

when a hearing is not recommended. Section 902.3(c) is being amended accordingly.

Another comment expressed a concern that subsection 902.4(b) seemed to allow only the Federal Bureau of Investigation or a Party State to appeal to the U.S. Attorney General when a hearing was denied. The Council modified this subsection to allow any disputant to appeal to the Attorney General and provide that the Attorney General has the discretion to consider the appeal and grant a hearing.

Comment 5 referred to 902.5, Hearing Procedures, asking if disputants would be allowed to cross-examine witnesses and introduce evidence at a hearing, if there was any way to compel the attendance of witnesses or production of documents, and if there are any restrictions on a disputant acting as his/her own attorney? The Council agreed to modify subsection (c)(4) to state, "Call and cross-examine witnesses." Council discussion acknowledged there is no way to compel the attendance of witnesses or production of documents or to restrict a disputant acting as his/her own attorney.

Comment 6 referenced 902.5(e), asking if the intent of the Council was to allow a Council member who raised a dispute to participate fully in the hearing and vote on the final Council decision, as this could be construed as a conflict of interest. Based on input from the Department of Justice, the Council decided to leave the original language intact.

When Congress passed the National Crime Prevention and Privacy Compact Act of 1998, it set forth specific language regarding the composition of the Compact Council, with a particular number of members representing the states, federal agencies, and criminal/noncriminal justice constituencies, each seat representing a vote on issues—including the adjudication of disputes. Requiring a member to recuse himself from a dispute hearing might result in removing a particular constituency's vote, contravening the intent of Congress.

Another comment questioned the language in section 902.5(h), asking if recording and transcription of a hearing might not always be necessary. The Council agreed to modify the language as follows:

The proceedings of the hearing will be recorded and, as necessary, transcribed. A transcript of the hearing shall be made and forwarded to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.

The next comment asked what defined a majority vote of Council

members. According to Compact Article VI and the Council's Bylaws, section 8.8, a quorum of Council members or any Committee of the Council is defined as a simple majority. No vote shall be taken without a quorum. The Council is revising 902.5(i) to add the references to Article VI and the Bylaws.

A final comment questioned if the rule was modeled after any existing precedents. The Council responded that the rule was structured according to current administrative procedures, but was not modeled after an existing precedent.

#### **Administrative Procedures and Executive Orders**

##### *Administrative Procedures Act*

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. See U.S. 42 .C.16, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

##### *Executive Order 12866*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

##### *Executive Order 13132*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this Rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

##### *Executive Order 12988*

The Compact Council is not an executive agency or independent

establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

##### *Unfunded Mandates Reform Act*

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

#### **List of Subjects in 28 CFR Part 902**

Administrative Practice and Procedure.

■ Accordingly, Chapter IX of Title 28 Code of Federal Regulations is amended by adding Part 902 to read as follows:

#### **PART 902—DISPUTE ADJUDICATION PROCEDURES**

Sec.

- 902.1 Purpose and authority.
- 902.2 Raising disputes.
- 902.3 Referral to Dispute Resolution Committee.
- 902.4 Action by Council Chairman.
- 902.5 Hearing procedures.
- 902.6 Appeal to the Attorney General.
- 902.7 Court action.

**Authority:** 42 U.S.C. 14616.

##### **§ 902.1 Purpose and authority.**

The purpose of Part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

##### **§ 902.2 Raising disputes.**

(a) Cognizable disputes may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;