

# A NICS DELAY . . .

A Federal Firearms Licensee (FFL) will receive the following instructions when a call is transferred from the FBI National Instant Criminal Background Check System (NICS) call center to the FBI NICS Section in an open transaction resulting in a delay:

*"--NTN-- will be delayed while the NICS continues its research of potentially prohibiting information on this open transaction and will advise you if it reaches a final determination of proceed or denied. If you do not receive a response from us, the Brady Law does not prohibit the transfer of the firearm on \_\_\_day/date \_\_\_."*

The following table specifies the day after a delay response on which a firearm may be lawfully transferred under federal law if a final determination has not been received from the NICS (assuming there are no intervening state holidays or closures):

<i>Delay Response On</i>	<i>Can Legally Transfer Under Federal Law On</i>
Monday	Friday
Tuesday	Saturday
Wednesday	Tuesday
Thursday	Wednesday
Friday	Thursday
Saturday	Thursday
Sunday	Thursday

If the FFL has not received from the NICS a final determination after 3 business days have elapsed since the delay response, it is within the FFL's discretion whether or not to transfer the firearm (if state law permits the transfer). If the FFL transfers the firearm, the FFL must note "no resolution was provided within 3 business days" on line 21d of the ATF Form 4473. *(Please refer to pages 24 and 25 of the FBI NICS FFL User Manual.)*

**\*Best practice recommendation:** In open transactions, the FFLs should record on the ATF Form 4473 the date provided in the delay response on which the firearm may be lawfully transferred under federal law if a final determination of proceed or denied is not received from the NICS.

# Applicable Federal Regulations

## 28 CFR Part 25 - The National Instant Criminal Background Check System

### Section 25.6(c)(1)(iv)(B) – Delayed response provided to FFL:

(B) "Delayed" response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from processing a firearm by Federal or state law. A "Delayed" response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a "Delayed" response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a "Proceed" or "Denied" response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

### Section 25.2 – Definition of "Open" transaction:

"Open" means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of "open" responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An "open" response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.