

federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

**National Environmental Policy Act**

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of the environment.

**Executive Order 13175 (Tribal Consultation)**

The FHWA and the FTA have analyzed this final action under Executive Order 13175, dated November 6, 2000, and believe that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 476**

Grant programs—transportation, Highways and roads, Mass transportation.

■ In consideration of the foregoing and under the authority of 23 U.S.C. 315, sec. 1106(b) of Public Law 105–178, 112 Stat. 107, 136 (1998), and 49 CFR 1.48, the FHWA and FTA are amending title 23, Code of Federal Regulations, by removing part 476, as follows:

**PART 476—[REMOVED]**

Issued on: November 20, 2003.  
**Mary E. Peters,**  
*Federal Highway Administrator.*  
**Jennifer L. Dorn,**  
*Federal Transit Administrator.*  
 [FR Doc. 03–29596 Filed 11–25–03; 8:45 am]  
**BILLING CODE 4910–22–P**

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

**28 CFR Part 902**

**[NCPPC 106]**

**Dispute Adjudication Procedures**

**AGENCY:** National Crime Prevention and Privacy Compact Council.

**ACTION:** Final rule.

**SUMMARY:** The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing this rule to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

**EFFECTIVE DATE:** This final rule is effective on December 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. Jeffrey D. Harmon, Compact Council Chairman, Maine State Police, 36 Hospital Street, Augusta, Maine 04333–0042, telephone number (207) 624–7060.

**SUPPLEMENTARY INFORMATION:** This document finalizes the Compact Council rule proposed in the **Federal Register** on November 25, 2002, (67 FR 70567). The Compact Council accepted comments on the proposed rule from interested parties until December 26, 2002, and is finalizing the rule with certain changes in response to the comments.

**Significant Comments or Changes**

Two comments from the same party questioned the Council's reference in the Supplementary Information that "the Compact eliminates barriers to the sharing of criminal history record information among Compact parties for noncriminal justice purposes", asking if the Compact encompassed all noncriminal justice purposes or only those criminal history record information requests supported by fingerprint submissions. The Council's response was that the Compact encompasses all noncriminal justice purposes. The second comment asked for verification of the quoted statement in the Supplementary Information that "Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with the FBI administration of the III System for criminal justice purposes." The Council's response was that this is a direct quote from the Compact, 28 CFR 14616, Article VI.

Nine comments referencing particular subsections of the proposed rule were received from a second party. The first comment referenced the use of and subsequent referral to the term "directly aggrieved" (§ 902.2, paragraphs (a) and (b)). To eliminate what was interpreted as a "circular" reference, the Council is revising paragraph (a) to state,

"Cognizable disputes may be based upon:

\* \* \* \* \*

while paragraph (b) is left unchanged.

A second comment asked the following questions about section 902.3(a): What if the dispute also poses a conflict of interest for the Chair? Could a deputy name the substitute member? The Council's original intent was that *any* Committee member with a conflict of interest would excuse him/herself from the hearing on that topic. Clarifying language is being added to 902.3 paragraph (a):

In the case when the Compact Council Chair is the committee member with the conflict, the Chair shall take appropriate steps to appoint a replacement that resolves the conflict.

Comment 3, on section 902.3(c), labeled the use of the phrase "lean toward" as vague. The Council is modifying paragraph (c) to indicate that the dispute resolution committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit, and that the committee will give written explanation

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;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) Only a Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Section 902.2(a)(4), may raise a cognizable dispute. Such disputants may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

#### **§ 902.3 Referral to Dispute Resolution Committee.**

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute. In the case when the Compact Council Chairman is the committee member with the conflict, the Chairman shall take appropriate steps to appoint a replacement that resolves the conflict.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) The Dispute Resolution Committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit. If the Committee recommends denying a

hearing, it must articulate its reason or reasons for doing so in writing.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

#### **§ 902.4 Action by Council Chairman.**

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the disputant may appeal this decision to the Attorney General. If the Attorney General believes the disputant has raised an issue that is not frivolous or without merit, the Attorney General may order the Compact Council Chairman to grant a hearing.

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

#### **§ 902.5 Hearing procedures.**

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call and cross-examine witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

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

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws) and voting at the hearing. The Council's decision on the dispute shall be published in the **Federal Register** as provided by Section (a)(2) of Article XI and Section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by Section (c) of Article XI of the Compact.

#### **§ 902.6 Appeal to the Attorney General.**

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to Section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

#### **§ 902.7 Court action.**

Pursuant to Section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

Dated: November 5, 2003.

**Jeffrey D. Harmon,**

*Compact Council Chairman.*

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