

PAPERWORK REDUCTION ACT SUBMISSION

Supporting Statement

Agency: Federal Bureau of Investigation (FBI)

Title: National Instant Criminal Background Check System (NICS) Section

Form: State Point of Contact (POC) Final Determination Electronic Submission

OMB No: 1110-0035

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The FBI's Criminal Justice Information Services (CJIS) Division's NICS Section is requesting the Office of Management and Budget (OMB) to approve the extension of the Paperwork Reduction Act submission for the State POC Final Determination Electronic Submission. This is a previously approved collection.

Under Title 28, Code of Federal Regulations (CFR), Section 25.6(h), Full State POCs, Partial POCs, and Alternate Permit State POCs are required to transmit electronic determination messages to the NICS Section of the status of a firearm background check in those instances in which a

transaction is "open" (transactions unresolved before the end of the operational day on which the transaction was initiated); "denied" transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The State POC must communicate this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee (FFL) or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. With the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message before the end of the operational date upon or those responses that are not received, the NICS will assume the transaction resulted in a "proceed" notification to the FFL. This information will be maintained in the NICS Audit Log, per 28 CFR, '25.9(b) and would still be subject to the rules governing record retention, also detailed in 28 CFR, '25.9(b).

A. JUSTIFICATION

1. Circumstances of the Collection

The Department of Justice (DOJ) promulgated regulations to govern the NICS, in 28 CFR, '25, in 1998, when the NICS became operational. The DOJ published a revision to '25.9 (b), July 23, 2004, which effected the retention period of all proceed transactions and the manner in which states are required to submit transaction status information to the NICS. Due to the reduction of retention period, any results of transactions from the State POCs would be unknown to the NICS, thus necessitating the states provide a status before the close of the operational day. This is outlined in 28 CFR, '25.6(h), requiring the transmission of information to the NICS as soon as the

determination is communicated to the FFL that a firearm transfer is denied, is an overturned denial, is open (previously referred to as delayed), or is an open transaction later changed to a proceed.

As previously stated, with the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message before the end of the operational date upon or those responses that are not received, the NICS will assume the transaction resulted in a "proceed" notification to the FFL. This information will be maintained in the NICS Audit Log, per 28 CFR, '25.9(b) and would still be subject to the rules governing record retention, also detailed in 28 CFR, '25.9(b).

2. Purpose and Use of the Information

The State POC Final Determination Electronic Submission is a means to obtain final status for transactions initiated by the POC States. This will help ensure that the NICS correctly purges proceeded transactions before the beginning of the next business day in order to maintain compliance with retention regulations. Additionally, this information will be used for statistical purposes; for FFL record inspections by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); to assist in the NICS Section's appeal process for research purposes; and to enhance the performance of the NICS by making state final determination information available to the NICS Section.

3. Use of Automated, Electronic, Mechanical, or Technological Collection Techniques

The State POCs are required to provide notification to the NICS of their determination that the firearm transfer is denied, is an overturned deny, is open, or was an open transaction changed to a proceed.

The NICS Denial Overturned (NDO)

The NDO will include information relating to the transaction, including a response header, the originating agency identifier (ORI) number, the NICS Transaction Number (NTN), the Message Key (MKE) code that indicates the status, and the name associated with the original Agency Search Request. An optional miscellaneous field is also provided.

The NICS Delay Notification (NLN)

The NLN for an open transaction requires a response header, MKE code, ORI number, and NTN to be entered.

The NICS Proceed Notification (NPN)

The NPN requires a response header, an MKE, ORI number, NTN, and an optional miscellaneous field.

The NICS Denial Notification (NDN)

The NDN message is an electronic message that tells the NICS that a gun buyer was considered ineligible to receive a gun based on the response data from the NICS. Mandatory fields are the header, MKE code, ORI number, and NTN. At least one record number is required.

Miscellaneous numbers are optional.

The information provided in the POC determination notification will be maintained in the NICS Audit Log described in 28 CFR, '25.9 (b). These notifications shall be provided by electronic messages immediately upon communication to the FFL.

4. Efforts to Identify Duplication

There will be no duplication by the POC States electronically sending information to the NICS. If a POC State attempts to send a duplicate response, an error message will be electronically transmitted to the contributing agency reporting a duplication error.

5. Impact on Small Businesses

The collection of information will not have a significant economic impact on small businesses.

6. Consequences of not Collecting Data

As a consequence of not collecting data, the NICS Section will not have information of the final status of POC-initiated transactions; thus, cases which are appealed to the Attorney General that NICS processes will not be accurately or efficiently resolved. The NICS Section must collect this data to comply with the Omnibus Appropriations Act to ensure the system is in compliance. Statistics which are captured and quoted will not be all inclusive in that the POC States do not voluntarily submit complete statistics on all transactions. The NICS can only accurately quote statistics for those transactions processed by the NICS Section. The NICS will not have complete system information to provide to the ATF for purposes of investigating possible violations of the Gun Control Act of 1968.

7. Special Circumstances

The special circumstances associated with reporting determination information on a daily basis is due to requirements in the regulation regarding retention outlined in 28 CFR, '25.

8. Outside Consultation

The FBI has contacted the ATF in the previous collection to respond to the information collection effort. The ATF reviewed and provided comments for 28 CFR, '25. The 60 and 30 day notices have been posted and no comments were received.

9. Payment to Respondents

There is no payment made or gift to an individual who provides the information to the NICS.

10. Assurance of Confidentiality

All information will be held confidential in accordance with Title 42, United States Code, Section 3789(g), the Privacy Act.

11. Justification for Sensitive Questions

The information submitted does not include any sensitive questions.

12. Estimates of the Hour Burden

The estimated total hours of burden, collectively for all 31 POC States (Full State POCs, Partial POCs, and Alternate Permit State POCs) annually is 18,689 hours. The estimated hours of burden required for each of the 21 submitting POC States is 603 hours per year. It is estimated that all 31 states initiate an average of 4,312,811 checks each year. Of those 4,312,811 transactions, it is estimated that only 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,121,331 transactions, which would be the total annual responses. The other 74 percent would not be reported in this collection. It will require

one minute (60 seconds) for each POC State to transmit the information (per transaction) to the NICS. Thus, it is estimated that collectively all POCs will spend 18,689 hours making its submissions to the NICS, which would be the total annual hours requested. If all states had an even distribution of the 1,121,331 transactions, then 603 hours would be the estimated time for each. Record keeping time is part of the routine business process and is not part of this calculation.

Calculation:

<u>Total Checks</u>	<u>Percentage reported</u>	<u>Time to Transmit Response</u>	<u>Hours of Responses Per POC</u>
4,312,811	26	60 seconds	18,689

The formula is $(4,312,811 \times 26 \text{ percent})/60 = 18,689$.

13. Estimates of Total Annual Cost Burden

Due to each POC State having different technical requirements, systems, and volume of transactions, start-up in 2004 was estimated to have cost each state between a minimum of \$10,000 and a maximum of \$2,000,000 per state for initial implementation according to information provided by the states themselves. Annual costs for post implementation years are estimated to be \$25,000 per state.

14. Estimates of Annualized Cost to the Federal Government

The initial implementation cost for the federal government to accept state-submitted transaction status is estimated to be between \$250,000 and \$350,000. Additional annual costs for data storage, processing costs, and communication requests should not exceed \$100,000.

15. Reasons for Program Changes

This requirement was mandated by 28 CFR, '25.

16. Plans for Tabulation and Publication

The data collected will be used for providing accurate records of all final determinations on transactions to the NICS by both POC and non-POC States. This information will be utilized by FBI employees, and FBI contract employees and may be supplied to the ATF for auditing purposes. Also, this information will be retained as a matter of routine daily statistics, reports, statistics to members of Congress upon request, and in presentations given by the NICS Section representatives.

17. Request for Approval not to Display OMB Expiration Date

The OMB is requested to not display an expiration date. There is no specific form upon which to display an expiration date. It would not be practical to send an expiration date in the computer message or have it on the screen.

18. Exceptions to the Certification Statement

No exceptions to the certification statement are requested.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection employs no statistical methods.