



# Oregon

Theodore R. Kulongoski, Governor

## Department of State Police

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September 7, 2006

Kevin Starrett  
Oregon Firearms Federation  
PO Box 556  
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Mr. Starrett,

This letter is in response to your email request dated August 19, 2006 for further information following our meeting on August 15, 2006 regarding firearm issues.

1. *Since the OSP are the POC in Oregon, who makes the final determination about a transfer to a potential buyer?*

OSP call-takers make the decisions based on Oregon and Federal firearms law.

2. *If the final determination is made by staff at OSP, are they required to inform the dealer, (as NICS apparently must do) that a transfer MAY take place without an approval after a specified time? (I know of very few dealers who are aware that this is the case.)*

No. The NICS notification procedure at time of delay is based on NICS policy and not part of federal firearms law or regulation. Oregon law states: "ORS 166.412 - 3(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information. (c) **If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection** (emphasis added) before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, **the dealer may deliver the handgun to the purchaser**" (emphasis added).

3. *If OSP makes the decision, exactly what background and training does the decision maker have? Are they trained in law? Are they given a specific set of criteria?*

Call takers receive standard in-house training for approximately 6 months. Training is based on Oregon and Federal laws regarding firearm purchases and possession.

The criterion used is outlined in both Oregon and Federal laws pertaining to firearms purchases.

4. *What specifically disqualifies a person because of issues dealing with "domestic violence?" For example, as we discussed, one of our members had a conviction for harassment but was assured by the US DOJ he still qualified. He was however denied when he attempted to make a purchase.*

We are unable to respond to your example without more specific information; however the attached criteria is used in making qualification determinations for "domestic violence" related charges under Oregon law and the Lautenberg Amendment 921(a)(33) and 922(g)(9) and 922(d)(9) of the Gun Control Act of 1968. This criterion must be applied to the records in every that are state reviewed during the background check process.

5. *NICS lays out specific procedures for appeals, if they are the POC. What exactly is the appeals process if a purchaser is denied by OSP?*

When a Federally Licensed firearms dealer registers with OSP, they are provided a copy of the State Of Oregon Firearms Instant Check System Instruction Guide for Firearm Dealers. This includes a notice in Appendix D entitled Oregon State Police – Denied Firearm Sale. Specifically on page 4 under "Denied" it says "The purchaser has a right to challenge this decision and may call on our regular business line to speak with the person processing challenge calls, regarding this matter." They can challenge the denial. If the denial is based on another state's information, the purchaser is informed they must resolve the matter with that particular state of record.

Please find attached a copy of OAR 257-010-0035 which outlines the process for challenges to Oregon criminal history record information. ORS 181.555 outlines the requirement for providing access to this information. We consider an "appeal" a challenge to the record information we have access to for conducting background checks. We work with the purchaser based on the information received at the time of purchase and additional information, if any, provided at the time of challenge.

6. *If OSP denies a purchase, is the denied party informed that they may not own other firearms?*

We do not inform parties that they may not own other firearms and we do not give legal advice. Our role is to perform background checks for each sale called in to the FICS unit. However, if the purchaser contacts OSP and directly asks a question regarding owning other firearms, the call taker will answer their specific question when possible.

There are a number of state and federal purchase laws and possession laws. The prohibition for purchase does not necessarily affect the ability to possess firearms. In order to inform a denied party they may not own other firearms, a significant amount

of additional research could be needed to apply all applicable state and federal laws. Our role is to perform the initial background check at time of sale and not to advise regarding possession.

7. *I understood from our conversation that OSP does not enforce Federal law, in this case the prohibition on possession for persons with misdemeanor DV convictions.*

OSP is not a Federal law enforcement agency; however we do cooperate with our federal law enforcement partners. Because the OSP FICS unit is the federal NICS POC, it must follow both Oregon and Federal laws. As stated above, FICS performs a background check at time of purchase and makes a determination of eligibility to purchase at that time.

According to Title 28, CFR Chapter 1, Part 25: "A POC means a state or local law enforcement agency serving as an intermediary between an FFL and the federal data bases checked by the NICS. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under state or federal law, and responds to FFLs with the results of a NICS background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order."

I hope this information is helpful. Please contact Major Spirup at 503-378-4102 if you have further questions.

Sincerely,



Ronald Ruecker, Superintendent

C: Representative Kim Thatcher

Attachments

**THE GUN CONTROL ACT OF 1968**  
**TITLE 18, UNITED STATE CODE, CHAPTER 44**

**Chapter 44 – Firearms**

§ 921 Definitions.

**(32)** The term "**intimate partner**" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

**(33) (A)** Except as provided in subparagraph (C), the term "**misdemeanor crime of domestic violence**" means an offense that—

**(i)** is a misdemeanor under Federal or State law; and

**(ii)** 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 cohabiting 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.

**(B) (i)** A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

**(I)** the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

**(II)** in the case of a prosecution for an offense described in this