

## **PAPERWORK REDUCTION ACT SUBMISSION**

### **Supporting Statement**

Agency: Federal Bureau of Investigation (FBI)

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

Form: Point of Contact (POC) State 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) approve the extension of the Paperwork Reduction Act submission for the POC State Final Determination Electronic Submission. This is a previously approved collection.

Under Title 28, Code of Federal Regulations (C.F.R.), Section 25.6(h), Full POC States, Partial POC States, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) – qualified Alternate Permit States are required to transmit electronic determination messages to the NICS 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 POC State 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 to the FFL, no later than the end of the operational day on which the transaction was initiated. With the exception of permit checks, in cases of newly created POC State NICS transactions that are not followed by a determination message before the end of the operational date or those responses that are not received, the NICS will assume the transaction that resulted in a proceed notification to the FFL. This information will be maintained in the NICS Audit Log, per 28 C.F.R., '25.9(b) and is subject to the rules governing record retention, also detailed in 28 C.F.R., '25.9(b).

## **A. JUSTIFICATION**

### **1. Circumstances of the Collection**

The Department of Justice (DOJ) promulgated regulations to govern the NICS, in 28 C.F.R., '25, in 1998, when the NICS became operational. The DOJ published a revision to Section 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 the retention period, any results of transactions from the POC States 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 C.F.R., '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 or is an open transaction later changed to a proceed.

With the exception of permit checks, newly created POC State NICS transactions that are not followed by a determination message before the end of the operational day or those responses 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 C.F.R., '25.9(b) and would still be subject to the rules governing record retention, also detailed in 28 C.F.R., '25.9(b).

## **2. Purpose and Use of the Information**

The POC State Final Determination Electronic Submission is a means to obtain final statuses for transactions initiated by the POC States. This will ensure 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 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 POC States are required to provide notification to the NICS of their determination that a firearm transfer is denied, is an overturned deny, is open, or was an open transaction changes to a proceed.

#### The NICS Denial Overturned (NDO)

This is an electronic message from an agency to the NICS via the National Crime Information Center (NCIC). The message tells the NICS that a previous NICS Transaction Number (NTN) denial has been overturned. The NICS uses this information to determine how long to maintain records associated with a NTN for which the denial has been overturned.

#### The NICS Delay Notification (NLN)

This is an electronic message from an agency to the NICS. The message tells the NICS a specified NTN was delayed by the agency. NICS uses this information to determine when to delay an agency initiated-search.

#### The NICS Proceed Notification (NPN)

This is an electronic message from an agency to the NICS via the NCIC. The message tells the NICS a specified transaction has been proceeded by the agency. The NICS uses this notification to

determine when to set an agency initiated search to the PROCEED status. The NICS can only apply a PROCEED status to an agency-initiated search that was delayed by the agency or has not yet been purged from the NICS.

#### The NICS Denial Notification (NDN)

This is an electronic message from an agency to the NICS via the NCIC. The message tells the NICS a gun buyer was considered ineligible to receive a firearm based on the POC States review. The NICS uses this notification to retain all records associated with a denied transaction

The information provided in the POC State determination notification will be maintained in the NICS Audit Log as described in 28 C.F.R., '25.9 (b). These notifications shall be provided by electronic messages immediately upon communication to the FFL or no later than the end of the operational day in which the check was initiated.

#### **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 due to the fact the electronic notifications are transmitted by POC State entities.

## **6. Consequences of not Collecting Data**

As a consequence of not collecting data, the NICS Section will not have information concerning the final status of POC State-initiated transactions; thus, cases proceeded by the NICS which are appealed to the U.S. Attorney General will not be accurately or efficiently resolved. The NICS must collect this data to ensure system compliance with the Omnibus Appropriations Act.

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 required in the retention regulation outlined in 28 C.F.R., '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 C.F.R., '25.

## **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 39 POC States (Full-POC States, Partial-POC States, and ATF-qualified Alternate Permit States) annually is 23,024 hours. It is estimated that all 39 states initiate an average of 5,313,445 background checks each year. Of those

5,313,445 transactions, it is estimated only 26 percent would be effected by this collection and would require electronic messages sent to the NICS. This translates to 1,381,496 transactions, which would be the total annual responses for POC States. 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 POC States will spend 23,024 hours making their submissions to the NICS, which would be the total annual hours requested. If all states had an even distribution of the 1,381,496 transactions, then 590 hours would be the estimated time for each state. 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>
5,313,445	26	60 seconds	23,024

The formula is  $(5,313,445 \times 26 \text{ percent}) / 60 = 23,024$ .

**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 of \$10,000 and of \$2,000,000, per state, for initial implementation according to information provided by the states themselves. Annual costs for post implementation years was 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 was 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 C.F.R., '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 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.