needed

## Section IV Criminal History Dispositions

The results of the great majority of background check requests provide definitive information on a prospective purchaser's eligibility within seconds to just minutes of initiating a NICS background check. A small percentage of the requests, however, are delayed due to the need for complete disposition information in order to make a determination on whether a firearm transfer may be proceeded or must be denied. Final disposition information is vital to the NICS because it is required in order to determine the eligibility of potential firearm purchasers. Currently under federal law, arrest information alone cannot preclude the transfer of a firearm.<sup>21</sup>

In instances where a valid matching record discloses potentially disqualifying record information (e.g., a felony offense arrest or a possible misdemeanor crime of domestic violence, etc.) that reflects missing or incomplete information, the NICS Section employee will "reach out" to the law enforcement and the judicial community to search for the information needed to complete the record. When the final judicial action taken is missing from an arrest, the NICS Section employees must contact local, state, or federal law enforcement agencies in order to obtain the vital disposition information.

This effort, however, is often complicated as the NICS Section is mandated under the Brady Act to resolve a delayed transaction within three business days. If the missing disposition information is not obtained within the three-business-day time frame, it is at the FFL's option to legally transfer the firearm; however, they are not required to do so. In such instances, a firearm may be transferred to a prohibited individual. These scenarios are of concern not only because a prohibited individual may come into possession of a firearm, but also because they place resource demands upon local and federal law enforcement agencies to retrieve the firearm.

As of December 31, 2004, the NICS Section had facilitated the posting of 480,966 final dispositions to criminal history records. Referencing Table 4, it is evident that the NICS Section aggressively reviews and analyzes available records and strives to obtain missing information necessary to make a final determination.

Table 4  
Criminal History Record Updates based on Dispositions Obtained  
by NICS Section Personnel as of December 31, 2004

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<sup>21</sup> Unless otherwise specified by state law.

<b>Year</b>	<b>Total</b>
<b>1999</b>	<b>73,240</b>
<b>2000</b>	<b>68,928</b>
<b>2001</b>	<b>79,965</b>
<b>2002</b>	<b>87,838</b>
<b>2003</b>	<b>96,591</b>
<b>2004</b>	<b>74,404</b>
<b>Program-to-Date Total</b>	<b>480,966</b>

The Document Review and Scanning Team (DRST)

Established in support of the NICS Section's research and evaluation processes in addition to the appeal services processes, the DRST receives and clarifies documentation from all employees in the NICS Section submitted for the purpose of updating criminal history record information. The team also captures and maintains documentation that cannot otherwise be updated or posted to either the FBI national database or applicable state-held databases. The DRST has greatly assisted the NICS Section in the review and/or scanning of several thousand documents for entry and maintenance and was instrumental in helping to facilitate the posting of over 480,000 dispositions (reference Table 4) to criminal history records as of December 31, 2004.

Firearm Retrieval Referrals

Although the NICS Section, with the assistance of its POC counterparts and a great many local and state agencies, has assisted in updating disposition information missing from state and federal databases, continued issues pertaining to "open" transactions remain. As previously noted, firearm dealers may legally transfer a firearm, under the Brady Act, to the purchaser if no definitive response is provided by the NICS within the Brady-mandated three-business-day time frame. The transferee may later be determined to be a prohibited person resulting in a referral to the ATF for a firearm retrieval investigation.

During 2003/2004, an average of 1.95 percent of FBI-processed transactions remained "open" at the end of the third business day. If, after the close of the third business day, a NICS Examiner obtains information that illustrates a firearm transferee to be a prohibited person, and



the FFL has transferred the firearm, a firearm retrieval is referred to the ATF. Of the 9,147,819 background checks processed by the NICS Section during 2003 and 2004, a total of 3,594 and 3,668 firearm retrieval referrals were forwarded to the ATF. The percentage of firearm retrieval scenarios referred to the ATF by the NICS Section has continued to decrease. As such, it is apparent that local and state agencies have made concerted efforts in locating records needed to effect more timely decisions for background check transactions.

The goal of the BJS' National Criminal History Improvement Program (NCHIP) is to improve the nation's safety and security by enhancing the quality, completeness, and accessibility of criminal history record information and by insuring the nationwide implementation of criminal justice and noncriminal justice background check systems. The NCHIP was initiated in 1995, under the Brady Act, and has encompassed evolving efforts to support state activities for the establishment of records systems and the collection and use of criminal history and related records. Since 1995, direct awards to the states have totaled nearly half a billion dollars. In addition, \$6 million was transferred to the FBI for implementation of the NICS, and nearly \$18 million was awarded to provide direct technical assistance to the states to evaluate the program, and to collect statistics and research data on presale firearm checks and the quality of information maintained in state record systems. The NCHIP encompasses a variety of criminal records-related activities including improving the capture and posting of arrest and disposition transactions, building and maintaining registries of sex offenders, implementing automated fingerprint identification systems, establishing protection order files, and identifying offenders with a background of domestic violence. Through the NCHIP, the states are encouraged to insure their data systems are compatible with one another and with the national records systems maintained by the FBI. Further information about the NCHIP is available on the BJS Web site at [www.ojp.usdoj.gov/bjs/nchip.htm](http://www.ojp.usdoj.gov/bjs/nchip.htm).

## **Section V**

# **The Explosives Background Check Initiative**

The  
Safe

Explosives Act, enacted as part of the Homeland Security Act on November 25, 2002, requires that any person who transports, ships, causes to be transported, or receives explosives materials in either interstate or intrastate commerce must obtain a federal permit or license issued by the ATF after undergoing a background check. This provision of the Safe Explosives Act became effective May 24, 2003.

The Safe Explosives Act requires that background checks be conducted on two categories of persons involved with explosives: "responsible persons" and "employee possessors." A "responsible person" is defined as an individual who has the power to direct the management and policies pertaining to explosives materials. For example, "responsible persons" generally include sole proprietors, explosives facility site managers, corporate directors and officers, as well as corporate stockholders who have the power to direct management and policies. "Responsible persons" must submit identifying information and fingerprints with their applications to the ATF's National Licensing Center (NLC). The fingerprints are submitted by the NLC to the CJIS Division where they are compared via the IAFIS. The identifying information of the applicant is then electronically forwarded to the NICS Section where a NICS background check is conducted.

An "employee possessor" is an employee authorized by the applicant to possess explosives materials and is defined as an individual who has actual physical possession or constructive possession, meaning the individual has dominion or direct control over the explosives. "Employee possessors" include employees who handle explosives materials as part of the production process; employees who handle the shipping, transporting, or selling of explosives materials; and employees who actually use the explosives materials. An "employee possessor" may be a blaster, a truck driver transporting explosives materials, or a construction supervisor who keeps the keys for magazines in which explosives are stored. "Employee possessors" submit identifying information with their applications to the NLC which, in turn, submits the information directly to the NICS Section via the NICS E-Check where a background check is conducted.

The Safe Explosives Act created a new category of permit, a "limited" permit, designed for the intrastate purchaser who buys explosives infrequently and does not intend to transport or use the explosives interstate. Intrastate users may include, for example, farmers or construction companies that acquire or use explosives infrequently and within their own state of residence. The permit will allow the purchaser to receive explosives materials from an in-state explosives licensee (permit holder) on no more than six occasions during the period in which the permit is valid. These permits are valid for one year and are renewable.

The NICS accesses the same three national databases (the NCIC, the III, and the NICS Index) as a part of the background check for explosives as for firearm-related background checks. Additionally, data on all applicants deemed to be non-U.S. citizens is submitted for a search of the applicable databases of the ICE to check the applicant's immigration status.

The first explosives background check was conducted on February 21, 2003.<sup>22</sup> By December 31, 2004, the NICS had processed a total of 65,593 explosives background checks (reference Table 5). Of that total, 9,016 were conducted on "responsible persons." During 2003 and 2004, a total of 56,577 background checks were submitted for "employee possessors." All background check results are returned to and retrieved by the NLC via the NICS E-Check. Of the explosives transactions processed in 2003 and 2004, the NICS Section denied a total of 1,651 transactions (or 2.52 percent) as of December 31, 2004. This is slightly higher than the denial rate for firearms transactions, despite having two fewer prohibitive categories.

Table 5  
Total NICS Explosives Checks 2003 - 2004

Month	2003	2004
January	N/A	2,517
February	14	2,241
March	208	3,871
April	1,750	3,422
May	5,268	3,704
June	4,405	3,915
July	5,374	3,660
August	3,251	3,037
September	2,864	2,595
October	2,446	2,336
November	2,330	1,625
December	2,262	2,498
<b>Total</b>	<b>30,172</b>	<b>35,421</b>

Misdemeanor crimes of domestic violence and domestic violence restraining orders are not prohibitive categories for explosives background checks. The higher number of denials on

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<sup>22</sup> Because it generally takes 90 days to process such applications, it was anticipated that many applications for the new limited permit would be submitted in February and March of 2003, prior to the actual date of implementation of the legislation.

explosives background checks could well be attributed to the fact that in many instances, state post conviction relief<sup>23</sup> does not remove a felony conviction as a prohibition on the processing of explosives. Felony convictions make up approximately 80.9 percent of all explosives denials, the largest single prohibitive category for both firearms and explosives.

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<sup>23</sup> For example: By operation of some state laws, after an individual has paid a fine and/or served a sentence, etc., that might otherwise result in a felony conviction, the court will expunge the guilty plea/finding and will dismiss the charge. This process, depending on state law, could result in the elimination of the evidence of conviction, thus rendering the individual "relieved of a disability." However, an individual who has been convicted of a state felony and has petitioned for and subsequently received the state's restoration of rights would remain convicted pursuant to the Safe Explosives Act.

## Section VI

# The NICS Section Provides Additional Services to Its Users

### The NICS Section POC Chat Room via LEO



Recognizing that communication, at all levels, is key in the success of any organization, the NICS Section identified the need to delve further into "information sharing" not only on an internal basis but also externally, e.g., with the POC states. In addition to the avenues already existing, e.g., the annual User Conference, the NICS Newsletter, teleconferences, official notifications, etc., the NICS Section added more informational resources to its Web site on the LEO.

In 2003, to further enhance the "hands-on" sharing of information with its state POCs, the NICS Section implemented the POC Chat Room. While the conventional methods of communication mentioned above are tremendous resource tools which serve to provide the needed connectivity between "team" members not logistically in proximity with one another, today's ever growing populace relies more and more on telecommunications to meet their constantly evolving needs. In addition to providing opportunities to discuss current events and changes in regulations and operational policies, the POC Chat Room allows for the exchange of information, ideas, questions, etc., in "real-time" via online conversation between the NICS Section staff and its POC state counterparts. Additionally, the POC Chat Room capability also provides for the exchange of information amongst the POC states themselves, allowing all to fully participate and, ultimately, benefit from the experience. Relevant to the topic for each Chat Room, the NICS Section ensures that employees with experience in the applicable areas are present, e.g., the Office of the General Counsel Attorney-Advisor to the NICS Section, specific team supervisors, etc. In this manner, the NICS Section strives to provide information and guidance in as accurately and as timely a manner as possible.

Subsequent to the first chat session held on August 6, 2003, the NICS Section has hosted several chat sessions to date. Some of the topics that have been discussed are:

- Common Audit Findings;
- The NICS Index versus NICS Denial Notifications;
- Federal Prohibiting Criteria pertaining to a Misdemeanor Crime of Domestic Violence

- Protection/Restraining Orders;
- VGTOF Processing;
- FFL Audit Logs;
- Federal Prohibiting Criteria pertaining to the Drug Prohibitor;
- ATF Licensing Issues; and
- Federal Prohibiting Criteria pertaining to Mental Health Disqualifications.

Notification of each scheduled POC Chat Room session is disseminated to the POC state counterparts in advance of its facilitation. When available, resource materials are provided to supplement information pertaining to the nature of the topic presented and, on occasion, a guest speaker may be invited to participate in the dialogue. Additionally, the NICS Section provides a synopsis of the transcript of the chat session to all POC states, regardless of active participation so that all may benefit from the information presented and discussed, and to encourage others to participate in the experience.

With the assistance of the CJIS Division's Advisory Groups Management Unit, many of the POC states have applied for and received LEO accounts, in addition to guidelines for accessing the online chat room. The NICS Section highly encourages participation in this "real-time" information-sharing experience and welcomes the submission of inquiries, comments, and recommendations for future topics.

#### The NICS Section POC Support Team

One of the long standing goals envisioned by the NICS Section became a reality late in the summer of 2003 with the implementation of a POC Support Team. The POC Support Team is a specialty team of employees who, based on their expertise and knowledge of the NICS, have dedicated their efforts to provide a centralized and consistent source for information and support to all users of the NICS with a focus on the POC states.

In 2003, the POC Support Team developed subject curriculums and plans; compiled visual presentations to correspond with lectures; and assembled materials in support of a variety of topics featured for delivery to external law enforcement and related agencies. The POC Support Team conducted research to fine tune their knowledge on all aspects of the NICS in order to provide a complete list of available information-sharing opportunities. Through effective liaison with POC state law enforcement agencies and/or governmental agencies, the POC Support Team works towards its target goal of providing optimal service to the law enforcement community.

The POC Support Team develops, maintains and continuously enhances information pertaining to a wide range of topics including (but not limited to):

- Overview of the NICS;
- Federal prohibitive criteria;

- Terminology and legal interpretations;
- Appeal processing policy and procedures;
- Permit processes;
- Firearm retrievals;
- Research strategies and techniques;
- State-to-state record retrieval resources; and
- Specialized information (upon request) pertaining to state law as it interacts with federal law.

Shortly after implementation in the summer of 2003, three POC assistance sessions were requested, planned, and successfully delivered to a wide range of law enforcement agencies. The first three sessions, all held within less than a month's time, provided information to the participants via several four-to-eight hour sessions. These sessions provided extensive and in-depth information cumulatively to approximately 375 attendees representing nearly 125 various state agencies.

Following each of the information-sharing sessions, the participants were requested to complete an evaluation form which solicits feedback from the attendees pertaining to the presenter's knowledge and communication skills; enthusiasm and professionalism; the extent to which the course achieved its stated purpose; and an overall assessment of the session. These assessments are utilized by the NICS Section to update and/or enhance the support program for optimal effectiveness. Many of the comments proffered by the attendees were very positive about the overall information-sharing experience provided by the POC Support Team.

From September 2003 through year-end 2004, the POC Support Team facilitated 43 information-sharing sessions in 26 locations in 11 states to over 1,750 participants. The POC Support Team has received several requests to schedule additional supplementary information-sharing sessions from states that previously used their services. The services provided by the POC Support Team's efforts have swiftly illustrated the NICS Section's focus on customer service as a vital and integral part of the overall success of the entire program.

### The Appeal Services Team

The NICS Section is committed to ensuring the timely transfer of firearms to law-abiding citizens while denying those transfers to persons who are specifically prohibited by law from receiving or possessing firearms. As provided in the permanent provisions of the Brady Act and further outlined in the NICS Regulations, 28 C.F.R., Part 25.10, individuals who, as a result of the NICS background check, believe they were wrongfully denied the transfer of a firearm may submit a written request for an appeal of that denial decision. To address these appeal inquiries

and to provide service to those individuals requesting further review and consideration, the Appeal Services Team (AST)<sup>24</sup> was established.

Table 6 shows the percentage of deny decisions that were appealed to the NICS Section.<sup>25</sup> Denials are overturned on appeal for a variety of reasons, such as the nonidentical match of the denied individual's fingerprints to the fingerprints of the subject of a prohibiting record or inconsistencies in criminal history records, particularly incomplete criminal arrest cycles and/or the omission of post conviction information<sup>26</sup> that is not included in the records returned in response to a background check.

The NICS Section is responsive to incoming appeal inquiries from prospective firearm transferees in an expeditious manner and in accordance with the NICS' rules and regulations. Once the identity of a denied individual has been established, e.g., via fingerprint comparison, the AST, through research and investigation, obtains information relative to the subject of the NICS transaction. The AST *often* facilitates the completion and/or correction of criminal history information or other records in support of final transaction decisions, thus effecting a timely appeal resolution for the individual and, in many instances, enabling the NICS Section to process background checks, e.g., for repeat purchasers, in a more expeditious manner.

In 2003, and consecutively in 2004, an approximate 4 percent increase in appeal transactions for the AST was realized. From the inception of the NICS in November 1998, through December 31, 2004, the NICS Section received approximately 64,350 appeal-related pieces of correspondence. As such, the AST has received, on average, approximately 882 appeal requests/inquiries per month. Even with a subsequent increase in appeal requests typically experienced as a result of the increase in transactional activity associated with the NICS Peak Season, the AST, in 2003 and 2004, consistently maintained an exceptional appeal completion rate.

In 2004, several changes aimed at enhancing the processing of appeals were identified, developed, and implemented. For example, when a transaction denial is overturned on appeal, correspondence verifying firearms eligibility is issued to the appellant for presentation to the FFL

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<sup>24</sup> For questions or general information relating to the AST, contact the NICS Customer Service Group at 1-877-444-6427 or e-mail at [nicsappeals@leo.gov](mailto:nicsappeals@leo.gov).

<sup>25</sup> The number of denials shown in Table 6 are based on NICS Section statistics only; however, individuals denied by a POC state also have the option to submit an appeal of their denial decision to the NICS Section in lieu of the POC state as the "denying" agency. Thus, the number of appeals received based on the number of denials issued by the NICS Section may be slightly inflated.

<sup>26</sup> Such as an affirmation of a restoration of rights, pardon, etc.



who, in turn, retains the correspondence as part of the transaction record. To allow the appellant to retain the correspondence for their personal reference, a Firearm Appeal Certificate (for presentation to and acceptance by an FFL) is included with the appellant's correspondence. This customer service was implemented in the summer of 2004.

TABLE 6  
Historical NICS Section Appeal Statistics

Year	Number of Transactions Conducted by the NICS Section	Number of Denials Issued	Number of Appeals Received	% of Denials Resulting in an Appeal	% of Appeals (Denials) Overturned
2000	4,260,270	66,808	9,372	14%	21%
2001	4,291,926	64,500	9,336	14%	29%
2002	4,248,893	60,739	10,398	17%	31%
2003	4,462,801	61,170	10,881	18%	37%
2004	4,685,018	63,675	11,349	18%	27%

*(Based on NICS Section Statistics only)*

# *Spotlight*

## The NICS Index

When a NICS background check is initiated, a name and descriptor search is conducted to identify any matching records in three nationally-held databases. In addition to the III and the NCIC databases, a search of the *NICS Index* is conducted. The NICS Index, a database created specifically for use by the NICS, pursuant to 28 C.F.R., Part 25, is managed by the FBI and contains records obtained from local, state, and federal agencies pertaining to persons prohibited from receiving firearms pursuant to federal law. All records in the NICS Index, a database that is separate and distinct from the III and the NCIC, will federally prohibit the individual record holder from the transfer of a firearm.

The following definitions from the *Federal Register*, Vol. 62, No. 124, outline the categories of persons contained within the NICS Index while Table 7 provides a breakdown of each category in addition to the contributing agencies and the corresponding number of records per each category as of December 31, 2004:

- Denied Persons - Persons who are federally disqualified when a record is not already included in the NCIC or the III.<sup>27</sup>
- Illegal/Unlawful Aliens - Persons who are aliens and are illegally or unlawfully in the United States.
- Controlled Substance Abusers - Persons who are unlawful users of or addicted to any controlled substance.
- Dishonorable Discharges - Persons who have been discharged from the armed forces under dishonorable conditions.
- Citizenship Renunciants - Persons who have renounced their U.S. citizenship.

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<sup>27</sup> Examples include protection orders or active warrants that are not in the NCIC, persons who are under court order not to possess a firearm as a condition of deferred adjudication, a felony conviction posted to the state record that is not reflected by the NCIC or the III, individuals meeting the federally established criteria pertaining to mental defectiveness that cannot be placed in the Mental Defective File due to state laws, etc.

- Mental Defectives/Commitments - 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. (This definition is established by 27 C.F.R., §478.11.)

Table 7  
Contributing Agencies to the NICS Index and Category Totals

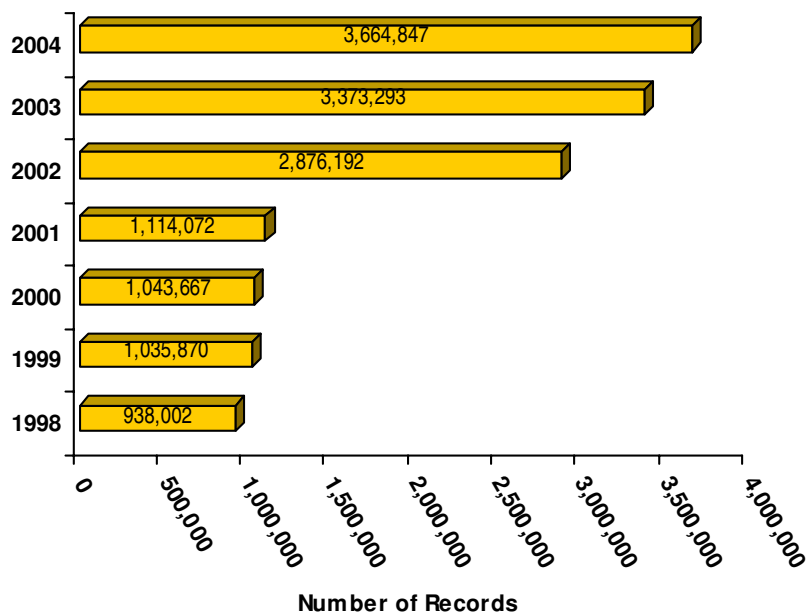
	Controlled Substance Abuse	Mental Defective Commitment	Illegal/ Unlawful Alien	Dishonorable Discharge	Citizenship Renunciant	Denied Person File
Department of Defense	0	1	0	14,783	0	0
ICE	0	0	3,049,894	0	0	0
Department of State	0	0	0	0	12,603	0
US Coast Guard (Department of Transportation)	0	0	0	16	0	0
Department of Veterans Affairs	0	91,478	0	0	0	0
States	2,166	129,507	49	0	0	337,686
FBI	683	492	296	4	0	25,189
<b>Total Active Records</b>	<b>2,849</b>	<b>221,478</b>	<b>3,050,239</b>	<b>14,803</b>	<b>12,603</b>	<b>362,875</b>
<b>PROGRAM-TO-DATE TOTAL (As of December 31, 2004)</b>						<b>3,664,847</b>

Initial growth within the NICS Index was slow. Shortly after the implementation of the NICS in November 1998, it became increasingly evident to the NICS Section that a lack of knowledge about the NICS and its mission greatly hindered the information and record-gathering processes. In order for the NICS to operate as it was envisioned, obtaining relevant record information is essential. The NICS is only as effective as the record information availed to it.

To increase the quantity of available records for inclusion in the NICS, the NICS Section initiated an outreach program to the law enforcement and judicial community, various state and federal agencies, and the general public, to boost awareness of the availability and benefits of the NICS Index.

To improve the efficiency and effectiveness of the system, the NICS Section in 2001 created a NICS Index Liaison position to focus *solely* on facilitating the population and maintenance of records in the NICS Index. As a result, the number of records contained within the NICS Index more than doubled in 2002. This upward trend continued into 2003 and throughout 2004 with the addition of another 788,655 additional federally prohibitive (and instantly available) records into the NICS Index. As indicated in Figure 8, the NICS Section, from inception through December 31, 2004, succeeded in increasing the number of available records in the NICS Index by close to 300 percent.

Figure 8  
The NICS Index Growth



In today's mobile society, the NICS Index is a valuable tool in providing immediate accessibility to federally prohibitive records (such as those pertaining to individuals with a disqualifying mental illness and/or individuals involuntarily committed to mental institutions) previously unavailable at the national level. A state's contribution of such records to a national database provides vital information accessible by *all* users when performing NICS background

checks. Without this information being readily available, prohibited persons may be successful in their attempt to receive a firearm merely by crossing state lines.<sup>28</sup>

The following story is an example of how the unavailability of prohibiting records at the national level can lead to tragic results:

*On January 2, 2004, a paranoid schizophrenic fatally shot two law enforcement officers after he was permitted to purchase a firearm. The alleged gunman had previously been involuntarily committed to a mental institution on five separate occasions; however, the NICS Section did not have access to the records and was unable to block the firearm transfer.*

The NICS Section is profoundly committed to the active solicitation of record information that would immediately identify those individuals who are prohibited by law from possessing or receiving firearms or explosives. It is in this spirit that the NICS Index Liaison Specialist pursues state-held record information through liaison with state officials in order to facilitate the successful entry of additional prohibiting records into the NICS Index.

The following examples and the information shown in Figure 9 demonstrate the effectiveness of making state-held prohibiting records available at the national level:

- In late 2002, the state of Michigan began the submission of disqualifying mental health records into the NICS Index. As of December 31, 2004, Michigan had submitted over 61,000 such prohibiting records. A total of 186 background check transactions were denied as a result. Of that number, 46 denial determinations were rendered by the NICS Section and the POC states for background checks initiated outside of the state of Michigan (the contributor).
- Beginning in November 2003, the Commonwealth of Virginia began submitting records for inclusion in the NICS Index. As of December 31, 2004, the Commonwealth of Virginia had

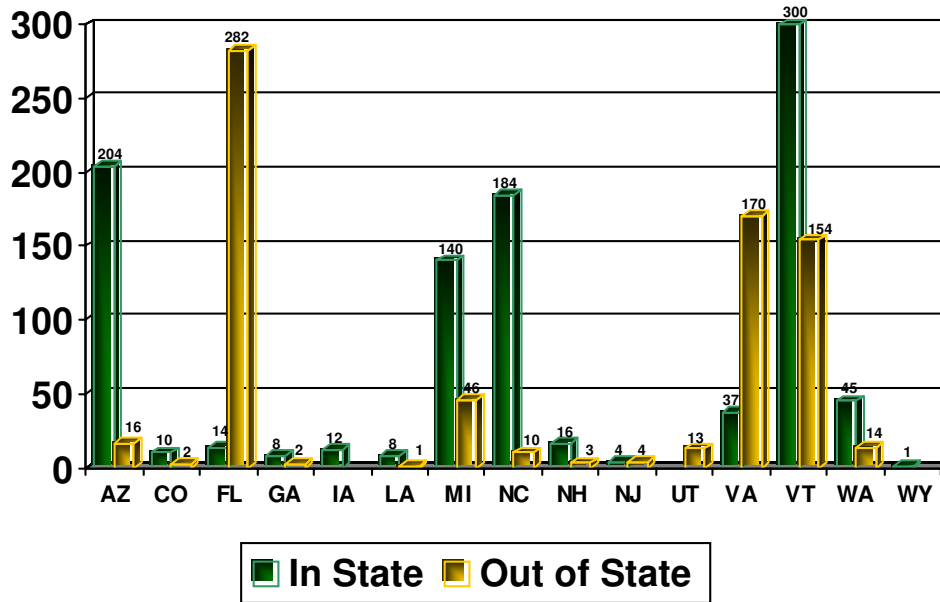
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<sup>28</sup> For example: Mr. Smith is the subject of a disqualifying mental health record in State X. The disqualifying information is maintained only by State X; thus, it is not available at the national level. Barring the existence of any other disqualifying information, Mr. Smith could conceivably purchase in State Y as State Y would not have access to State X's record information. Thus, if disqualifying information is not available at the *national level*, a prohibited person could receive the transfer of a firearm by relocating across state lines.

submitted 62,652 disqualifying mental health records and over 104,000 non-III criminal history records to the NICS Index. Based on these records, 207 firearm transactions have been denied, 170 of which were denials rendered by the NICS Section and the POC states for background checks that were initiated outside of the Commonwealth of Virginia (the contributor).

- As of December 31, 2004, over 152,000 records submitted by the state of Florida were maintained in the NICS Index. As a result of these submissions, 296 firearm transactions have been denied. Of this number, 282 were denials rendered by the NICS Section and the POC states for background checks initiated outside of the state of Florida (the contributor).
- In November 2004, the state of New Hampshire also made available over 14,000 non-fingerprint based records for inclusion in the NICS Index. As of December 31, 2004, 19 firearm transactions have been denied. Of these, three were denials for background checks initiated outside of the state of New Hampshire.

Figure 9  
Denials Based on State-submitted NICS Index Records<sup>29</sup>



<sup>29</sup> These statistics only represent denials reported to the NICS.

Building on past successes such as those mentioned above, the NICS Index Liaison Specialist worked with the Washington State Patrol and the Washington Department of Social and Health Services (DSHS) to obtain state-held mental health record information for inclusion in the NICS Index. In July 2004, Washington State-held mental health records began to be transmitted to the NICS Index. This success is especially notable in that this is the first time that the submission of mental health records has been facilitated to the NICS via a state's mental health department. The interface between the DSHS and the Washington State Patrol allows for the confidentiality of the records to be preserved by the DSHS while providing vital information to the NICS Index. As of December 31, 2004, over 33,000 Washington mental health records were included in the NICS Index. As a result of the availability of the record information exhibited by those submissions, 59 firearm transactions were denied. Of the 59 firearm transaction denials rendered, 14 pertained to background checks initiated outside of the state of Washington.

Had the above information not been provided to the NICS, the transfer of a firearm (or issuance of a firearm or explosives permit) to a prohibited individual may have otherwise been proceeded. The real benefit of information sharing on a *national* level is evident with successes such as these.

As a testament to the ongoing efforts of the NICS Section's proactive approach to seeking vital record information necessary to effectively facilitate the background check program, several states (reference Figure 10) are submitting records to the NICS Index. By making this information available to a national database, all states<sup>30</sup> will have access to valuable prohibiting records when performing a NICS background check. As of year-end 2004, the NICS Index Liaison Specialist was in communication with several states, e.g., Connecticut, Louisiana, Florida, and Kansas, and had disseminated correspondence to every state's Attorney General (with a copy to the Governor) and Department of Mental Health (or similarly situated) soliciting for the submission of state-held records to the NICS Index in addition to outlining the benefits of facilitating such.

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<sup>30</sup> Contributing states can submit mental health records to the Denied Persons File of the NICS Index if they do not or cannot identify the information specifically as a mental health record.





Index will provide a means for state-prohibitive information to be readily accessible, thus resulting in a more accurate and a more timely response to the subject of a background check. At the current time, a processing protocol is being identified and outlined by NICS Section personnel to determine feasibility.

The FBI envisions a coordinated effort with other law enforcement agencies, courts and mental health agencies to assist the NICS Index in realizing its full potential by providing a convenient repository for federally disqualifying records not accessible through the NCIC or the III. The availability of this information in a national database will save lives by allowing the NICS Section and the POC states access to federally disqualifying records concerning individuals who are not eligible to receive or possess a firearm under federal law, thus negating the transfer of a firearm to a federally prohibited individual that crosses state lines. (For further information pertaining to the mental health prohibition, reference the NICS Web site at [www.fbi.gov/hq/cjisd/nics/index.htm](http://www.fbi.gov/hq/cjisd/nics/index.htm).)

# Success Stories of the FBI NICS Section

- On December 7, 2004, a NICS Examiner contacted the Independence County Sheriff's Office in Arkansas seeking to validate a Brady-disqualifying warrant validly matched to a prospective firearm transferee as a result of a NICS background check. The NICS Examiner was provided information indicating that the warrant was still active; thus, the transaction was denied. Subsequent information pertaining to this event revealed that the prospective firearm transferee was attempting the transfer of a firearm from an FFL located approximately five blocks from the Independence County Sheriff's Office, the aforementioned contact agency for the warrant. As a result of the NICS Section's liaison with local law enforcement, the subject was apprehended.
- On November 15, 2004, a NICS Examiner reviewed a background check transaction reflecting a match to an NCIC protection order. After contacting the protection order's originating agency, a child advocacy facility, the NICS Examiner was advised that said agency had no record of or information pertaining to the NCIC protection order. However, the child advocacy agency did advise that the named individual's children had been placed in foster care. With this information, the NICS Examiner continued to research the nature of the NCIC entry to determine the subject's eligibility to receive a firearm.

After various telephone calls, the NICS Examiner was transferred to the local county prosecutor who advised that a child abuse/neglect case had been initiated against the subject when she tested positive for drugs earlier in October 2004. The subject had also tested positive for drugs on other occasions in 2004, in addition to giving birth to a child in August 2004, who had also tested positive. The local county prosecutor, who had advised that the subject had been entered into the NCIC by mistake, forwarded the applicable documentation explaining the aforementioned action to the NICS Examiner and the subject was denied pursuant to federally established criteria pertaining to drug use. As such, this individual was placed in the NICS Index. The NICS Examiner's diligent pursuit of clarifying information pertaining to this case resulted in the denial of a prohibited person.

- An individual who was attempting to purchase a firearm in Kansas was found to be the subject of a warrant in the NCIC. This individual was wanted for military desertion. The NICS Examiner confirmed with the U.S. Army Deserter Information Point that the warrant was still active and that the Army would extradite. After obtaining the subject's address and providing said information to the Army, the NICS Examiner received a message the next day that the subject was in custody.
- A man attempting to purchase a firearm in Louisiana was found to be the subject of a restraining order. In order to establish the relationship between the subject of the order and the victim (which is required in order to determine prohibitive status), the NICS Examiner worked with an employee of the Louisiana Supreme Court who advised that the former girlfriend of the subject sought the order on behalf of her daughter who was alleged to have been raped by the former boyfriend. The NICS Examiner contacted the FFL and advised that the transaction was denied.
- A man who was sentenced to probation in Texas was attempting to purchase a firearm in Missouri. While conducting research pertaining to the subject's terms of probation, the NICS Examiner contacted the local county sheriff's department in Texas and was advised that the subject was still on probation. He had not reported to the probation for seven months, and the sheriff's office was preparing to file probation violation charges against the subject and issued a warrant for his arrest. The NICS Examiner advised the FFL to deny the transaction, obtained the subject's address, and forwarded it to the sheriff's office in Texas.
- On December 4, 2003, the ATF NLC submitted the descriptive data of an explosive license applicant to the NICS via the NICS E-Check to complete a background check in support of the Safe Explosives Act. The data generated a hit in the NICS Index which was an exact match. The NICS Index record had been submitted by the ICE. The subject's record was originally entered into the NICS Index as an Illegal/Unlawful Alien on January 6, 2001. Based on the valid NICS Index match, the NICS Examiner denied the transaction.

The NICS Examiner then sent a fax to the ATF NLC requesting the address, which the subject provided on the application for the explosives possessor license. The NICS Examiner forwarded the address as provided by the ATF NLC to the ICE via the International Justice and Public Safety Information Sharing Network (NLETS), a secure form of electronic messaging used by the law enforcement community.

On December 17, 2003, the NICS Examiner received a telephone call from an ICE Special Agent who stated that the subject had been arrested at his residence in Santa Ana, California. The ICE Special Agent also stated the subject was in jail and facing deportation proceedings.

