



# FFL NEWSLETTER

## FEDERAL FIREARMS LICENSEE INFORMATION SERVICE

September 2011

In an effort to keep Federal firearms licensees (FFLs) abreast of changing firearms laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide semiannual FFL Newsletters. Previous editions of the FFL Newsletters are available on ATF's Web site (<http://www.atf.gov>).

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receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

Per 27 CFR 478.11, *adjudicated as a mental defective* is a determination by a court, board, commission, or other lawful authority that a person, as a result of a marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or others; or (2) lacks the mental capacity to contract or manage his own affairs. Further, this term includes: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

A person is "committed to a mental institution" if that person has been formally committed to a mental institution by a court, board, commission, or other lawful authority. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission.

A person is not prohibited by 18 U.S.C. 922(g)(4) if the person received relief from Federal firearms disabilities under 18 U.S.C. 922(g)(4) by:

1. ATF, per 18 U.S.C. 925(c); or
2. A proper Federal or State authority under a relief from disabilities program that meets the requirements of the NICS Improvements Amendments Act of 2007, Public Law (P.L.) 110-180.

Since October 1992, ATF's annual appropriation has prohibited the expending of any funds to investigate or act upon applications for relief from Federal firearms disabilities submitted by individuals. As long as this provision is included in current ATF appropriations, ATF cannot accept or process these applications.

### Adjudicated "Mentally Defective"

The Gun Control Act of 1968 (GCA), 18 U.S.C. 922(g)(4), states that it "shall be unlawful for any person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to

Additionally, a person is not prohibited by 18 U.S.C. 922(g)(4) if the mental health adjudication or commitment was imposed by a Federal department or agency, **and** any of the following actions occurred:

1. Adjudication was set aside or expunged;
2. The individual was fully released from mandatory treatment, supervision, or monitoring;
3. He or she was found to no longer suffer from the disabling mental health condition;
4. The person has been otherwise rehabilitated; or
5. Adjudication or commitment was based solely on a medical finding without opportunity for hearing by the Federal department or agency with proper jurisdiction. (Please see ATF I 3310.4.)

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## Prohibited Persons and Restoration of Gun Rights

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Under the provisions of the Federal firearms laws, there are ten (10) categories of persons who are prohibited from possessing or receiving firearms and ammunition. The GCA, at 18 U.S.C. § 925(c), provides that persons prohibited by Federal law from possessing firearms may apply for relief from Federal firearms disabilities. However, since October 1992, ATF's annual appropriations have prohibited the expenditure of any funds to investigate or act upon applications for relief from Federal firearms disabilities submitted by individuals. Accordingly, ATF cannot accept or process these applications. The current restriction is located in Public Law 111-8.

Persons convicted of a State offense may contact the appropriate State Attorney General's office for information concerning any alternatives that may be available to them, such as an expungement or pardon.

Persons convicted of a Federal offense may apply for a Presidential pardon. You may contact the Office of the Pardon Attorney at [www.usdoj.gov/pardon](http://www.usdoj.gov/pardon), or by calling (202) 616-6070.

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## Serial Numbers

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A primary purpose of the Gun Control Act (GCA) is to enable firearms to be traced from the manufacturer or importer of the firearm through the firearm's sequence of distribution. Federal firearms laws and regulations require that the identifying information contained on firearms be accurately and fully recorded in the acquisition and disposition (A&D) records retained by FFLs. The markings required to be placed on firearms and the records maintained by FFLs are critical in tracing firearms that are used in crimes. Symbols, numbers, and/or letters found in firearms serial numbers often identify model designations and date of manufacture and may include other coded manufacturer data that can be very important to a successful crime-gun trace. Two regulations implementing, respectively, the GCA and the National Firearms Act (NFA), 27 CFR § 478.92 and § 479.102, specify the marking requirements for licensed manufacturers and importers relative to firearms and armor piercing ammunition, and for makers of NFA firearms. Licensees and makers of NFA firearms must legibly and conspicuously mark the firearms with the required markings. The above regulations require markings that legibly identify each firearm. A serial number must consist of an actual number or series of numbers. However, such numbers may be accompanied by a combination of letters. ATF has consistently taken the position that "legibly" marked means using Roman letters (A, a, B, b, C, c, and so forth) and Arabic numerals (1, 2, 3, 4, 5, 6, etc.). ATF has received many questions regarding whether a manufacturer may identify a firearm with an individual's name. This may be done provided it is also marked with a number(s) adjacent to the name (e.g., "adamsgun1234"). In addition, ATF has received numerous requests from Federal firearms licensees about special characters. A legibly marked firearm may also include, but may not be comprised solely of, special characters provided that a variance is requested and approved. We caution that the manufacturer must ensure that the serial number used should be readily located in their A&D records.



**FBI** Federal Bureau of Investigation

**Potential Indicators of Terrorist Activities  
Related to Firearms Shops and Ranges**

**Note:** Neither ATF nor the FBI intends to interfere with an individual’s right to purchase a firearm or deny the Constitutional rights of law-abiding citizens. There may be a perfectly legitimate reason why any of the indicators described below is present; we are counting on you to determine when that is *not* the case.

What Should I Consider Suspicious?	What Should I Do?
<p><b>Related to Individual Appearance, General Behavior, and Communications:</b></p> <ul style="list-style-type: none"> <li>• Alters appearance from visit to visit (beard shaved off, hair color changed, etc.)</li> <li>• Insists on paying with cash or uses credit card(s) in different name(s)</li> <li>• Identification provided is inconsistent or person demands identity privacy</li> <li>• Customer travels illogical distance to purchase a firearm or train/practice at a gun range</li> <li>• Buying a large number of the same or similar model firearms</li> <li>• Attempting to conceal conversations (beyond mere price negotiations)</li> <li>• Acting evasively during conversations or while responding to questions</li> <li>• Individuals who <u>together</u> are interested in learning <u>group</u> tactics</li> <li>• Participants making racist or extreme religious statements</li> <li>• Unusual comments made regarding anti-US, radical theology, vague or cryptic warnings</li> <li>• Interested in using a firearm in a manner inconsistent with the type of weapon being purchased</li> <li>• Purchasing firearms in a way revealing intent to circumvent legal restrictions</li> <li>• Purchasing firearms in a manner meant to avoid the multiple sales reporting requirements</li> <li>• Inquiring about the illegal conversion of firearms</li> <li>• Expressing interest in the deadly force of the firearm beyond the interest typically shown by purchasers</li> <li>• Expressing interest for ammunition which can penetrate law enforcement body armor</li> <li>• Practice of kidnapping or ambush scenarios at ranges</li> <li>• Referring to military/jihad training manuals in a threatening manner</li> </ul> <p><i>It is important to remember that just because someone’s speech, actions, beliefs, appearance, or way of life is different; it does not mean that he or she is suspicious.</i></p> <p><b>Contact your local Joint Terrorism Task Force</b></p>	<p><b>If something seems wrong, notify law enforcement authorities.</b></p> <p><b>Do not jeopardize your safety or the safety of others.</b></p> <p>Preventing terrorism is a <b>community effort</b>. By learning what to look for, you can make a positive contribution in the fight against terrorism. <b>The partnership between the community and law enforcement is <u>essential</u></b> to the success of anti-terrorism efforts.</p> <p>Ask questions about the purchase and the intended use of the firearm. By asking questions, you may prevent a potentially unlawful firearms transaction.</p> <p>Exercise your right to decline a transaction if the customer appears nervous or uneasy, avoids eye contact, or if you are unsure whether the sale is legal.</p> <p>If you have lawfully sold a firearm, ammunition, provided gunsmith services, or firearm training services, and you later uncover any unusual information about your customer, you are encouraged to contact either the ATF or the FBI.</p> <p>Some of the activities, taken individually, could be innocent and must be examined by law enforcement professionals in a larger context to determine whether there is a basis to investigate. The activities outlined on this handout are by no means all-inclusive but have been compiled from a review of terrorist events over several years.</p>

Each indicator listed above, is by itself, lawful conduct or behavior and may also constitute the exercise of rights guaranteed by the U.S. Constitution. In addition, there may be a wholly innocent explanation for conduct or behavior that appears suspicious in nature. For this reason, no single indicator should be the sole basis for law enforcement action. The totality of behavioral indicators and other relevant circumstances should be evaluated when considering any law enforcement response or action.

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## Marking of Conversion Devices by Manufacturers

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It is important that manufacturers of devices designed and intended to convert a firearm from semiautomatic to fully automatic fire have a thorough understanding of the markings that must appear on the devices they produce. The NFA's definition of a machinegun includes parts designed and intended to convert a firearm to automatically shoot more than one shot, without manual reloading, by a single function of the trigger.

NFA supporting regulations in Title 27, Code of Federal Regulations, § 479.102, require manufacturers of conversion devices, often known as auto sears, to mark the sears they produce with the same markings required of any other type of NFA firearm. Those markings include:

1. **Serial Number** – must be located on the frame/receiver of the firearm and cannot be duplicated.
2. **Name of Manufacturer** – as it appears on the manufacturer's license.
3. **City and State of Manufacturer** – or recognized abbreviation.
4. **Model** (if designation available).
5. **Caliber or Gauge**.

**All markings other than the serial number must conspicuously appear on the frame/receiver, barrel, or slide of the firearm.**

Manufacturers must engrave, cast, stamp (impress), or otherwise conspicuously place their markings at a depth of no less than .003" and in text with a letter height of no less than 1/8". Serial numbers must not be susceptible to being readily obliterated, altered, or removed, and must not duplicate any serial number placed by the manufacturer on any other firearm.

The marking requirements apply to all NFA firearms manufactured or imported into the United States and apply regardless of the size of the firearm. Due to the small size of sears, placing all required markings on them in accordance with regulatory requirements may be difficult to achieve, but sear manufacturers may not deviate from marking requirements without an approved marking variance from ATF's Firearms Technology Branch (FTB).

To request a marking variance, a manufacturer must submit a written request to the Chief, Firearms Technology Branch, 244 Needy Road, Martinsburg, WV 25405. A request for a sear marking variance must contain the following information:

- The name of the manufacturer.
- The type/style of firearm (for example, AR15 drop-in auto sear, H&K conversion sear, etc.).
- The model, if assigned.
- The serial number scheme that will be used.
- Copy of the manufacturer's Federal firearms license and Special Occupational Tax stamp.
- While not a requirement, submission of a drawing or schematic of how the markings will be applied and where they would appear on the sear will assist in ATF's consideration of the request.

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## Prohibition on Obliterating, Removing or Changing the Markings on an NFA Firearm

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ATF reminds National Firearms Act (NFA) registrants and special (occupational) taxpayers, that pursuant to Section 5861(g) of the NFA, it is unlawful "to obliterate, remove, change, or alter the serial number or other identification of a firearm required by the chapter. Further, § 5861(h) makes it unlawful "to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered." Section 5842 of the NFA requires that each firearm manufactured, imported, or made be identified by a serial number, the name of the manufacturer, importer or maker, and "other identification" as prescribed by the regulations. The additional marking requirements are prescribed by 27 CFR § 479.102 and include the model of the firearm, caliber or gauge, name of the manufacturer or importer of record, and the city and State of the manufacturer who made the firearm or name of the country in which the firearm was manufactured.

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## Address for Reports of Multiple Sale or Other Disposition of Pistols and Revolvers Address

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ATF has set up a new mailbox for FFLs to submit [Reports of Multiple Sale or Other Disposition of Pistols and Revolvers, ATF F 3310.4](#) to the National Tracing Center (NTC). The e-mail address is: [MultipleHandgunSalesForms@atf.gov](mailto:MultipleHandgunSalesForms@atf.gov). Licensees have the responsibility to assure transmission of the e-mail message (i.e., no error notification). The NTC will automatically send a confirmation receipt when the ATF F 3310.4 is received via e-mail.

This additional method for submitting the F 3310.4 must be used not later than the close of business on the day the multiple sales or other disposition occurs. The form is available online in a fillable format and must be submitted in an electronic readable format, such as PDF or JPEG. Each form must be submitted individually.

Licensees are reminded that they must maintain a copy of the ATF F 3310.4, and attach it to the ATF F 4473 upon the delivery of the pistols and revolvers.

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## Transferring Firearms from One A&D Record to Another

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If a licensee is transferring a firearm from one acquisition and disposition (A&D) record (e.g., an old book) to another, he/she should enter the date the transfer occurs, as well as the book name/number, page number, and line number, on the disposition side of the A&D record in the old book. In the new book, the licensee should record the description of the firearm and original receipt information (original date and name and address, or name and license number from whom the firearm was received). Licensees must ensure that each firearm is logged out of one A&D record before it is entered into another to prevent multiple entries without corresponding disposition information. In addition, licensees must retain the old A&D books in accordance with the 20 year retention period specified in the regulations.

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## C&R Licensees: Out-of-Business Requirements

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ATF receives numerous inquiries concerning record-retention requirements applicable to holders of Collector of Curios or Relics (C&R) licenses that discontinue their collection activities and do not renew their licenses. If someone who held a C&R FFL is no longer a licensee, then he or she is no longer required to comply with ATF regulation of licensees, which includes the record retention requirement specified in 27 CFR 478.129(e). In addition, C&R licensees are not required to submit their A&D records to the ATF Out-of-Business Records Center. However, we suggest that all C&R records be retained for future reference.

Additionally, there may be State laws pertaining to C&R FFLs. C&R licensees should contact the appropriate State attorneys general office or other appropriate State agencies to inquire about these laws. A list of State attorneys general offices, with contact information, may be found at <http://www.naag.org>.

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## Are You Moving?

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Licensees who move their licensed premises to a different location during the term of an existing license must notify ATF at least 30 days prior to the move. Licensees must notify ATF of their move by submitting the [Application for an Amended Federal Firearms License, ATF F 5300.38](#), along with their original license, to the Federal Firearms Licensing Center (FFLC) in accordance with the instructions on the form. ATF recommends that licensees maintain a copy of the license as part of their records prior to mailing the original license to the FFLC. Licensees should be aware that a license is only valid at the licensed premises and qualifying gun shows or events within the State specified on the license. The existing license cannot be used at the new address. If a licensee moves and fails to notify ATF of the move, the licensee may not conduct business at the new premises until a new license is received.

If FFLs have questions about the license amendment application (ATF F 5300.38), they may contact the Federal Firearms Licensing Center at (866) 662-2750 or with a local ATF office. A listing of ATF office phone numbers may be found at <http://www.atf.gov/field/>.

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## Most Recent Open Letters

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**Iowa** – Iowa permits to acquire handguns and Iowa permits to carry concealed handguns and concealed weapons qualify as alternatives to the background check required by the Brady law. This determination includes Iowa's Professional Permit to Carry Weapons, Iowa Code § 724.6, and Nonprofessional Permit to Carry Weapons, Iowa Code § 724.7.

**Kansas** – FFLs in Kansas should be aware that only Kansas licenses to carry a concealed handgun issued on or after July 1, 2010 qualify as alternatives to the background check. If an unlicensed person presents a Kansas license to carry a concealed handgun **issued prior to July 1, 2010**, the FFL must conduct a background check prior to transferring the firearm. Please be advised that the current letter dated April 8, 2011, supersedes any earlier letters.

**Nebraska** – A Nebraska Concealed Handgun Permit qualifies as an alternative to the NICS check required by the Brady Law. The permit must have been issued in the past five (5) years, and be valid (not expired) at the time of the transaction. Please be advised that current open letter supersedes any earlier determinations.

**Washington** – A Washington concealed pistol license **issued on or after July 22, 2011**, qualifies as an alternative to the background check required by the Brady Law.

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## On-Site Responsible Persons

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Pursuant to its authority in the GCA, as amended, ATF requires applicants for Federal firearms licenses to furnish identifying information including, name, date of birth, place of birth, photographs, and fingerprint cards for each individual owner, partner, and other *Responsible Person* in the business. Responsible persons must pass an ATF-initiated NICS background check prior to issuance or renewal of this license. In addition to a sole proprietor, a Responsible Person is, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the corporation, partnership, or association as they pertain to firearms. In general, corporate officers and directors are Responsible Persons. Majority shareholders and office managers are also generally Responsible Persons.

When ATF performs an inspection of a license applicant or license holder, it requires a Responsible Person to meet with an ATF investigator and sign documents on behalf of the business. When an applicant or licensee makes decisions about which employees to designate as Responsible Persons with ATF, it is imperative that at least one employee who is physically present at the premises location be identified. While this is not an issue for single-location licensees, firearms businesses with multiple locations overseen from a home office or corporate headquarters should bear in mind the need to designate at least one employee at each business location as a Responsible Person. District managers and corporate officers generally will not suffice as the sole responsible persons for remote store locations because of their geographic separation from the business premises, the firearms inventory, and ATF records kept there. In addition, remote personnel will likely be absent during unannounced ATF compliance inspections, which sometimes may be concluded within a single business day. A district manager or corporate officer permanently assigned to and based at a licensed premises location could serve as the sole Responsible Person for that location.

ATF will require at least one Responsible Person at each business premise to be identified and cleared prior to issuing or renewing Federal firearms licenses. ATF will share the results of inspections and document any necessary corrective actions and corrective action deadlines with on-site Responsible Persons. This policy does not preclude off-site Responsible Persons from representing a store in regulatory matters with ATF, but it will help ensure that ATF has immediate access to a Responsible Person at each licensed business premises that it inspects, or from which urgent trace data may be requested. Questions about this requirement should be directed to the Federal Firearms Licensing Center at (866) 662-2750.

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## Guidance to FFLs Affected by Flooding and Other Natural Disasters

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ATF has developed an informational brochure and a video designed to offer guidance to Federal firearms licensees who will be or are affected by flooding and other natural disasters. The brochure, "*Disaster Preparedness for Federal Firearms Licensees*", ATF Publication 3317.7; can be found at: [www.atf.gov/publications/download/p/atf-p-3317-7.pdf](http://www.atf.gov/publications/download/p/atf-p-3317-7.pdf).

The video entitled, “*Disaster Preparedness*,” can be found at [ATF Online - Training - Firearms - ATF Online Educational Seminars](#).

If you have any questions concerning what you can do to prepare for a disaster, please contact your local ATF field office or call ATF’s 24-hour hot line at (800) 800-3855. Further information about ATF can be found at: [www.atf.gov](http://www.atf.gov).

## Looking for Past Newsletters?

In an effort to keep FFLs abreast of changing firearms laws and regulations, ATF provides ready access to *FFL Newsletters*. Previous editions of the *FFL Newsletters* are available on ATF’s Web site at: <http://www.atf.gov/publications/newsletters/>

## FBI/NICS News

[How to comply with recordkeeping requirements when there is a change to the response initially received by the National Instant Criminal Background Check System \(NICS\) during a background check for a firearm transfer pursuant to 18 U.S.C. §922\(t\)](#)

Federal law requires, with limited exceptions, that Federal firearms licensees (FFLs) conduct background checks prior to transferring a firearm to a nonlicensee. Also, the FFL is required to record the initial response received from the National Instant Criminal Background Check System (NICS) or the appropriate State agency in a Point of Contact (POC) State on the ATF Form 4473, Firearms Transaction Record (Form 4473). Generally, an FFL may rely on a NICS or POC check conducted only for use in a single transaction and for a period not to exceed 30 calendar days from the date that NICS or POC was originally contacted. If the “proceed” response and the firearm transfer occur within 30 days of the date NICS or the POC were originally contacted, the FFL is not required to complete a new Form 4473. However, if the “proceed” response is received or the purchaser picks up the firearm more than 30 days after the initial background check was conducted, the licensee **must** complete a new Form 4473 and conduct a new NICS or POC check.

### NICS Toll-Free Number to Show on Caller Identification (ID)

The NICS Section is always open to your ideas and suggestions. We frequently receive requests to have the NICS Section’s toll free number appear on caller ID. We have arranged for this change to be implemented soon. When receiving a call from a NICS representative, you will see “1-877-324-6427” as long as your telecommunications provider allows it.

One exception to this change has already been identified. When the NICS Section or the NICS Contracted Call Center dials a West Virginia telephone number, the caller ID will display either “304” or “877.”

### NICS E-Check Digital Certificate Expiration Date

Attention FFL NICS E-Check Users: The NICS Section sends a reminder to renew your NICS E-Check digital certificate via e-mail 30, 15, and 7 days prior to the expiration date of the digital certificate. If you have not received these notices in the past, you may want to check your spam e-mail. Also, in order to receive these reminders, it is very important to keep your e-mail address up to date with the NICS Section. NICS Customer Service Representatives are available to assist in updating your e-mail address in FBI NICS records, and/or with additional questions concerning the NICS E-Check Digital Certificate if you call 1-877-FBI-NICS (324-6427), option 3.

### Please Keep Your FFL Contact Information Up to Date

If the NICS Section needs to contact your business, do we have the correct contact information on file for you? When your Federal Firearms License contact information changes, there are two agencies to contact: The ATF Federal Firearms Licensing Center at 1-866-662-2750, and the NICS Section’s Customer Service Center at 1-877-FBI-NICS (324-6427), Option 2.

## FBI/NICS News (cont'd.)

### NICS Call Center Representatives Seek Status Validation

In August 2010, the NICS Contracted Call Centers began asking the following question at the end of each background check:

Can you verify the status I provided was a **Proceed** or **Transfer**?

This question has been established to minimize discrepancies while conducting a NICS background check initiated through the NICS Contracted Call Centers. By reiterating the status provided, the FFL will help eliminate erroneous status documentation.

### Notification of a NICS Web site for Appeal and Voluntary Appeal File (VAF) Applicants

The NICS Section has deployed a Web site for customers wishing to appeal a denied transaction or submit a Voluntary Appeal File (VAF) application on a delayed transaction. Previous NICS appeal e-mail addresses [nicsappeals@leo.gov](mailto:nicsappeals@leo.gov) and [nicsapps@leo.gov](mailto:nicsapps@leo.gov) will no longer be accepting appeal requests. All electronically submitted appeal requests must be made through the NICS Appeal Web site at <http://www.fbi.gov/nics-appeals>. The NICS appellant or VAF applicant will need to follow the step-by-step instructions on how to submit an appeal or VAF request. An Appeal or VAF Request Form must be completed with all **mandatory fields** filled in prior to being able to print or electronically submit the request.

### Modification to the NICS Process

As of May 2, 2011, the NICS Contracted Call Center is no longer asking if there are additional countries of citizenship on question 14 of the ATF Form 4473, if United States is marked on the form.

### Processing a NICS Denied Transaction When a Final Status is Provided by the NICS Section

As of May 2, 2011, the NICS Section began a pilot project requesting the following from all denied individuals, phrased as follows:

- Please provide the denied individual's address
- Was this transaction conducted at a gun show?
- If yes, please provide the location (city and state) of the gun show

### NICS Going Green

In the effort to "go green," the NICS FFL Manual with attachments will be provided to new FFLs at [www.fbi.gov/nics](http://www.fbi.gov/nics). Tentatively scheduled to deploy in late summer/early fall of 2011, the ATF Distribution Center will no longer send a new FFL the hard copy of the FFL Manual with attachments. Instead, as scheduled tentatively for late summer/early fall of 2011, the FFL will receive a letter of explanation and guidance, the FFL NICS E-Check Enrollment Form (OMG No. 1110-0026), FFL Officer/Employee Acknowledgement of Responsibilities form/instructions (OMB No. 1110-0026), and the NICS FFL Quick Reference Guide. For those FFLs without Internet or printer access, the explanatory letter instructs them to contact the NICS FFL Liaison Specialist at (304) 625-7387 for a hard copy of the NICS FFL Manual with Attachments.