

**LETTER TO STATES WITH PERMITS THAT APPEAR TO QUALIFY AS  
ALTERNATIVES TO NICS CHECKS**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has advised Federal firearms licensees in your State that certain permits to possess, acquire, or carry firearms qualify as exceptions to the background check requirements of the Brady law. The purpose of this letter is to remind States of the conditions set forth under Federal law for permits that qualify as Brady alternatives and to offer ATF's assistance in helping States ensure that these requirements are being met. So that we may more effectively assist you, we are asking each permit State to provide additional information to ATF regarding the issuance of qualifying permits.

**Background**

The Brady law, 18 U.S.C. § 922(t), generally requires licensed importers, manufacturers, and dealers to initiate a background check through the National Instant Criminal Background Check System (NICS) before transferring a firearm to an unlicensed individual. While the Federal Bureau of Investigation (FBI) administers NICS, ATF is responsible for enforcing the provisions of § 922(t) and for advising licensees in order to ensure compliance with the requirements of the Brady law.

**Minimum Requirements for Permits Qualifying as  
Exceptions to the Background Check Requirements of the Brady Law**

The Brady law and its implementing regulations provide certain exceptions to the NICS check requirement, including an exception applicable to holders of certain State permits to possess, carry, or acquire firearms. See 18 U.S.C. § 922(t)(3) and 27 C.F.R. § 478.102(d)(1). Permits issued within the past 5 years by the State in which the transfer is to take place may qualify as alternatives to a NICS check, as long as certain other requirements are satisfied. Most importantly, the law of the State must provide that such a permit is to be issued only after an authorized government official has verified that the information available to such official, including NICS results, does not indicate that possession or receipt of a firearm by the applicant would be in violation of Federal, State, or local law.

The permanent provisions of the Brady law took effect on November 30, 1998. Prior to that date, ATF sent open letters to licensees in each State, advising them whether State permits would qualify as alternatives to the background check required under the Brady law. ATF's recognition of certain permits granted by your State as Brady alternatives was based on assurances from your State that State law, regulations, and/or written policies required permit officials to conduct NICS checks prior to the issuance and renewal of these permits and, also, to deny a permit to anyone prohibited under Federal, State, or local law.

### **Federal Prohibition on Possession of Firearms by Nonimmigrant Aliens**

On February 5, 2002, ATF published temporary regulations implementing the statutory provisions prohibiting the possession or receipt of firearms by nonimmigrant aliens, subject to certain exceptions. In an open letter dated July 23, 2002, ATF advised the permit States that in order to satisfy the standards set forth in the Brady law and its implementing regulations, certain queries must be initiated for non-U.S. citizen applicants as part of the NICS check performed prior to the issuance of a qualifying permit. The steps for initiating these queries are set forth in the open letter, a copy of which is enclosed for your reference. The open letter explained that these additional steps were now considered an integral part of the NICS check for individuals who are not citizens of the United States. ATF explained that a NICS check that does not include the appropriate queries for non-U.S. citizens would not satisfy the standards set forth in ATF's regulations for qualifying permits.

Consequently, the July 23<sup>rd</sup> letter advised the permit States that in order to conduct a complete NICS check, the State had to solicit the following information from permit applicants: First, the issuing authority must determine if the applicant is a citizen of the United States. If the applicant is not a U.S. citizen, the issuing authority was instructed to obtain information about the applicant's country of citizenship, place of birth, and alien or admission number. Finally, if applicable, the issuing authority would have to determine the basis for the applicant's claimed exception from the nonimmigrant alien prohibition.

The letter recognized that it might take time to revise State permit application forms to obtain the necessary information from applicants who are not U.S. citizens. As an interim measure, ATF attached a document that States could use as an attachment to their permit application forms. The letter concluded by advising that ATF would be contacting the permit States in the near future to learn how they were complying with these new requirements.

### **Ensuring Compliance with Requirements for Qualifying Permits**

In the fall of 2002, ATF officials contacted the qualifying permit States, in order to verify their compliance with the procedures set forth in the July 23<sup>rd</sup> open letter. The results of that outreach program indicated a lack of consistency in the procedures used by the permit States to ensure that qualifying permits are not issued to individuals prohibited from possessing or receiving firearms under Federal, State, or local law. In particular, many States that issue qualifying permits had not yet amended their procedures to reflect the new requirements regarding nonimmigrant aliens.

Moreover, it appeared that although some States were taking all the necessary steps when they initially issued permits, they were not conducting a NICS check at the time of renewal. In order for a State's permits to qualify as a NICS alternative, NICS checks also must be conducted before renewal permits are issued.

Based on the results of this informal outreach to the permit States, ATF requires additional information from these States to effectively monitor their compliance with the requirements for qualifying permits specified in Federal law and regulations. Accordingly, we are asking that you send a written response to ATF, within 30 days of the date of this letter, explaining how your State licensing authority complies with the minimum requirements for qualifying permits under the Brady law and its implementing regulations. Conversely, if you believe that your State's procedures do not currently comply with these requirements, please indicate any remedial steps that your licensing authority plans to take to bring those procedures into compliance, as well as the anticipated date for achieving such compliance.

Responses to ATF should include the name(s) and contact information for the individual(s) responsible for ensuring that NICS checks are conducted prior to the issuance and renewal of all qualifying permits and confirmation that applications are denied if the applicant is prohibited from possessing or receiving firearms under Federal, State, or local law. In addition, the letter should specifically address how your State's procedures ensure, or soon will ensure, that qualifying permits are not issued to nonimmigrant aliens who are prohibited from possessing firearms under Federal law. In addition, please let us know if your permit application asks for place of birth from all persons, both U.S. citizens and non-U.S. citizens. Furthermore, please inform us if your State conducts a NICS check prior to renewing qualifying permits.

Finally, we ask that the reply set forth any steps that your State permit authorities are taking to determine if individuals with qualifying permits have subsequently incurred firearms disabilities. In other words, let us know if your State has a procedure that (1) would enable permit authorities to find out if the holder of a qualifying permit is convicted of a felony, or otherwise becomes prohibited from possessing or receiving a firearm and (2) would revoke the permits of such prohibited persons. Please note that current regulations do not require such a procedure as a condition for recognizing a permit as a Brady alternative.

Please send your responses to: Mr. James A. Zamillo, Sr.  
Chief, Firearms Programs Division  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
650 Massachusetts Avenue, NW.  
Washington, DC 20226

You also may fax your response to the attention of Mr. Zamillo at 202-927-7685 or e-mail it to his attention at: [FEA@ATF.GOV](mailto:FEA@ATF.GOV).

### **Conclusion**

ATF looks forward to continuing to work with your State to ensure that prohibited persons do not obtain qualifying permits that would enable them to bypass a background check under the Brady law. However, please be aware that if a State's permit authority is not able to meet the minimum requirements set forth under the Brady law and its implementing regulations, the permits issued by that State may no longer qualify as alternatives to a background check under the Brady law.

Thank you for your prompt attention to this important matter. Please let us know if ATF may assist you in training your permit authorities on the requirements of the Federal firearms laws, or if you need further information on permit-related issues. If you have any questions about this letter, you may contact the ATF Firearms Programs Division at (202) 927-7770.

Sincerely yours,

John P. Malone  
Assistant Director  
(Firearms, Explosives and Arson)

Enclosure

Paperwork Reduction Act Notice:

This request is in accordance with the Paperwork Reduction Act of 1995. The purpose of this information collection is to ensure that only State permits that meet the statutory requirements contained in the Gun Control Act (18 U.S.C. §§ 921-931) qualify as alternatives to a National Instant Criminal Background Check System Check.

The estimate average burden associated with this collection of information is 1 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Regulations and Procedures Division, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

P: Roth/openlettertopermitstates.doc