



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

September 14, 2018

Mr. Joseph B. Nye
OMB Policy Analyst
Office of the Information and Regulatory Affairs
New Executive Office Building
Washington, D.C. 20530

Ms. Melody Braswell
Department Clearance Officer, PRA
Office of the Chief Information Officer
Policy and Planning Staff
DOJ 2CON
Washington, D.C. 20002

Dear Mr. Nye and Ms. Braswell:

As the Section Chief of the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, National Instant Criminal Background Check System (NICS) Section, I am seeking an emergency review and approval of the attached NICS State Implementation Plan template pursuant to the requirements of the Paperwork Reduction Act (PRA). This letter requests emergency approval of the Application by September 28, 2018, in accordance with 44 U.S.C. § 35070 and 5 C.F.R. § 1320.13, which permits such expedited approvals when a collection is needed prior to the expiration of time periods established by the PRA, is essential to the mission of the agency, and would cause a statutory deadline to be missed. *See* 44 U.S.C. §§ 3507(j)(1) and 3507(j)(2).

This emergency processing is essential because compliance with normal clearance procedures would cause the statutory deadline to be missed, and would further delay and potentially inhibit the identification and contribution of valuable records necessary for NICS to make accurate and timely decisions regarding the Second Amendment rights of individuals requiring a NICS Background Check.

The State Implementation Plan Template is Essential to the Mission of the FBI CJIS NICS

The expedited approval of the State Implementation Plan Template is essential to the mission of the FBI CJIS NICS because the collection of data from the State Implementation Plan Template is necessary in order to identify state records establishing NICS prohibitions that are not available to NICS and develop a plan to submit such records to one of the three systems NICS searches. On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act, 2018. *See* H.R. Res. 1625, 115th Cong. (2018) (enacted). Division S, Title VI of this appropriations law is known as the Fix NICS Act. The Act strives to strengthen the NICS, which is a program operated at the FBI CJIS Division in West Virginia. Section 107 of the Act requires, no later than March 23, 2019, for the Attorney General (AG) to establish an

implementation plan for each State government. Each plan will ensure maximum coordination and automation of the reporting or making available of appropriate records to the NICS established under section 103 of the Brady Handgun Violence Prevention Act and the verification of the accuracy of those records during a four-year period specified in the plan.

Approval is Necessary to Achieve Compliance with Statutory Deadlines in the Act

Approval of the State Implementation Plan Template is necessary, because it is the only way to achieve compliance with the mandatory statutory deadlines in the Act. On September 4, 2018, the Department of Justice (DOJ) verbally assigned the task of developing a document to collect state specific-information, regarding gaps in records made available to NICS verses records possessed by states, to the FBI CJIS NICS. The NICS Section was instructed to gather information from the CJIS state contacts that will support the development of the state implementation plans. This was not previously assigned/delegated to the FBI CJIS Division. Regardless of which entity is assigned the task of disseminating the questions to state contacts and developing the implementation plans, work must be undertaken at the earliest opportunity to meet the March 2019 deadline. Collecting this information is merely the first step in developing an implementation plan. Once information is received, it will require additional man hours to review each state contact's response and then generate an appropriate plan for each individual state. Approval of the template is necessary before the expiration of the 60-day and 30-day notice periods, because it is the only way to achieve compliance with the mandatory statutory deadlines in the Act. Otherwise, neither CJIS nor another entity will be able to meet the statutory requirement of the Fix NICS Act. The Act requires the Attorney General to develop an implementation plan for each State government, in coordination with the States, to ensure maximum coordination and automation of the reporting or making available of appropriate records to the NICS by March 23, 2019. Each plan is required to include annual benchmarks to enable the AG to assess the implementation of the plan, including: qualitative goals and quantitative measures; and a needs assessment, noting estimated compliance costs. If the normal process for obtaining an OMB number is required, adding a 90-day or even a 60-day Office of Management and Budget (OMB) clearance process, would prevent the AG or delegated entity from meeting the statutory deadline of having state plans in place by March 23, 2019. The questionnaire needs to be disseminated to state contacts beginning October of 2018, in order to allow states adequate time to determine an accurate response, as well as time to then develop, draft, and coordinate with states on the final implementation plan. The process of coordinating with the state contacts and developing an applicable plan is critical as the statute not only requires the plans, but states found to not be in compliance with their developed plans are subject to annual penalties. By the end of each fiscal year beginning October 2019, the AG shall determine whether each State government has achieved substantial compliance with the benchmarks included in the plan. The AG shall disclose and publish, including on the DOJ website, the name of each State government that received a determination of failure to achieve substantial compliance with an implementation plan for the fiscal year. Additionally, those states found not to be in compliance shall not be given affirmative preference with regard to Bureau of Justice Assistance discretionary grant applications for the fiscal year in which the grant was solicited. Therefore, CJIS is requesting an emergency processing to facilitate this task.

Expedited Approval of the State Implementation Plan Template provides a Temporary Measure to Allow the FBI CJIS NICS the ability to begin disseminating the template to the state contacts in October 2018, to allow the states ample time to establish and implement a plan that will comply with the Act by the March 23, 2019 deadline while the template undergoes the normal clearance procedures.

Expedited Approval provides a Temporary Measure to Allow States time to Develop and Implement their Plan within the Statutory Time Limits while the Template undergoes the Normal Clearance Procedures

Finally, the FBI CJIS Division NICS request for expedited approval should be granted because it is a temporary measure to allow the state contacts time to develop and implement their plans establishing the criteria for making records available to NICS within the statutory time limits, while the template undergoes the normal clearance procedures. If additional comments are received during the PRA clearance process, the template can be amended.

Thank you for your prompt consideration of this request. Please contact Gerry Lynn Brovey, FBI CJIS Division, Supervisory Information Liaison Specialist, by email at glbrovey@fbi.gov or by phone at 304-625-4320 if you have any questions or need additional information.

Sincerely,



Robin A. Stark-Nutter
Section Chief
NICS Section
CJIS Division