

## **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.), subsection 25.6 (h), POC 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 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.; § Part 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. As outlined in 28 C.F.R.; § 25.6 (h), POCs shall transmit transaction

determination messages to the FBI for four specified determinations immediately upon communicating the determination to the FFL. Those specified transaction determinations are the following:

1. open transactions that are not resolved before the end of the operational day on which the check is requested;
2. denied transactions;
3. transactions reported to the NICS as open and later changed to proceed; and
4. denied transactions that have been overturned.

For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks, newly created POC State 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**

Title 28, Code of Federal Regulations, subsection 25.6 (h) requires the Point-of-Contact (POC) states to transmit electronic NICS transaction determination messages to the FBI. The electronic information received from the POC states consists of Proceed, Delay and Deny statuses. This helps ensure the NICS correctly purges proceeded transactions within 24 hours in order to

maintain compliance with retention regulations. The NICS Section uses the data received in the electronic submissions for managing the NICS, for example, staffing balance and transaction volume forecasting. In addition, the NICS Section uses the information transmitted by POC States to report the number of Proceeds, Delays, and Denies annually to the Department of Justice and to Congress; 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 changed 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 that 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 that a gun buyer was considered ineligible to receive a firearm based on the POC State's review. The NICS uses this notification to retain all records associated with denied transactions.

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 entities, public entities, small governments, or nonprofit organizations 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. The electronic information received from the Point of Contact (POC) states consist of Proceed, Delay and Deny statuses. The NICS Section uses the statuses to

management the NICS, for example, staffing balances and transaction volume forecasting. In addition, the NICS Section uses the statistical information to report annually to the Department of Justice and Congress.

## **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 60 and 30 day notices have been submitted and no public comments were received.

## **9. Payment to Respondents**

The FBI does not provide any payment or gift to an individual who provides the information to the NICS.

## **10. Assurance of Confidentiality**

All information will be held private in accordance with Title 42, United States Code, Section 3789(g), the Privacy Act. The System of Records Notice for the collection is in SORN 63FR652333 and 69FR43899.

## **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. Reductions in responses and burden in this ICR: Three paper forms were inadvertently submitted as part of the previously approved information collection package. These forms were unrelated to 1110-0035. Then and now, this information collection neither contains paper forms nor requires respondents to generate paper forms. This collection requires POC States to transmit electronic messages to the NICS regarding the status and outcome of background checks. The previous package also contained burden estimates



associated with the three paper forms. Correcting the previous error, this information collection request removes the three paper forms and associated burden estimates. This results in a decrease in responses and burden from the previous collection package.

**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 the variety of technical requirements that exist among the different POC state systems, the multiplicity of available technology, and indeterminate volume of transactions, the total annual cost burden to the POC states was estimated to be approximately \$13,390,000. This figure includes start-up costs for initial implementation which were estimated according to industry standard data and limited information provided by the POC states. This figure also includes NICS Section estimated annual costs for post implementation, which includes operation and maintenance, hardware/software upgrades, and overhead based on 13 POC states.

**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.