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**SUPPLEMENTARY INFORMATION:** The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes.

The Compact requires that subject's fingerprints or other approved forms of positive identification "shall be submitted with all requests for criminal history record checks for noncriminal justice purposes." See 42 U.S.C. 14616, Article V(a). The Compact Council recognizes the extreme reliability of fingerprint-based identifications and believes that the above quoted provision requires that, whenever feasible, fingerprints should be submitted contemporaneously with search requests. In promulgating the Fingerprint Submission Requirements Rule (28 CFR Part 901), however, the Council acknowledged that there are exigent circumstances in which time is a critical factor in decision making and in which the immediate fingerprinting of the subject is not feasible. In such emergency circumstances, the Council interpreted the Compact to permit preliminary name searches of the III System for noncriminal justice purposes, provided that fingerprints are obtained and submitted within a time frame specified by the Council. This procedure allows access to criminal history record information in a timely manner in exigent circumstances with follow-up positive identification assured by fingerprint submissions.

Part 901 authorizes state criminal history record repositories and the FBI, upon approval by the Compact Council, to grant access to the III System in emergency situations on a delayed fingerprint submission basis, predicated upon a statute approved by the U.S. Attorney General pursuant to Public Law 92-544 and Article III (c) of the Compact. Access authorized by part 901 must adhere to both the Criminal Justice Information Services Security Policy and applicable state security policies.

Subsequent to the publication of Part 901, states that were authorized to conduct the name-based checks

articulated varying interpretations of the fingerprint submission time frame. In order to eliminate these disparate interpretations, the Compact Council is amending the rule to define the term "time frame" by adding a sentence at the end of Subsection 901.3(b).

Section 901.3 is also amended by adding paragraph (d) to clarify that part 901 is also applicable to Federal agencies authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes. The original rule identified only state agencies, and per the Compact's definition of "state", an amendment to the rule is necessary. See 42 U.S.C. 14616, Article I(22).

Recently, the FBI CJIS Division expanded its Audit Unit programs to include reviews of noncriminal justice agencies with direct access to the III System for emergency placement of children. Though the Background section of the original **Federal Register** publication establishing part 901 included verbiage addressing audits and sanctions, no such language was included in the Rule. The Compact Council has now approved the addition of language in the rule addressing audits and sanctions in order to reduce the potential for misinterpretation. Section 901.4 identifies the State Compact Officer or, in nonparty states, the Chief Administrator of the Criminal History Record Repository, as the responsible party to ensure that audits are conducted of approved state agencies, and the responsible Federal Service Coordinator will ensure that similar audits are conducted of authorized Federal agencies. The audits will verify adherence to the provisions of part 901 and the FBI Criminal Justice Information Services Security Policy. Section 901.4 also includes the details of records an authorized agency must maintain related to this III access under part 901 and requires that mechanisms to calculate the specified time frame for fingerprint submissions be included in the audit and compliance reviews.

Sanctions for noncompliance as related to the audit methodology spelled out in section 901.4 are addressed in section 901.5. This section states that the Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions according to rules, procedures, or standards established by the Council. Approved access to criminal history record information systems is subject to cancellation for violation of the National Crime Prevention and Privacy Compact Act or for failure to comply with part 901 or the FBI Criminal Justice

Information Services Security Policy. The state's Compact Officer, the Chief Administrator of the Criminal History Record Repository in a nonparty state, or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

#### **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 compact which was approved and enacted into law 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 42 U.S.C. 14616, 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.