



## **NATIONAL SHOOTING SPORTS FOUNDATION, INC.**

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### **Lawrence G. Keane**

SVP Gov't & Public Affairs  
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April 6, 2020

The Honorable Christopher Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535

The Honorable Regina Lombardo  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
United States Department of Justice  
99 New York Avenue, NE  
Washington, DC 20226

Dear Director Wray and Acting Director Lombardo,

The National Shooting Sports Foundation (NSSF) is America's trade association for the firearm, ammunition, hunting and recreational shooting sports industry. Our over 9,000 member companies include federally licensed manufacturers, distributors and retailers of firearms and ammunition products. On behalf of our members nationwide, I am writing to thank you for your leadership and the ongoing efforts of your agencies to keep our nation safe and secure during the COVID-19 (Coronavirus) pandemic.

### **Record Number of Firearm Purchases Straining NICS**

During this time of crisis, Americans are concerned for their safety, and record numbers have turned to their Second Amendment rights to keep and bear arms. Food, water, shelter and medical care are paramount for survival, but so too is the ability for an individual to defend his or herself, their family, as well as their home, business and property. NSSF shares concerns expressed by others that this increase in demand for firearms has strained the crucial National Instant Criminal Background Check System (NICS). There is also a sense of frustration among federally licensed firearm retailers that there has not been enough communication and guidance for retailers who are committed to remaining in compliance with all applicable laws and regulations during this unprecedented situation.

The firearm and ammunition industry respects the existing laws and regulations and seeks increased guidance on how to comply with new restraints and requirements imposed by state and local authorities seeking to contain this virus. We know that NICS and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have a clear obligation to enforce the law under their statutory authority. However, we reject arguments made by some elected officials

and advocacy groups that NICS and ATF should illegally impose policy changes that extend beyond the clear legal requirements.

The top concern for those in our industry is how to handle the small percentage of NICS checks that result in a “Delay” response. NSSF is aware that the COVID-19 crisis is creating a perfect storm for NICS in terms of these delays. First, there is a significant increase in background check volume, putting pressure on the system. Second, certain state offices are working remotely or with reduced staffing, creating uncertainty about whether the state is “open,” for purposes of calculating the three-business days (“Brady Transfer Date”) pursuant to 18 USC § 922(t)(B)(ii). Third, the current situation is making it difficult for NICS examiners to investigate delayed checks. We understand delayed checks are currently about 58,000 nationwide, down from as many as 80,000.

NSSF has proactively shared NICS communications with retailers that the system is currently under enormous strain and that they may choose, as always, whether to decline a sale without an affirmative NICS response.<sup>1</sup> However, without an Act of Congress, it is inaccurate to state that transferring a firearm after the three-business day period provided by Section 922(t)(B)(ii) and 27 CFR 478.102(a)(2) is illegal. All states offices remain open, whether their personnel are working remotely or in reduced capacities. No state is closed as if it were a state holiday. The guidance that would most help the retailer community right now would be to fully explain how the Brady Transfer Dates are being calculated in accordance with the law and what the recommendations are for situations in which the transfer dates are farther out than the 30-day period for which the NICS check is valid.

NSSF urges ATF and NICS to reject politically motivated pressure to exceed statutory authority and promulgate regulations with no legal authority, or to pull resources away from core functions of protecting public safety in order to issue reports on background checks. No existing statute allows for extending the records retention beyond 90 days for NICS checks. NICS does caution on its website that “if the FFL transfers the firearm, the FFL must mark ‘No resolution was provided within three business days’ on line 21d of the ATF Form 4473.”<sup>2</sup> Issuing an emergency directive that runs counter to existing regulations would be a violation of the Administrative Procedures Act.

We understand the challenges facing ATF and NICS during this crisis. NSSF is working hard to urge Congress to provide ATF and NICS with the enhanced resources each needs to comply with the law, including the three-business day transfer date stated in the existing law and regulation. NSSF was the leading advocacy group urging support for the bipartisan Fix NICS Act signed into law by President Trump. The law was named after NSSF’s successful FixNICS<sup>®</sup> campaign that has changed the law in 16 states to submit to NICS disqualifying records establishing that someone is a prohibited person under current law. NSSF’s efforts have resulted in an over 240% increase in disqualifying mental health adjudications submitted to NICS.

Now is the time to provide more resources for NICS and ATF. It is not the time to divert limited existing resources to suit the requests of those with alternative agendas.

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<sup>1</sup> NSSF, “WHAT FFLS NEED TO KNOW RIGHT NOW,” March 19, 2020, <https://www.nssf.org/what-ffls-need-to-know-right-now/>

<sup>2</sup> <https://www.fbi.gov/services/cjis/nics/about-nics>

## Industry's Dedication to Safe Storage and Use Practices

For our part, the firearm and ammunition industry is more dedicated than ever to ensuring the safe and legal purchase, use and storage of our products. We are reaching out to new gun owners, as well as the existing firearm-owning community, through articles that review the rules of firearm safety and secure storage, and through video messages and interviews that emphasize the resources new owners should be aware of and rely on.<sup>3</sup>

For decades now, manufacturers have included a free locking device with every new firearm shipped from the factory. In addition, NSSF, on behalf of our industry and through our award-winning Project ChildSafe® campaign, has distributed at no cost over 38 million firearm safety education kits that include a cable-style gun lock to our more than 15,000 law enforcement partners in all 50 states and U.S. territories for distribution into their local communities.<sup>4</sup>

NSSF also works to support legislation such as the bipartisan FFL Protection Act (S.1788/H.R.2179), which would strengthen and enhance criminal penalties for thefts of firearms from licensees, and build on Operation Secure Store®, our partnership with ATF to match reward offers for such thefts and to educate FFLs on the steps they can take to reduce the chance that guns will be stolen from them during a burglary or robbery.

In addition, NSSF is working to help keep open shooting ranges, with appropriate social-distancing measures in place. Both public and private ranges are essential to public safety, as they are where firearm safety education is taught to new and inexperienced gun owners. Ranges are also where law enforcement officers typically train to be proficient with their duty weapon and where members of the military train before they deploy to defend our nation.

The firearm and ammunition industry is present in every community. We know first-hand the importance of ensuring that families are able to focus on what's important right now: following government guidance to help stop the spread of this deadly virus. The last thing an American should be worrying about is how to make sure they are physically safe. To that end, NSSF and the firearm and ammunition industry thank ATF and NICS for the tremendous work underway to allow federally licensed firearms licensees to remain open, while abiding by the important social-distancing guidelines.

Sincerely,



Lawrence G. Keane

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<sup>3</sup> See for example: NSSF, PRACTICAL ADVICE FOR QUARANTINED NEW GUN OWNERS, March 23, 2020, <https://www.nssf.org/practical-advice-for-quarantined-new-gun-owners/>  
And NSSF, "NSSF'S JOE BARTOZZI AND USCCA'S TIM SCHMIDT TALK NEW GUN OWNERS," April 3, 2020 <https://www.nssf.org/?p=25787&preview=1&ppp=569094e63b>

<sup>4</sup> Federal law also requires licensed retailers provide a locking device with each handgun transferred. 18 USC § 922(z). Additionally, federal law requires licensed retailers to make locking devices available for customers to purchase. And, since 1998, retailers have been required to notify handgun purchases of the Youth Handgun Safety Notice. 18 USC § 922(x); 27 CFR § 478.103.