

# 14-0036-cv(L), 14-0037-cv(XAP)

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## United States Court of Appeals *for the* Second Circuit

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WILLIAM NOJAY, THOMAS GALVIN, ROGER HORVATH, BATAVIA MARINE & SPORTING SUPPLY, NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC., WESTCHESTER COUNTY FIREARMS OWNERS ASSOCIATION, INC., SPORTSMEN'S ASSOCIATION FOR FIREARMS EDUCATION, INC., NEW YORK STATE AMATEUR TRAPSHOOTING ASSOCIATION, INC., BEDELL CUSTOM, BEIKIRCH AMMUNITION CORPORATION, BLUELINE TACTICAL & POLICE SUPPLY, LLC,

*Plaintiffs-Appellants-Cross-Appellees,*

*(For Continuation of Caption See Inside Cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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**BRIEF OF EMPIRE STATE ARMS COLLECTORS, INC.  
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-  
APPELLANTS-CROSS-APPELLEES**

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PALOMA A. CAPANNA, ATTORNEY  
*Attorney for Amicus Curiae*  
633 Lake Road  
Webster, New York 14580  
(585) 377-7260

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– v. –

ANDREW M. CUOMO, Governor of the State of New York, ERIC T.  
SCHNEIDERMAN, Attorney General of the State of New York, JOSEPH A.  
D’AMICO, Superintendent of the New York State Police,

*Defendants-Appellees-Cross-Appellants,*

FRANK A. SEDITA, III, District Attorney for Erie County,  
GERALD J. GILL, Chief of Police for the Town of Lancaster, New York,  
LAWRENCE FRIEDMAN,

*Defendants-Appellees.*

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**DISCLOSURE OF CORPORATE AFFILIATIONS  
AND FINANCIAL INTEREST**

Empire State Arms Collectors, Inc. is a New York Domestic Not for Profit Corporation, and has no parents, subsidiaries, or affiliates that have issued shares of debt securities to the public.

/s/ Paloma A. Capanna  
Paloma A. Capanna, Attorney  
*Attorney for Amicus Curiae*  
*Empire State Arms Collectors, Inc.*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
INTEREST OF AMICUS CURIAE .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	4
I. Any provisions of the Act that adds state-based compliance tasks upon Federal Firearms Licensees, which are already operating within a federal compliance system, are excessive burdens more likely to decrease public safety than to enhance it.	
II. Using a strict scrutiny analysis, several provisions of the Act must be struck down as imposing a substantial burden upon the fundamental rights of FFLs and individuals without an exceedingly persuasive, offsetting benefit.	
CONCLUSION .....	38

**TABLE OF AUTHORITIES**

**CASES**

*Arriaga v. Mukasey*, 521 F.3d 219 (2d Cir. 2008) ..... 19

*District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783,  
171 L.Ed.2d 637 (2008) ..... 17, 18, 23, 30, 34, 35, 36, 37

*Kolender v. Lawson*, 461 U.S. 352, 103 S.Ct. 1855,  
75 L.Ed.2d 903 (1983) ..... 19

*Kwong v. Bloomberg*, 723 F.3d 160 (2013) ..... 36

*McDonald v. City of Chicago*, 561 U.S. 742, 130 S.Ct. 3020,  
177 L.Ed.2d 894 (2010) ..... 30, 36

*N.Y. State Rifle & Pistol Ass’n. v. Cuomo*, 2013 U.S. Dist.  
LEXIS 182307.<sup>1</sup> ..... 18, 33, 34, 36

*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1,  
93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) ..... 31

*United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012), *cert. denied*,  
133 S.Ct. 838, 184 L.Ed.2d 665 (2013) ..... 21

*United States v. Grace*, 461 U.S. 171, 103 S.Ct. 1702,  
75 L.Ed.2d 736 (1983) ..... 36

*United States v. Miller*, 307 U.S. 174, 59 S.Ct. 816,  
83 L.Ed. 1206 (1939)..... 17

*United States v. Virginia*, 518 U.S. 515, 116 S.Ct. 2264,  
135 L.Ed.2d 735 (1996) ..... 33, 34

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<sup>1</sup> Also available at SPA-1.

*Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746,  
105 L.Ed.2d 661 (1989)..... 35

*White River Amusement Pub, Inc. v. Town of Hartford*, 481 F.3d 163  
(2d Cir. 2007) ..... 32

**STATUTES, REGULATIONS – Federal**

U.S. Const. Art. I, Sec. 8, Clause 3..... 2, 5, 31, 36, 38

U.S. Const. Amend. II..... 2, 3, 4, 5, 30, 36, 37, 38

Pub.L. 110-180, “NICS Improvement Amendments Act of 2007” ..... 24

Pub.L. 103-159, “Brady Handgun Violence Prevention Act of 1993” ... 12

Pub.L. 74-474, “The National Firearms Act of 1934” ..... 17

26 U.S.C. §5845(b) ..... 17

26 U.S.C. §5811 ..... 17

26 U.S.C. §5812..... 17

18 U.S.C. §922(b)(2) ..... 5, 9

18 U.S.C. §§922(b)(4) ..... 17

18 U.S.C. §922(g)(1)-(9) ..... 9

18 U.S.C. §922(n) ..... 9

18 U.S.C. §922(o) ..... 17

18 U.S.C. §922(t)(1) ..... 8

18 U.S.C. §922(t)(1)(B)(ii) .....	10
18 U.S.C. §922(t)(5) .....	11, 13
27 CFR §478.21 .....	9
27 CFR §478.23 .....	13
27 CFR §478.31 .....	20
27 CFR §§478.73 – 478.78 .....	15
27 CFR §478.94 .....	20
27 CFR §478.99(b)(2).....	5, 9
27 CFR §478.124 .....	9
27 CFR §478.124(c)(5).....	11
27 CFR §478.125(e) .....	13
27 CFR §478.127 .....	11
27 CFR §478.128 .....	13
27 CFR §478.129(b) .....	11
28 CFR §25.4 .....	12, 23
28 CFR §25.6(a) .....	12
28 CFR §25.6(j) .....	12

**STATUTES, REGULATIONS – New York**

N.Y. Gen. Bus. L. §898 .....	4, 38
N.Y. Gen. Bus. L. §898(4).....	27

N.Y. Penal Law §16-A ..... 4, 38

N.Y. Penal Law §265.00(22), ver. Laws of New York, 2013,  
Chapter 1..... 4, 36, 38

N.Y. Penal Law §265.00(22), ver. Laws of New York, 2000,  
Chapter 189..... 19

N.Y. Penal Law §265.00(22)(h) ..... 19

N.Y. Penal Law §400.02..... 4, 38

N.Y. Penal Law §400.03..... 4, 21, 38

N.Y. Penal Law §400.03(6)..... 12

**LEGISLATIVE RECORD – State**

NYS Assembly, “Live Stream of Legislative Proceedings: Archived  
Videos (1-15-13 Session) ..... 16, 34

NYS Senate, “Session: Senate Session 01-14-13” ..... 16

NYS Senate, Rules Committee, “Committee Meeting: Rules  
Meeting” (January 14, 2013)..... 17

**GUIDANCE DOCUMENTS – Federal**

ATF Proc. 2013-1, “Recordkeeping and background check procedures  
for facilitation of private party firearms transfers” ..... 27, 28

**AGENCY REPORTS – Federal**

ATF, “Listing of Federal Firearms Licensees – 2014  
(downloadable by state)” ..... 6



ATF, “Total NICS Background Checks (November 30, 1998 – March 31, 2014) ..... 9, 21

ATF Fact Sheet, “Federal Firearms License Revocation Process” (February 2013) ..... 15

ATF Fact Sheet, “FFL Compliance Inspections” (February 2013)..... 14

ATF, “Report of Active Firearms Licenses” (February 11, 2014)..... 5

Bureau of Justice Statistics, “State-by-State Summaries for FY 2013 NICS Act Record Improvement Program (NARIP)” ..... 24

FBI, “Active Records in the NICS Index (updated as of March 31, 2014)” ..... 10

FBI, “National Crime Information Center” ..... 10

FBI, “NICS Firearm Background Checks (Year 2013)” ..... 9

**AGENCY FORMS – Federal**

ATF Form 4473 (rev. April 2012), “Firearms Transactions Record Part I – Over-the-Counter” ..... 9, 11, 13, 17

**OTHER**

National Center for State Courts, “State Records Estimates Development and Validation Project” (September 30, 2010)..... 25

New York State Police, Office of Division Counsel, “Guide to the New York Safe Act for Members of the Division of State Police (September 2013) ..... 16

Amicus Curiae Empire State Arms Collectors Association respectfully submits this Amicus Curiae Brief in support of the Plaintiffs in the appeal currently pending before this Circuit Court.

All Parties have consented to the filing of this Brief.

### **INTERESTS OF AMICUS CURIAE<sup>1</sup>**

Empire State Arms Collectors Association, Inc. is a not for profit corporation in Rochester, New York, which hosts the Rochester Gun Show. Founded in 1964, the Empire State Arms Collectors Association comprises nearly 3,000 members, including Federal Firearms Licensees and individuals. The Empire State Arms Collectors Association has a strong interest in this case because the law at issue here violates the constitutional rights of the association and its many members engaged in commerce as FFLs and otherwise wishing to exercise their Second Amendment rights.

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<sup>1</sup> In accordance with Local Rule 29.1(b), the Amicus states that no Party's Counsel authored this Brief in whole or in part, no Party or Party's Counsel contributed money that was intended to fund preparing or submitting the Brief, and no person other than the Amicus, its Board of Directors, or its Counsel contributed money that was intended to fund preparing or submitting this Brief.

## SUMMARY OF ARGUMENT

Within the broader issues presented by this case is the watershed question about the relationship between the Commerce Clause and the Second Amendment, for the modern firearm is a product that must be permitted to reach the consumer if our fundamental rights are to have meaning beyond the theoretical. The impact of the Act is a *de facto* ban on the modern firearm, whether framed through a commercial analysis or a civil liberties analysis. Several provisions of the Act must be deemed unconstitutional under a strict scrutiny analysis because they are excessive burdens to the exercise of fundamental liberties. Nothing about these provisions will enhance public safety beyond the existing federal compliance system.

Businesses which engage in commerce involving firearms and ammunition are required to have a Federal Firearms License and to adhere to strict compliance mandates. The federal compliance system has been operative for decades and extends through several agencies. The leading defense against illegal firearms transactions is the federal NICS background check. The federal government has expended tremendous resource into the

debate, design, development, and administration of these, and other, federal FFL compliance mandates.

By contrast, the State has historically focused on illegal gun use in local crimes. In 2013, through the New York Secure Ammunition and Firearms Enforcement Act (“the Act”), the State advanced expansive legislation for which it had no policy foundation, no readiness to execute, and no qualifications to undertake. The State’s crime-based mentality is ill-suited to the compliance activities the State sought to hoist onto FFLs. The State has failed to appropriately participate in federal opportunities to bolster federal compliance initiatives. Since the passage of the Act, the State has predictably been unable to demonstrate core competencies in the execution of various of its own new programs.

It is critical to the vitality of our individual rights under the Second Amendment for this Court to strike down at least four specific provisions from the Act.

## ARGUMENT

**I. ANY PROVISIONS OF THE ACT THAT ADD STATE-BASED COMPLIANCE RESPONSIBILITIES UPON FEDERAL FIREARMS LICENSEES, WHICH ARE ALREADY OPERATING WITHIN THE FEDERAL COMPLIANCE SYSTEM, ARE EXCESSIVE BURDENS MORE LIKELY TO DECREASE PUBLIC SAFETY THAN TO ENHANCE IT.**

Among the Appellants are Bedell Custom, Beikirch Ammunition Corporation, and Blueline Tactical & Police Supply, LLC, each of which is a Federal Firearms Licensee (“FFL”). We share their concerns.

Without repeating their arguments, we focus our objections around four provisions that are part of the Act, specifically, the definition of “assault weapons” (Penal Law §265.00(22)), the registration of “assault weapons” (Penal Law §16-A and §400.02), the use of the FFL for background checks in private gun sales (General Business Law §898), and the use of the FFL for ammunition background checks (Penal Law §400.03). These provisions are effective impediments to the commerce rights of the FFL, and, consequently, to fundamental, individual rights under the Second Amendment of the U.S. Constitution.

The firearm is the only consumer product guaranteed to the American people as a matter of constitutional law. You can read through the entire Constitution and the Bill of Rights, and you will find only one consumer product mentioned: “arms.” U.S. Constitution, Amend. II.

Because the product in which we engage for commerce purposes is the firearm, we consider our rights under the Commerce Clause to be inextricably interwoven with the Second Amendment. U.S. Const. Art. I, Sec. 8, Clause 3. No other business can make a constitutional claim of serving such a vital purpose for the people of our nation. FFLs represent the bridge between the theoretical and the actual with respect to our fundamental right to bear arms.

**A. The typical FFL in New York is a small, independent dealer, already actively fulfilling extensive federal compliance mandates.**

It is unlawful for any licensed importer, manufacturer, dealer, or collector to sell or deliver any firearm or ammunition to any person who is prohibited from receiving the same in violation of any federal, state, or local law. 18 U.S.C. §922(b)(2); 27 CFR §478.99(b)(2). In a nutshell, the FFL is

already a highly regulated participant in lawful firearms transactions and is already the front line against firearms purchases by disqualified persons.

FFLs operating in New York fall into two categories: huge and small. There are 4,171 FFLs in New York, subcategorized as 1,721 dealers (FFL-01), 165 manufacturers of firearms (FFL-07), 45 manufacturers of ammunition (FFL-06), and 30 import/export operations (FFL-08). ATF, “Report of Active Firearms Licenses” (dated February 11, 2014), ADD-2.<sup>2</sup> There are, additionally, 2,195 collectors (FFL-03). *Id.* The range of dealers includes interstate commercial operations, such as Wal-Mart and Dick’s Sporting Goods, Inc. Likewise, there are massive manufacturing operations like Remington Arms Company, LLC. Many FFLs are small businesses with less than 20 employees. A fair number are sole proprietors or family-run operations. ATF, “Listing of Federal Firearms Licensees – 2014 (downloadable by state),” available at <https://www.atf.gov/content/firearms/firearms-industry/listing-FFLs>.

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<sup>2</sup> This and other documents so noted are supplied for the convenience of the Court at the Addendum to this Brief, signified “ADD-##.”

The individuals who comprise the Empire State Arms Collectors personally know the owners and operators of the few other gun shows across the state and many of the FFL dealers that rent booths at our shows. As a direct result of the Act, a number of FFLs went out of business.

Additionally, several, larger FFL manufacturers and import/exporters relocated out of state, among them American Tactical Imports, Inc., Kahr Arms, and AR15.com.

Overnight, Empire State Arms Collectors lost long-standing vendors from its annual gun shows, both FFLs based in New York and those which are from other states. FFL dealers are sufficiently chilled as to ask us that their name not appear in this Amicus Brief out of fear that any critical remark about the Act could result in government retaliation, audit bullying, and being turned into some kind of an “example.” The typical FFL does not have in-house counsel, and some out-of-state FFLs tell us the lawyers with which they consulted advised that the risk is simply too high to do business as an FFL in New York. Effectively, because New York is a gateway to Massachusetts and New England, the impact of the Act has also cut off commerce going to gun shows in those states. This is the climate of fear that



impedes valuable interstate commerce in arms through and within New York.

A show like the Rochester Gun Show, now in its 50<sup>th</sup> year, brings in about 4,000 people over two days for approximately 200 FFL dealers. Some of the customers who attend the Rochester Gun Show are now in their third generation of attendance. Customers include families, Veterans, people with disabilities, and women – all segments of the firearms consumer market reflected by the Plaintiffs to this lawsuit.

**B. The FFL is already mandated to work with the FBI to facilitate the NICS background check, including the collection and maintenance of detailed information on ATF Form 4473, in order to prevent a sale of a firearm to a disqualified individual.**

Since 1998, the FFL has been prohibited from transferring a firearm to a potential customer prior to completion of an approved background check and assignment of a unique identification number or passage of three business days, along with verification of the buyer's identity. 18 U.S.C. §922(t)(1). An FFL is required in every instance to initiate the federal NICS background check at the point of purchase for a firearm by completing and

submitting ATF Form 4473. ADD-3-8; 27 CFR §478.124 and §478.21.

There are 37 data fields for the Transferee (Buyer) to complete. There are an additional 35 data fields to be completed by the FFL. Contact is then made between the FFL and the ATF for the background check. This quasi-law enforcement function served by the FFL is generally conducted in person at the FFL place of business, including at gun shows.

In 2013, the ATF ran 21,093,273 background checks. ATF, “Total NICS Background Checks (November 30, 1998 – March 31, 2014),” ADD-9. Of that national total, the ATF ran 353,064 background checks for FFLs in New York. FBI, “NICS Firearm Background Checks (Year 2013),” ADD-10. Even though New York is the third most populous state in the nation, the New York ranking for 2013 NICS background check volume was 22<sup>nd</sup>, representing only 1.7% of all checks run.

The ATF also denies background checks, in which instance the FFL withholds transfer of the firearm. 18 U.S.C. §922(b)(2); 27 CFR §478.99(b)(2). Denials fall into one of ten categories, known as “disqualifying events.” 18 U.S.C. §922(g)(1)-(9) and §922(n). Checks may come back “delayed,” and the ATF then has three days to complete its

review of available data. 18 U.S.C. §922(t)(1)(B)(ii). It is the FFL that serves as a gatekeeper on behalf of the ATF, which operates under the FBI.

The NICS background check is a function of the personal data of the customer being compared to the NICS database. The NICS database is comprised of three sets of data: (1) Interstate Identification Index; (2) National Crime Information Center; and, (3) NICS Index. Non-U.S. citizens are also checked against records with the Department of Homeland Security, U.S. Immigration and Customs Enforcement. There are more than 80 million records in the NICS database, including 11,417,904 records in the specialized NICS Index. FBI, “Active Records in the NICS Index (updated as of March 31, 2014),” ADD-11; FBI “National Crime Information Center” available at <http://www.fbi.gov/about-us/cjis/ncic>.

Since 2012, the NICS Index has expanded to include records in an additional category of denials for “state disqualifying events.” Through this feature, states like New York, which use NICS for all background checks and which have additional state law disqualifying events, can upload such records for single point of reference background checks at the federal level that are coordinated with state law and records.

Further, the FFL must maintain every approved ATF Form 4473 for a period of 20 years. 27 CFR §478.129(b). If denied, the FFL must maintain these records for five years. *Id.* Even if the FFL ceases operations or goes out of business, the FFL has an obligation to within 30-days transmit these and other statutorily mandated records to the ATF-designated records repository. 27 CFR §478.127.

In addition to completing this mandated paperwork, “[t]he seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction.” ATF Form 4473, *supra*, ADD-5. The FFL has an additional obligation to evaluate the potential customer for, *inter alia*, whether the person is knowingly misrepresenting responses on the ATF Form 4473, including, but not limited to, an intention to purchase a firearm for a third party known to be a disqualified individual (the “straw man purchase”). Failure to properly complete the ATF Form 4473 and assess the customer can result in a suspension or revocation of the federal license and imposition of a monetary fine. 18 U.S.C. §922(t)(5); 27 CFR §478.124(c)(5).

Notably, the text of the Act reflects a question whether the State could require FFLs to utilize the NICS Index to run ammunition background checks. Penal Law §400.03(6). According to various news reports, the inquiry from the State to the ATF for access to NICS for this purpose was denied. The State's question should not have even been a question; federal law surrounding the NICS system is that well known to the FFL. "FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs are strictly prohibited from initiating a NICS background check for any other purpose." 28 CFR §25.6(a), emphasis added. Even state law enforcement officers would not be permitted to conduct such checks using NICS. 28 CFR §25.6(j).

The federal NICS background check system is highly sophisticated, emerged from extensive national debate, and took five years to develop before being launched in 1998. The benefit of a federal compliance system is its uniform application to all FFLs and consumers, which reflects the interstate nature of lawful commerce in firearms.

**C. The FFL is already mandated to maintain an inventory book of acquisitions and dispositions as part of the federal compliance system, in order to assist the FBI with gun tracing activities.**

Every FFL is required to permanently maintain an inventory of “Acquisitions and Dispositions” (hereafter “the A&D book”), which includes no less than 10 specific data points about every firearm coming into and going out of the FFL inventory. 27 CFR §478.125(e).

Routine ATF compliance audits include firearm inventory reconciliation and Form 4473 review and may be conducted without a warrant on an annual basis. 27 CFR §§478.23.

As with a failure to perform the necessary background checks, failure to maintain the A&D book in accordance with federal law, regulations, rulings, and other guidance documents can result in the permanent revocation of the federal license. 18 U.S.C. §922(t)(5); 27 CFR §478.128.

Both ATF Form 4473 records and the A&D book are the keys to federal firearms tracing activities; both contain the serial number of the firearm. The FFL, no matter how small, generates and maintains these

compliance records. There is nothing in the State legislative record to suggest any consideration of the existing federal FFL compliance system or the criminal investigatory benefits that already inure to the State.

**D. Unlike the State, the ATF approaches its relationship with the FFL like a partnership.**

The ATF views the FFL as a business with which to have a two-way relationship.

“The ATF’s focus is to help licensees avoid violations of the law and its implementing regulations. The Bureau prides itself on partnering with the firearms industry, especially regarding voluntary internal controls, to better protect the public. To that end, ATF continues to work closely with the firearms industry at all levels to ensure compliance, understand concerns, and help resolve perceived obstacles to compliance. ATF strives to educate licensees concerning their obligations under the law through open letters mailed to FFLs, information posted on ATF’s Web site (*sic*), quarterly FFL newsletters, industry seminars, attendance at trade shows, and partnerships with industry associations.” ATF Fact Sheet, “FFL Compliance Inspections” (February 2013), p. 1.

Here in the Upstate New York region, FFLs and ATF agents have long-standing, professional relationships, and our regional ATF officers are known by name.

There is also an established system within the ATF for compliance violations, beginning with the ATF written “Report of Violations” to the FFL, outlining any discrepancy and remediation requirements. 27 CFR §§478.73 – 478.78. Warning letters and warning conferences can also be conducted. *Id.* A persistent, willful violation can result in revocation of a license. *Id.* In 2012, the ATF sought license revocation 97 times, which amounted to less than one percent of the inspections conducted. ATF Fact Sheet, “Federal Firearms License Revocation Process” (dated February 2013), p. 1 available at <https://www.atf.gov/publications/factsheets/factsheet-ffl-revocation-process.html>. It is in the interests of the FFL to adhere to compliance mandates to preserve its business operations and help to deter crime.

By contrast, the State charged its new provisions under the Act to the NYS Police, and the climate instantly became one of presumed criminal behavior. The NYS Police started a “hotline” for questions about the Act, but refuse to put responses in writing. There is a \$500 reward for tips against alleged violators. The only written document issued by the NYS Police is a “Field Guide” for their officers on how to go about search and



seizure activities. Office of Division Counsel, “Guide to The New York Safe Act for Members of the Division of State Police (September 2013), available at

[http://www.nypdcea.org/pdfs/NYSP\\_Safe\\_Act\\_Field\\_Guide.pdf](http://www.nypdcea.org/pdfs/NYSP_Safe_Act_Field_Guide.pdf). The State is clear in its intention to criminalize otherwise lawful commerce in and use of firearms and ammunition.

**E. The Assault Weapon Registry is a de facto ban on the most popular, modern firearms, without adding anything to the existing federal FFL compliance system.**

The State now wants to build a gun registry that will be duplicitous to the federal compliance system without enhancing public safety.

Not a single New York Legislator articulated what the “assault weapon” and “assault weapon registry” would prospectively accomplish. Official website of the NYS Assembly, “Live Stream of Legislative Proceedings: Archived Videos (1-15-13 Session)” with printed transcript; Official website of the NYS Senate, “Session: Senate Session 01-14-13;” Official website of the NYS Senate, Rules Committee, “Committee Meeting: Rules Meeting” (January 14, 2013). Not one Member so much as mentioned

FFLs, ATF Form 4473, NICS background checks, the A&D book, or other federal compliance mandates.

Similarly, no Legislator reflected that the federal government already has a firearms registry, limited precisely the few, specific firearms defined by the National Firearms Act of 1934 (Pub.L. 73-474), including the machine gun and the short-barreled shotgun. 26 U.S.C. §5845(b), §5811, §5812; see, also, *District of Columbia v. Heller*, 554 U.S. 570, 624-627 (2008). Pre-1986 manufactured machineguns continue to be registered and controlled through the ATF and remain available to individuals at federal law. 18 U.S.C. §§922(b)(4) and 922(o).

Such NFA firearms are thought not to be of “ordinary military equipment” or otherwise “useful” to the common defense, *U.S. v. Miller*, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939), and are “not typically possessed by law-abiding citizens for lawful purposes...” *Heller, supra*, 625. It is through this lineage of *Miller* to *Heller* that the *Heller* court arrived at the standard of “common use,” *supra*, 627.

The District Court acknowledged that all firearms that come under the definition of the “assault weapon” are in common use and would meet the *Heller* standard. *N.Y. Rifle & Pistol Ass’n. v. Cuomo*, 2013 U.S. Dist. LEXIS 182307, 36-37.

The Act passed because the Governor triangulated two news events under a banner of a “Message of Necessity.” There was not even a basic state-sponsored analysis whether events in Webster, NY or Newtown, CT could have in any way been prevented through the proposed Act.

Because the Act was rushed through the legislative process in approximately 24-hours, FFLs across the State were, overnight, faced with an estimated 30% - 40% of their firearms trapped in inventory and potentially worthless. Some FFLs were unable to recover or reconfigure that inventory loss and went out of business.

Additionally, sales of firearms priced at or over approximately \$1,000 (a price typical for an AR with a standard configuration of features) is persistently depressed by as much as 60% - 70%. The AR was (and remains) the best selling, most popular, modern firearm in the country. The

definition of the “assault weapon” is so vague to the ordinary person that what is prohibited cannot be understood, and it is deterring not only ownership of an “assault weapon,” but other unrestricted firearms, as well. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); accord *Arriaga v. Mukasey*, 521 F.3d 219, 224 (2d Cir. 2008).

Since 2000, New York had used a two-feature test to define the “assault weapon.” Penal Law §265.00(22), ver. Laws of New York, 2000, Chapter 189. In these same years, the development of and popularity of certain firearms models grew in what is best described as a normal product development cycle. The detachable magazine, in use since the 1960s, became a standard feature of firearms and black polymer became the preferred style.

At the same time, the Act created unsellable firearms in FFL inventories, the State demanded FFLs become repositories for people to unload their “assault weapons.” The Act calls for local FFLs to accept “assault weapons” from individuals, but does not permit resale to New York residents who comprise a good portion of their customer base. Penal Law §265.00(22)(h).

The statutory “fix” to this situation was to allow FFLs to sell “assault weapons” to out-of-state FFLs. The typical Upstate New York FFL dealer does not have the financial capacity to function as a quasi-government buy-back operation. On a practical level, not all FFLs have an established business relationship with an out-of-state FFL. And, on a federal level, there are a number of regulations surrounding interstate FFL-to-FFL transfers, which include verification of the out-of-state FFL license, commercial shipping limitations, and the possibility of a failed transaction that returns the firearm to the local FFL inventory. 27 CFR §478.31; 27 CFR §478.94. Each one of these steps exposes the FFL to federal compliance responsibilities and penalties, as well as the potential for a balloon of items trapped in inventory.

The collective impact of these provisions is a *de facto* ban of the modern firearm, whether one couches the analysis in terms of the popularity such firearms, the reaction of the owner who is too afraid to engage in commerce lest he become a test case with associated felony charges, or the FFL with trapped inventory. This confluence of provisions of the Act with pre-existing federal compliance requirements creates an excessive burden to

FFLs that far outweighs the question presented in *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012), *cert. denied*, *Decastro v. United States*, 133 S.Ct. 838, 184 L.Ed.2d 665 (2013), wherein this Court did not consider it a substantial burden for individual firearms purchasers to route their selection from the out-of-state FFL through their home state FFL, a low volume transaction that placed tasking upon the FFL making a profit on the sale and that utilized the buyer's local FFL for a limited purpose.

**F. New York is neither ready nor qualified to administer a high-volume ammunition background check system, nor would such activity contribute to public safety.**

FFLs are appropriately anxious that the go-around language of the Act for the ammunition background check is for the State to build, from scratch, its own database and corresponding background check system. Penal Law §400.03 is currently inactive.

Penal Law §400.03 will require FFLs to conduct background checks for every ammunition purchase – a volume exponentially higher than the federal NICS checks for firearms in New York. The ATF reported 2013 annual NICS background checks in New York for firearms at 353,064.

*Supra.* Firearms are one part of sales for an FFL. If a small, retail FFL sells approximately 60 firearms in a month, it would not be unreasonable to estimate the same dealer might sell 250 boxes of ammunition per month, including box quantities as small as 20 rounds. The State is far from ready to conduct more than 1.5 million instant ammunition background checks per year.

If the ammunition sales background check goes live, a significant portion of FFL dealers will likely go out of business. Ammunition sales are an important revenue source for the average FFL dealer. A firearm that is well made and appropriately cared for will last 100-years or more; ammunition is the functional part that one repetitively buys. The combined effect will be very negative for business as sales go down and record keeping goes up.

The leading use of the modern firearm is at the range as a recreational sport. If three friends head over to the range on a nice afternoon, they might stop at the local FFL for two boxes of 500 rounds and go through the rounds that afternoon. Amateur firearms competitors can easily run through 2,500 rounds/month. The sportsman, similarly, 2,000-3,000 rounds/month.

It is counter-productive to limit ammunition sales or otherwise discourage any gun owner from establishing a local FFL relationship and routinely using their firearms at a licensed gun range setting. Firearms use is a skill that must be maintained. The ability to successfully engage in a self-defensive posture under stress is ultimately dependent upon whether skills that are learned are regularly practiced. For the substantial segment of gun owners who are Veterans, they are prudent to maintain their skills and to continually upgrade their personal firearms. Ideally, one has neither skills nor equipment that is obsolete. A burglary, rape, assault, or robbery is not an appointment on the kitchen calendar. At the time such event occurs, one is either able to engage in a self-defensive posture or one isn't. In the bigger picture, "...a well regulated militia...cannot exist unless the people are trained to bearing arms." *Heller, supra*, 617, citing Thomas Cooley, *Treatise on Constitutional Limitations* (1868).

While New York wants to place additional, significant responsibilities upon FFLs through the Act, the State has not been a good government partner to the FBI. The NICS Index will only ever be as effective as the records contributed to it by states and other federal agencies. The



contribution of records is voluntary, and always has been. 28 CFR §25.4.

The FBI relies upon states and other federal agencies for the records that can effectively terminate a prospective firearm sale at the FFL point of purchase.

Since 2010, under the NICS Improvement Amendments Act of 2007, New York has received over \$10 million in federal aid to correct deficiencies in its state and local record contributions to the FBI. Pub.L. 110-180 (2008); see Bureau of Justice Statistics, “State-by-State Summaries for FY 2013 NICS Act Record Improvement Program (NARIP) available at <http://www.bjs.gov/index.cfm?ty=tp&tid=49>. This grant money far exceeds the amount given to any other state, and is reflective of the substantial deficiencies in State records management.

New York was ranked as the worst state in the country for the gap between the level of records it believed it had put on-line and the actual number of records it had properly entered and up-loaded. While New York believed it had contributed nearly 9 million records into the NICS database, only about 3.5 million records had been correctly coded and put on-line for FBI/ATF access. “State Records Estimates Development and Validation Project” (dated September 30, 2010), The National Center for State Courts

with The National Consortium for Justice Information and Statistics, p. 26 available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/232195.pdf>. There is a reasonable likelihood that New York contributed to firearms sales that should have been halted at the point of purchase due to its lack of appropriate participation in the federal NICS system.

This Court should also take a moment to reflect upon the evolution both of the federal requirements and of those in California. The federal government has actively involved itself in the firearms regulatory process since 1968 and California has done so since 1978. Both of these government entities provide statutes, regulations, advisory opinions, written guidelines, open letters, monthly public reporting of a comprehensive listing of relevant statistical information, periodic educational seminars, newsletters, manned infrastructure, physical agency-styled offices, and testing laboratories. In addition, both the federal and the California governments have structured violation and appeals processes. Both the federal and the California governments have long-established and functional relationships with FFLs that balance between well-articulated goals and the

commercial functions of the FFL for civilians, law enforcement, and armed services, alike.

At the federal level, the ATF is joined in corresponding functions for firearms, ammunition, and explosive devices by the FBI, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, and the Department of State.

At a certain level of regulation, a governmental body must be able to support the demands it places upon businesses with the leadership, manpower, and budget necessary to support a commercial compliance system. Meanwhile, not only has New York suspended the effective date for the ammunition background check, it more recently suspended the five-year license renewal system.

The State is ill equipped and unprepared to undertake a high-volume ammunition background check system, and such a high number of uncompensated, detailed information gathering and storage tasks will put any number of FFL dealers out of business. There is no benefit to the State in the elimination of small FFLs, which provide an important federal

compliance function. There is no demonstrated or even alleged research to support a claim that a registry of ammunition sales would enhance public safety. The burden of establishing such a high volume background check and record-keeping system, from scratch, by a state actor with a poor participation history in the federal-state system cannot survive constitutional scrutiny.

**G. The Private Firearms Sale Background Check by an FFL implicates the federal compliance system and unjustly burdens FFLs.**

The State wants FFLs facilitate private firearms sales for \$10. Gen. Bus. L. §898(4). To say “facilitate” is a misnomer. Taking just the two core elements of the NICS federal background check and the A&D book into consideration, the FFL has significant federal compliance to perform in order to conduct the background check in the context of the private firearm sale.

The ATF recently issued Procedure 2013-1, identifying seven, different scenarios of the proposed private transfers that must be followed or, again, the FFL’s license will be at risk. Available at

<https://www.governor.ny.gov/assets/documents/ATFFFLProcedures.pdf>.

Generally speaking, in a private firearm sale a proposed seller places the firearm into the FFL's inventory, requiring the FFL to process the firearm into the A&D book, assume liability for the firearm, and be potentially unable to clear the firearm back out of inventory. *Id.* If the proposed buyer fails a background check, the FFL is then required to run a background check on the proposed seller. *Id.* (Once a firearm is taken into the FFL's inventory, it cannot be released without an approved background check of the person to whom the firearm will be released, even if it is the original seller. *Id.* If the proposed seller likewise fails the background check, the FFL is not permitted to release the firearm from its inventory. *Id.*

The State does not gain anything through the institution of background checks on private sales of firearms in the sense that any person who has suffered a subsequent disqualifying event should already have had his firearms surrendered or removed. Upon issuance of a final order in a federal or state case and under certain *ex parte* or temporary orders, judges are required to and do direct the immediate surrender of all firearms, issue a prohibition against future purchases, and instruct defendants on the loss of

firearms privileges. All of these steps occur through the judiciary, prosecuting attorneys, and law enforcement agencies. There is no gain by pulling the FFL into this cycle, as weighed against the burdens and liabilities to which the FFL is exposed.

In essence, the State is asking FFLs to expend upwards of 45-minutes for each one of potentially three transactions per firearm transfer for \$10. This is not a viable business model. Some FFLs made it a policy not to conduct private sale transactions. Others offer it only to customers with whom they have an established relationship. Any prospective customer inquiry that is declined potentially means a loss of both immediate and of ancillary business. For individuals, it means they may be unable to lawfully complete the private sale. The impact of this section is a tangible stressor upon good people who want to comply with the law, but who are being chilled to inaction, thus impeding their fundamental rights.

**II. USING A STRICT SCRUTINY ANALYSIS, SEVERAL PROVISIONS OF THE ACT MUST BE STRUCK DOWN AS IMPOSING A SUBSTANTIAL BURDEN UPON THE FUNDAMENTAL RIGHTS OF FFLS AND INDIVIDUALS WITHOUT AN EXCEEDINGLY PERSUASIVE, OFFSETTING BENEFIT.**

For the Second Amendment to have any real meaning, the individual must have not only a right to bear arms, but, also, a right to buy arms. The Act imperils the Second Amendment by excessively burdening both the FFL and the individual in a manner that closes businesses and frightens individuals from exercising their fundamental rights. If these four provisions are permitted to go into full effect, the federal government will lose even more of its front-line FFL partners, and the threat to public safety will increase.

The U.S. Supreme Court has classified rights under the Second Amendment to keep and bear arms as “fundamental.” *Heller, supra*; *McDonald v. City of Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 3026, 177 L.Ed.2d 894 (2010).

When a law interferes with “fundamental constitutional rights,” it is generally subject to a “strict scrutiny” evaluation. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973).

While government restrictions of commerce could be viewed as a “lesser” function, in this case, the consumer product that is the focus of commerce is the only consumer product protected under the U.S. Constitution, specifically, “arms.” The specific application of Commerce Clause analysis to the firearms transaction must thus be viewed as inextricably intertwined and equally fundamental, thus deserving of a concurrent strict scrutiny analysis, at least as to the four provisions of the Act herein highlighted. It would be a pyrrhic victory for an individual to have a right to bear arms, but be literally or effectively inhibited from purchasing either the arms or the ammunition through an FFL.

**A. The State has made no specific demonstration of the evidence that would be necessary to present a prima facie burden of proof under any level of constitutional scrutiny.**

The State has made no demonstration that could even arguably meet its burden of proof at any level of judicial scrutiny because no such



legislative record exists. The government is limited to “pre-enactment evidence” when attempting to justify law under even the lower “intermediate scrutiny” standard. *White River Amusement Pub, Inc. v. Town of Hartford*, 481 F.3d 163, 171 (2d Cir. 2007).

In this case, relative to just the four provisions upon which we focus, the State would have – at a minimum – to respond to the following questions:

1. What would be accomplished by restricting the features associated with a particular firearm from two features (ver. 2000) to one feature (ver. 2013);
2. What would be accomplished beyond that which is already part of the federal compliance system through the state requirement of a gun registry;
3. What would be accomplished beyond that which is already part of the federal compliance system through the requirement of a state ammunition background check and recordkeeping for every ammunition transaction; and,
4. What would be accomplished beyond that which is already part of the federal compliance system and the federal/state judicial system

through a state requirement for a private firearm sale background check?

These four questions are narrower than the broad questions presented in this lawsuit. The inability to find in the legislative and case records even an arguable response to these smaller questions does not bode well for the evaluation of the State's case with respect to the Act as a whole.

The State cannot simply say “gun” and “public safety” and satisfy the demands of a constitutional judicial review. The State's argument must be “exceedingly persuasive” and “not hypothesized or invented *post hoc* in response to litigation.” *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996).

Even the District Court below could not find an appropriate argument among the State's many Exhibits, writing, “These types of restrictions are presumably justified because of the unique ability of firearms to upset and disrupt public order.” *N.Y.S.R.P.A.*, *supra*, 40, emphasis added. A judicial “presumption” may not be taken where fundamental constitutional rights are

at stake. “The burden of justification is demanding and it rests entirely on the State.” *United States v. Virginia, supra*.

We can take one specific example to further establish this point. The District Court Judge based his distinction of the Act from the ban in the *Heller* case because the Act “...applies only to a subset of firearms with characteristics New York State has determined to be particularly dangerous and unnecessary for self-defense...” *Id.*, 26. There is no such legislative history. The only references in the legislative record were to personal ownership of a Glock 19 by Assemblyman Losquadro (NYS Assembly record, *supra*, pp. 34-35), his references to the Colt AR-15/M16 design and the Colt 1911 style magazine (*Id.*, p. 35), the Glock as an example of a handgun by Assemblyman Lentol (*Id.*, p. 64), and reference to the Bushmaster as a “weapon of mass destruction” by Assemblyman Perry (*Id.*, p. 194). At no time during floor or committee discussion was there even one remark related to a shift from the two-feature to a one-feature test or to any feature within the existing or the proposed “assault weapon” definition. There was no legislative determination of anything of a technical or policy nature relative to firearms or public safety. Conditions on the floor revealed

nothing more than a desire to win a “full-throated ban.” Website of NYS Senator Jeffrey D. Klein, “Senate Co-leader Jeff Klein Leads Bipartisan Passage of Landmark Gun Control Legislation in Senate” (January 24, 2013). *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

Nor can the State assert that there are alternative products on the market. *Heller, supra*, 629. Capitalism cannot be used to cure unconstitutional legislation. Whether or not a manufacturer is now advertising “New York compliant” firearms should not be considered. Such advertising assertions are untested; New York does not have a compliance certification process for manufacturers as offered by California. The Act must be evaluated as to the common use of the firearms when the provisions were enacted. For so many commonly used firearms to fall within the definition of “assault weapons” represents a *de facto* ban on the modern firearm.

**B. These four provisions of the Act must be evaluated under a strict scrutiny constitutional standard.**

If this Court finds that the State has made out a *prima facie* argument, a strict scrutiny analysis must be conducted because of the propensity that

these four provisions will operate as a *de facto* ban upon firearms and ammunition, will shut down FFLs, and will otherwise infringe associated business and individual rights under the Second Amendment and the Commerce Clause. *United States v. Grace*, 461 U.S. 171, 182, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983).

In his Decision and Order, the District Court Judge acknowledged that all firearms captured by the “assault weapon” definition at Penal Law §265.00(22) are in “common use.” *NYSRPA, supra*, 36-37. He also agrees that the Act “unquestionably affects Plaintiffs’ ownership rights in their home...” *Id.*, 39. These findings are a true reflection of the lineage of Second Amendment doctrine through *Heller, supra*. and *McDonald, supra*.

The District Court Judge errs, however, when he characterizes the Act as mere “regulations,” requiring an evaluation of only “intermediate scrutiny.” *Id.*, 23. This is not, e.g., a charge that the \$10 fee for the private firearm sale background check should be raised to \$50. *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013). This is a case opposing, *inter alia*, whether the requirement of background check for the inter-personal sale of a firearm can be converted into a transaction requiring the participation of an

FFL using the federal NICS system, including exposure to federal compliance mandates and liabilities.

To date, no court has been asked to consider the collective impact of statutes upon the commercial aspects of buying and selling firearms and ammunition, particularly in the context of the federal compliance system. This case is a test of whether our Second Amendment freedoms – which are fundamental – will be able to be exercised in a meaningful way.

The FFL is the critical link in the functioning of the lawful commerce in firearms. Without the FFL, there is no viable conduit for the manufacturer to interface with a law-abiding customer and the Second Amendment will face a sudden death. “[W]hat is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.” *Heller, supra*, 636. The manufacturer cannot take on all functions performed by the FFL, any more than law enforcement could take on the customer interface and assessment functions performed by the FFL. The Act has already started pushing FFLs out of business. The risk that the additional provisions going live will shutter more FFL doors will only further weaken public safety. The Act does nothing to enhance public safety

that is not already undertaken by the federal government, in partnership with FFLs, and with as much as can be expected of FFLs to perform in the nature of gratis, quasi-government functions.

## CONCLUSION

At least four, specific provisions of the Act violate the Second Amendment and the Commerce Clause, and should be struck down as unconstitutional, specifically the definition of “assault weapons” (Penal Law §265.00(22)), the registration of “assault weapons” (Penal Law §16-A and §400.02), the use of the FFL for background checks in private gun sales (General Business Law §898), and the use of the FFL for ammunition background checks (Penal Law §400.03). The District Court’s Decision & Order to the contrary should be reversed, and the case should be remanded for entry of summary judgment in favor of the Plaintiffs-Appellants-Cross-Appellees.

Dated: May 1, 2014

/s/ Paloma A. Capanna  
Paloma A. Capanna, Attorney  
*Attorney for Amicus Curiae*  
*Empire State Arms Collectors, Inc.*  
633 Lake Road  
Webster, New York 14580  
(585) 377-7260

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 28.1(e)(2)(a) because this brief contains 6,910 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times new Roman font.

Dated: May 1, 2014

/s/ Paloma A. Capanna  
Paloma A. Capanna, Attorney  
*Attorney for Amicus Curiae*  
*Empire State Arms Collectors, Inc.*



**ADDENDUM**

**TABLE OF CONTENTS**

	<b>Page</b>
ATF, "Report of Active Firearms Licenses" (dated February 11, 2014).....	ADD-1
ATF, Form 4473 .....	ADD-3
ATF, "Total NICS Background Checks" (November 30, 1998-March 31, 2014).....	ADD-9
FBI, "NICS Firearm Background Checks" (Year 2013) .....	ADD-10
ATF, "Active Record in the NICS Index" (updated as of March 31, 2014).....	ADD-11

**ADD-1**

**BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES**  
**Report of Active Firearms Licenses - License Type by State Statistics**

Date: February 11, 2014

Page: 1 of 2

State	PA	01	02	03	06	07	08	09	10	11	TOTAL
AK	14	629	35	236	26	64	6	0	1	0	997
AL	33	823	325	1,015	48	143	24	1	7	11	2,397
AR	20	802	425	548	47	166	10	1	12	4	2,015
AS	0	0	1	0	1	0	0	0	0	0	2
AZ	51	1,147	186	1,070	86	518	44	4	18	14	3,087
CA	199	2,150	97	5,642	107	440	67	6	18	6	8,533
CO	61	1,331	185	935	79	280	28	0	1	2	2,841
CT	38	406	12	1,203	13	141	33	0	6	3	1,817
DC	0	6	0	15	0	0	1	0	0	0	22
DE	5	128	1	207	0	6	2	1	0	0	345
FL	72	2,064	623	4,074	115	522	99	5	27	27	7,556
GA	57	1,240	621	1,585	69	250	26	1	7	4	3,803
GU	0	11	0	3	4	1	0	0	0	0	19
HI	2	127	0	162	4	12	1	0	0	0	306
IA	22	1,254	60	665	63	110	9	0	1	0	2,162
ID	13	670	144	323	51	199	18	0	1	0	1,406
IL	53	2,019	58	2,760	81	175	28	3	9	7	5,140
IN	57	1,365	78	1,312	49	157	13	0	1	1	2,976
KS	43	954	107	685	60	117	9	1	1	3	1,937
KY	44	1,059	359	878	26	141	22	2	7	4	2,498
LA	18	1,005	195	783	46	136	5	1	2	1	2,174
MA	45	389	0	3,332	15	137	10	0	4	2	3,889
MD	46	483	40	2,565	16	121	16	1	5	7	3,254
ME	11	449	54	368	16	74	6	0	3	1	971
MI	42	2,201	76	1,738	105	200	23	3	9	4	4,359
MN	49	1,369	90	1,009	36	192	20	0	2	3	2,721
MO	91	1,881	323	3,109	82	308	27	1	8	4	5,743
MP	1	1	0	0	0	0	0	0	0	0	1
MS	29	707	206	475	32	70	4	0	4	3	1,501
MT	14	927	131	282	64	123	15	0	2	1	1,545
NC	37	1,784	459	2,087	72	312	27	2	7	3	4,753
ND	13	405	27	190	5	10	1	0	0	0	638
NE	26	634	42	382	24	70	6	0	1	0	1,159
NH	14	399	5	608	17	108	15	0	9	5	1,166

For Official Use Only

**ADD-2**

**BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES**  
**Report of Active Firearms Licenses - License Type by State Statistics**

Date: February 11, 2014

State	PA	01	02	03	06	07	08	09	10	11	TOTAL
NJ	20	328	0	185	15	24	11	0	2	1	566
NM	19	543	75	359	35	130	9	0	4	2	1,157
NV	37	427	76	660	19	162	26	2	5	2	1,379
NY	27	1,721	9	2,195	45	165	30	0	6	0	4,171
OH	51	2,259	125	2,188	95	367	24	1	5	1	5,065
OK	61	1,123	280	711	63	268	16	1	2	0	2,464
OR	30	1,429	64	787	71	232	13	0	2	1	2,599
PA	90	2,418	5	3,309	116	302	42	4	17	9	6,222
PR	2	37	0	23	6	0	5	0	1	1	73
RI	2	83	2	502	3	15	4	0	0	0	609
SC	24	834	214	970	26	155	21	0	5	6	2,231
SD	13	478	56	201	18	46	9	0	0	0	808
TN	36	1,172	279	1,749	38	233	21	2	9	2	3,505
TX	240	4,677	1,019	3,706	191	933	84	2	13	11	10,636
UT	33	593	108	301	33	204	26	1	4	2	1,272
VA	67	1,452	175	2,460	55	233	47	10	14	17	4,463
VI	1	10	0	1	0	0	1	0	0	0	12
VT	8	305	0	194	10	37	6	0	4	3	559
WA	26	940	154	1,491	29	236	22	1	4	2	2,879
WI	42	1,470	66	1,319	64	204	9	3	4	4	3,143
WV	22	727	209	442	26	75	6	0	1	1	1,487
WY	10	557	46	179	29	69	7	0	2	2	891
<b>Total</b>	<b>2,081</b>	<b>54,402</b>	<b>7,927</b>	<b>64,178</b>	<b>2,446</b>	<b>9,393</b>	<b>1,054</b>	<b>60</b>	<b>277</b>	<b>187</b>	<b>139,924</b>

Note: "PA"(Pending Application) column counts are for informational purposes only and are NOT included in the report "TOTAL" column.

ADD-3

OMB No. 1140-0020

**U.S. Department of Justice**  
Bureau of Alcohol, Tobacco, Firearms and Explosives

## Firearms Transaction Record Part I - Over-the-Counter

**WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.**

Transferor's Transaction  
Serial Number (If any)

**Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."**

**Section A - Must Be Completed Personally By Transferee (Buyer)**

1. Transferee's Full Name		Last Name		First Name		Middle Name (If no middle name, state "NMN")				
2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)		Number and Street Address		City		County		State	ZIP Code	
3. Place of Birth		U.S. City and State		-OR- Foreign Country		4. Height	5. Weight (Lbs.)	6. Gender		7. Birth Date
						Ft. _____ In. _____		<input type="checkbox"/> Male <input type="checkbox"/> Female		Month _____ Day _____ Year _____
8. Social Security Number (Optional, but will help prevent misidentification)					9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)					
10.a. Ethnicity		10.b. Race (Check one or more boxes.)								
<input type="checkbox"/> Hispanic or Latino		<input type="checkbox"/> American Indian or Alaska Native			<input type="checkbox"/> Black or African American			<input type="checkbox"/> White		
<input type="checkbox"/> Not Hispanic or Latino		<input type="checkbox"/> Asian			<input type="checkbox"/> Native Hawaiian or Other Pacific Islander					
11. Answer questions 11.a. (see exceptions) through 11.l. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.										
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? <b>Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.</b>								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
d. Are you a fugitive from justice?								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
g. Have you been discharged from the Armed Forces under dishonorable conditions?								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
j. Have you ever renounced your United States citizenship?								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
k. Are you an alien illegally in the United States?								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.								Yes <input type="checkbox"/>	No <input type="checkbox"/>	
13. What is your State of residence (if any)? (See Instructions for Question 13.)		14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____				15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?				

Note: Previous Editions Are Obsolete

**Transferee (Buyer) Continue to Next Page  
STAPLE IF PAGES BECOME SEPARATED**

ATF Form 4473 (5300.9) Part I  
Revised April 2012



ADD-5

**Section D - Must Be Completed By Transferor (Seller)**

26. Manufacturer and/or Importer ( <i>If the manufacturer and importer are different, the FFL should include both.</i> )	27. Model	28. Serial Number	29. Type ( <i>pistol, revolver, rifle, shotgun, receiver, frame, etc.</i> ) ( <i>See instructions for question 29</i> )	30. Caliber or Gauge
30a. Total Number of Firearms ( <i>Please handwritten by printing e.g., one, two, three, etc. Do not use numerals.</i> )			30b. Is any part of this transaction a Pawn Redemption? <input type="checkbox"/> Yes <input type="checkbox"/> No	
30c. For Use by FFL ( <i>See Instructions for Question 30c.</i> )				

**Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days**

31. Trade/corporate name and address of transferor ( <i>seller</i> ) ( <i>Hand stamp may be used.</i> )	32. Federal Firearms License Number ( <i>Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.</i> ) ( <i>Hand stamp may be used.</i> )
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**The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.**

**I certify that my answers in Sections B and D are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. On the basis of: (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.**

33. Transferor's/Seller's Name ( <i>Please print</i> )	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transferred
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**NOTICES, INSTRUCTIONS AND DEFINITIONS**

**Purpose of the Form:** The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form should only be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun (*rifle or shotgun*) to a resident of another State, the seller is presumed to know the applicable State laws and published ordinances in both the seller's State and the buyer's State.

After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 (*which includes the Notices, General Instructions, and Definitions*), and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological (*by date*), alphabetical (*by name*), or numerical (*by transaction serial number*), as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not complete after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (*by name*) or chronological (*by date of transferee's certification*) order.

If you or the buyer discover that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, then photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer should only make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

**Over-the-Counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.

**State Laws and Published Ordinances:** The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.

**Exportation of Firearms:** The State or Commerce Departments may require you to obtain a license prior to export.

**Section A**

**Question 1. Transferee's Full Name:** The buyer must personally complete Section A of this form and certify (*sign*) that the answers are true, correct, and complete. However, if the buyer is unable to read and/or write, the answers (*other than the signature*) may be completed by another person, excluding the seller. Two persons (*other than the seller*) must then sign as witnesses to the buyer's answers and signature.

When the buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the

business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity and (B) the name and address of that business entity. If the buyer's name in question 1. is illegible, the seller must print the buyer's name above the name written by the buyer.

**Question 2. Current Residence Address:** U.S. Postal abbreviations are acceptable. (e.g., St., Rd., Dr., PA, NC, etc.). Address cannot be a post office box. County and Parish are one and the same.

If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2. If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2).

**Question 9. Unique Personal Identification Number (UPIN):** For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a Unique Personal Identification Number, which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.

**Question 11.a. Actual Transferee/Buyer:** For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (e.g., redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner). You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE ACTUAL TRANSFEREE/BUYER** of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, you may not transfer a firearm to any person you know or have reasonable cause to believe is prohibited under 18 U.S.C. § 922(g), (n), or (x). **Please note: EXCEPTION:** If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

**Question 11.b. - 11.i. Definition of Prohibited Person:** Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

**Question 11.b. Under Indictment or Information or Convicted in any Court:** An indictment, information, or conviction in any Federal, State, or local court. An information is a formal accusation of a crime verified by a prosecutor.

**EXCEPTION to 11.c. and 11.i.:** A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of

the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable.

**Question 11.f. Adjudicated Mentally Defective:** A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (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.

**Committed to a Mental Institution:** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. Please also refer to Question 11.c. for the definition of a prohibited person.

**EXCEPTION to 11. f. NICS Improvement Amendments Act of 2007:** A person who has been adjudicated as a mental defective or committed to a mental institution is not prohibited if: (1) the person was adjudicated or committed by a department or agency of the Federal Government, such as the United States Department of Veteran's Affairs ("VA") (as opposed to a State court, State board, or other lawful State authority); and (2) either: (a) the person's adjudication or commitment for mental incompetency was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; or (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication. **Persons who fit this exception should answer "no" to Item 11.f.** This exception does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

**Question 11.h. Definition of Restraining Order:** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or cohabitating with the person.

**Question 11.i. Definition of Misdemeanor Crime of Domestic Violence:** A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., assault and battery), if the offense is committed by one of the defined parties. (See Exception to 11.c. and 11.i.) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.



**Question 11.l.** An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. The definition does **NOT** include permanent resident aliens nor does it apply to nonimmigrant aliens admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements.

An alien admitted to the United States under a nonimmigrant visa who responds “yes” to question 11.l. must provide a response to question 12 indicating whether he/she qualifies under an exception.

**Question 12. Exceptions to the Nonimmigrant Alien Response:** An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; (5) is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Persons subject to one of these exceptions should answer “yes” to questions 11.l. and 12 and provide documentation such as a copy of the hunting license or letter granting the waiver, which must be recorded in 20.c. If the transferee (buyer) answered “yes” to this question, the licensee must complete 20.c.

The seller should verify supporting documentation provided by the purchaser and must attach a copy of the provided documentation to this ATF Form 4473, Firearms Transaction Record.

**Question 13. State of Residence:** The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located.

If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2.*)

**Question 16. Certification Definition of Engaged in the Business:** Under 18 U.S.C. § 922 (a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.

## Section B

**Question 18. Type of Firearm(s):** Check all boxes that apply. “Other” refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, they still are “firearms” by definition, and subject to the same

GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a “firearm other than a shotgun or rifle,” it cannot be transferred to anyone under the age of 21. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not “pistols or revolvers” under Section 923(g)(3)(a).

**Question 19. Gun Shows:** If sale at gun show or other qualifying event sponsored by any national, State, or local organization, as authorized by 27 CFR § 478.100, the seller must record the name of event and the location (*city and State*) of the sale in question 19.

**Question 20a. Identification:** List issuing authority (*e.g., State, County or Municipality*) and type of identification presented (*e.g., Virginia driver’s license (VA DL), or other valid government-issued identification*).

**Know Your Customer:** Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer’s name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20.a. A driver’s license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver’s license from another State, you should list the buyer’s military identification card and official orders showing where his or her permanent duty station is located in response to question 20.a.

**Question 20.b. Alternate Documentation:** Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing the transferee’s residence address. This alternate documentation should be recorded in question 20.b., with issuing authority and type of identification presented. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address.

**Question 20c. Documentation for Aliens Admitted to the United States Under a Nonimmigrant Visa:** See instructions for Question 11.l. Types of acceptable documents would include a valid hunting license lawfully issued in the United States or a letter from the U.S. Attorney General granting a waiver.

**Question(s) 21, 22, 23, NICS BACKGROUND CHECKS:** 18 U.S.C. § 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the seller has complied with the background check requirements of the Brady law.

After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*read below for NICS check exceptions*.) However, the licensee should NOT contact NICS and should stop the transaction if: the

buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.l., unless the buyer only has answered "yes" to question 11.l. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20.a, b, or c.

At the time that NICS is contacted, the licensee must record in question 21.a-c: the date of contact, the NICS (*or State*) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21.c. that NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21.d. any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21.e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

**NICS Responses:** If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR § 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*

**EXCEPTIONS TO NICS CHECK:** A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must **not** be transferred to any buyer who fails to provide such documentation.

### Section C

**Question 24 and 25. Transfer on a Different Day and Recertification:** If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.

### Section D

Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolver on ATF Form 3310.4 (see 27 CFR § 478.126a).

**Question(s) 26, 27, 28, 29 and 30, Firearm(s) Description:** These blocks should be completed with the firearm(s) information. Firearms manufactured after 1968 should all be marked with a serial number. Should you acquire a firearm that is not marked with a serial number; you may answer question 28 with "NSN" (No Serial Number), "N/A" or "None."

If more than five firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

**Types of firearms include:** pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell or National Firearms Act (NFA) firearms.

Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.

**Question 30c.** This box is for the FFL's use in recording any information he or she finds necessary to conduct business.

**Question 32 Federal Firearms License Number:** Must contain at least the first three and last five digits of the FFL number, for instance X-XX-XXXXX.

**Question 33-35 Transferor/Sellers Information:** For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.

### Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the buyer's identity.

### Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

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

ADD-9

# Total NICS Background Checks

November 30, 1998 - March 31, 2014

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTALS
1998											21,196	871,644	892,840
1999	591,355	696,323	753,083	646,712	576,272	569,493	589,476	703,394	808,627	945,701	1,004,333	1,253,354	9,138,123
2000	639,972	707,070	736,543	617,689	538,648	550,561	542,520	682,501	782,087	845,886	898,598	1,000,962	8,543,037
2001	640,528	675,156	729,532	594,723	543,501	540,491	539,498	707,288	864,038	1,029,691	983,186	1,062,559	8,910,191
2002	665,803	694,668	714,665	627,745	569,247	518,351	535,594	693,139	724,123	849,281	887,647	974,059	8,454,322
2003	653,751	708,281	736,864	622,832	567,436	529,334	533,289	683,517	738,371	856,863	842,932	1,008,118	8,481,588
2004	695,000	723,654	738,298	642,589	542,456	546,847	561,773	666,598	740,260	865,741	890,754	1,073,701	8,687,671
2005	685,811	743,070	768,290	658,954	557,058	555,560	561,358	687,012	791,353	852,478	927,419	1,164,582	8,952,945
2006	775,518	820,679	845,219	700,373	626,270	616,097	631,156	833,070	919,487	970,030	1,045,194	1,253,840	10,036,933
2007	894,608	914,954	975,806	840,271	803,051	792,943	757,884	917,358	944,889	1,025,123	1,079,923	1,230,525	11,177,335
2008	942,556	1,021,130	1,040,863	940,961	886,183	819,891	891,224	956,872	973,003	1,183,279	1,529,635	1,523,426	12,709,023
2009	1,213,885	1,259,078	1,345,096	1,225,980	1,023,102	968,145	966,162	1,074,757	1,093,230	1,233,982	1,223,252	1,407,155	14,033,824
2010	1,119,229	1,243,211	1,300,100	1,233,761	1,016,876	1,005,876	1,069,792	1,089,374	1,145,798	1,368,184	1,296,223	1,521,192	14,409,616
2011	1,323,336	1,473,513	1,449,724	1,351,255	1,230,953	1,168,322	1,157,041	1,310,041	1,253,752	1,340,273	1,534,414	1,862,327	16,454,951
2012	1,377,301	1,749,903	1,727,881	1,427,343	1,316,226	1,302,660	1,300,704	1,526,206	1,459,363	1,614,032	2,006,919	2,783,765	19,592,303
2013	2,495,440	2,309,393	2,209,407	1,714,433	1,435,917	1,281,351	1,283,912	1,419,088	1,401,562	1,687,599	1,813,643	2,041,528	21,093,273
2014	1,660,355	2,086,863	2,488,842										6,236,060

TOTAL  
187,804,035

**NOTE:** These statistics represent the number of firearm background checks initiated through the NICS. They do not represent the number of firearms sold. Based on varying state laws and purchase scenarios, a one-to-one correlation cannot be made between a firearm background check and a firearm sale.

ADD-10

**NICS Firearm Background Checks****Year 2013**

January 1, 2013 - December 31, 2013

STATE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTALS
Alabama	55,210	52,678	45,144	33,215	32,005	27,990	33,290	49,978	46,263	51,520	59,213	77,374	563,880
Alaska	9,975	9,397	9,047	8,758	7,529	6,077	5,889	7,545	6,047	8,322	6,868	7,951	93,405
Arizona	41,443	38,022	36,946	32,444	27,145	25,994	25,712	29,065	22,904	24,148	26,839	32,374	363,036
Arkansas	29,607	33,226	28,004	22,062	18,509	17,280	22,815	22,401	16,195	19,661	24,393	25,583	279,736
California	133,187	108,666	117,106	110,149	112,464	109,153	100,114	111,132	104,067	114,595	109,140	138,522	1,368,295
Colorado	53,121	55,170	58,007	43,675	39,181	40,488	42,207	35,642	31,620	34,371	37,908	43,268	514,658
Connecticut	31,886	24,128	31,213	29,703	22,706	22,597	22,598	23,489	21,666	20,189	22,530	21,633	294,338
Delaware	5,055	4,235	4,250	3,665	2,992	2,447	2,282	2,526	2,515	2,989	3,354	3,752	40,062
District of Columbia	59	62	52	48	40	26	32	35	36	37	35	35	497
Florida	117,696	99,785	86,541	102,757	90,077	76,142	78,121	81,138	73,216	79,284	86,342	102,760	1,073,859
Georgia	70,862	67,907	53,457	39,865	32,984	28,248	31,011	34,288	32,309	38,032	43,059	55,863	527,885
Guam	132	95	82	89	134	95	113	122	98	127	103	141	1,331
Hawaii	2,260	1,803	1,564	1,753	1,322	1,146	1,260	1,283	1,196	1,325	1,103	1,401	17,416
Idaho	17,708	17,947	15,954	13,075	10,133	8,717	8,460	9,967	10,165	10,694	10,703	13,971	147,494
Illinois	149,608	127,615	137,812	132,255	109,338	105,012	82,699	85,074	67,839	101,416	90,868	91,077	1,280,613
Indiana	61,855	57,638	57,961	51,393	39,560	39,636	51,081	49,336	40,129	43,650	51,526	53,359	597,124
Iowa	24,157	20,309	19,176	15,734	9,708	8,336	6,772	8,566	10,873	11,717	12,076	12,638	160,062
Kansas	29,270	24,839	22,741	21,146	19,099	13,084	14,721	14,753	13,318	15,038	18,670	21,426	228,105
Kentucky	238,510	247,260	243,253	39,190	25,271	29,195	29,719	27,296	54,426	204,305	208,696	231,210	1,578,331
Louisiana	42,313	35,129	30,893	24,525	21,920	18,953	19,777	25,224	29,508	28,194	33,765	42,824	353,025
Maine	10,538	9,029	10,320	8,888	6,442	5,620	5,492	6,806	8,102	9,707	8,004	7,812	96,760
Mariana Islands	1	2	0	0	0	0	0	0	1	2	5	2	13
Maryland	18,392	16,241	16,873	15,618	14,340	12,702	12,248	14,929	49,644	20,526	18,413	21,256	231,182
Massachusetts	27,785	21,491	25,220	22,616	20,226	18,481	20,775	21,380	18,583	19,891	18,506	16,407	251,361
Michigan	60,852	54,680	57,686	49,219	34,050	29,521	29,608	34,265	36,135	40,320	39,996	37,647	503,979
Minnesota	64,272	55,260	57,031	52,210	40,424	29,559	30,700	35,738	40,431	43,178	38,292	38,679	525,774
Mississippi	26,380	26,649	21,207	15,363	13,418	11,605	12,768	16,821	14,804	18,028	25,301	29,367	231,711
Missouri	71,515	65,205	62,321	47,963	39,002	32,677	32,926	38,352	35,901	42,480	47,444	51,223	567,009
Montana	15,217	14,677	13,783	11,764	9,873	8,571	8,719	10,683	10,194	12,038	10,548	11,763	137,830
Nebraska	14,751	9,960	11,052	8,310	5,806	4,503	4,323	5,411	5,387	6,517	6,868	8,665	91,553
Nevada	18,361	17,065	15,623	14,225	11,297	9,962	8,915	9,540	8,704	9,800	10,503	12,897	146,892
New Hampshire	20,513	14,988	15,881	14,365	11,780	8,975	8,707	9,645	10,164	11,318	10,397	10,993	147,726
New Jersey	11,110	8,972	9,843	8,977	12,656	12,104	9,963	9,865	8,091	9,341	10,031	9,118	120,071
New Mexico	16,998	17,202	16,606	12,995	11,936	9,948	10,135	10,939	10,018	12,018	12,642	14,896	156,333
New York	43,752	32,249	35,013	30,999	23,167	21,003	20,065	23,867	27,247	30,402	32,643	32,657	353,064
North Carolina	70,301	72,694	58,353	46,729	38,695	32,934	33,798	36,326	34,609	40,850	50,272	59,061	574,622
North Dakota	9,686	8,362	8,143	7,678	6,284	5,016	5,143	5,641	6,707	8,511	7,692	6,949	85,812
Ohio	83,996	79,762	76,031	57,639	42,751	39,150	39,440	41,954	42,579	48,416	61,911	67,301	680,930
Oklahoma	48,246	43,984	37,224	30,530	24,269	21,661	22,622	26,282	23,496	27,268	35,876	39,176	380,634
Oregon	33,335	30,190	28,021	23,657	18,777	17,274	15,846	18,504	19,746	19,484	22,895	26,573	274,302
Pennsylvania	135,603	113,841	114,209	90,995	70,882	61,992	60,876	70,687	70,015	79,205	88,985	87,441	1,044,731
Puerto Rico	1,357	1,258	1,233	1,315	1,555	1,606	1,351	1,540	1,469	1,491	1,488	1,305	16,968
Rhode Island	3,792	2,624	3,088	2,775	2,109	1,697	1,561	1,642	1,622	1,862	1,925	1,969	26,666
South Carolina	36,801	42,168	35,234	27,599	23,713	21,463	23,572	25,637	20,573	21,704	25,922	31,309	335,695
South Dakota	11,242	10,060	9,506	7,058	5,772	4,820	4,719	5,998	6,812	8,534	8,416	9,118	92,055
Tennessee	69,456	70,784	61,462	45,767	42,521	36,424	34,531	39,133	40,207	42,522	53,278	64,784	600,869
Texas	186,890	189,806	163,594	131,815	111,668	97,420	100,819	115,380	111,067	124,834	133,911	166,074	1,633,278
Utah	27,938	28,356	32,240	30,717	34,615	27,453	28,963	30,966	19,074	17,812	21,492	24,978	324,604
Vermont	4,195	4,254	4,099	3,608	2,228	1,957	1,915	2,306	2,742	2,951	3,007	2,873	36,135
Virgin Islands	26	6	271	108	75	94	77	107	94	96	86	94	1,134
Virginia	60,837	57,124	52,284	39,271	31,108	29,376	28,960	33,074	33,507	36,623	44,918	51,344	498,426
Washington	73,547	66,081	60,588	49,100	40,430	35,567	33,115	37,388	36,213	41,311	40,784	46,998	561,122
West Virginia	26,793	29,414	25,848	18,761	15,908	13,796	13,839	16,506	17,038	19,865	24,919	26,265	248,952
Wisconsin	56,977	50,656	50,492	42,236	28,975	20,416	22,108	27,420	32,039	35,951	35,704	31,714	434,688
Wyoming	7,861	7,556	7,534	6,084	5,581	4,854	4,299	4,876	5,018	4,629	5,494	6,885	70,671

**NOTE:**

These statistics represent the number of firearm background checks initiated through the NICS. They do not represent the number of firearms sold. Based on varying state laws and purchase scenarios, a one-to-one correlation cannot be made between a firearm background check and a firearm sale.

# Active Records in the NICS Index

UPDATED: As of March 31, 2014

<u>Rank</u>	<u>Prohibited Category Description</u>	<u>Total</u>	<u>Percent of Total</u>
1	Illegal/Unlawful Alien	5,698,372	49.91%
2	Adjudicated Mental Health	3,381,941	29.62%
3	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	1,672,488	14.65%
4	Fugitive from Justice	400,977	3.51%
5	Misdemeanor Crime of Domestic Violence Conviction	106,777	0.93%
6	Under Indictment/Information	32,910	0.29%
7	Federally Denied Persons File	32,143	0.28%
8	Unlawful User/Addicted to a Controlled Substance	31,700	0.28%
9	Renounced U.S. Citizenship	24,220	0.21%
10	State Prohibitor	15,567	0.14%
11	Protection/Restraining Order for Domestic Violence	10,438	0.09%
12	Dishonorable Discharge	10,371	0.09%
<b>Total Active Records in the NICS Index</b>		<b>11,417,904</b>	<b>100.00%</b>