

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL****28 CFR Part 902**

[NCPPC 102]

**Dispute Adjudication Procedures****AGENCY:** National Crime Prevention and Privacy Compact Council.**ACTION:** Proposed rule.

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

**DATE:** Submit comments on or before December 26, 2002.

**ADDRESSES:** Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Cathy L. Morrison. Comments may also be submitted by fax at (304)625-5388 or by electronic mail at *cmorriso@leo.gov*. To ensure proper handling, please reference "Dispute Adjudication" on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wilbur Rehmman, Compact Council Chairman, Montana Department of Justice, 303 North Roberts, 4th Floor, Post Office Box 201406, Helena, Montana 59620-1406, telephone number (406) 444-6194.

**SUPPLEMENTARY INFORMATION:** The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-14616, establishes uniform standards and processes for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999, when ratified by the second state. 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 Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

This proposed rule establishes Dispute Adjudication Procedures authorized under Article XI of the Compact. Article XI provides generally for the adjudication of disputes relating

to the Compact and this rule provides a structured framework for the Council to efficiently and effectively implement the adjudication process.

Section 902.2(a) of the proposed rule provides that cognizable disputes may only be raised by a person or organization directly aggrieved by: (1) The Council's interpretation of the Compact; (2) any rule or standard established by the Council pursuant to the Compact; or (3) failure of a Compact Party to comply with a provision of the Compact or with any rule or standard established by the Council. Limiting disputes to those who are "directly aggrieved" by Council or Compact Party actions ensures that Council resources are devoted to reviewing substantive matters relating to direct Council or Compact Party actions and that standing is provided only to a person or organization substantially impacted by relevant actions of the Compact Council or a Compact Party.

Section 902.2(d) of the proposed rule provides that a dispute may not be based solely upon a disagreement with the merits of a rule or standard established by the Council. If a rule has been established by the Council, the Council has provided an opportunity for comments through the publishing of a proposed rule, has debated the merits and wisdom of the rule at meetings open to the public, and has determined that the rule should be enacted. Prior public notice is given in the **Federal Register** of each Council meeting, including the matters to be addressed at the meeting. Therefore, the public will have prior notice of the proposed rules to be discussed by the Council and will have an opportunity to comment on the merits of the proposed rules. Accordingly, prohibiting disputes based on the merits or wisdom of a Council rule ensures that Council time and resources are not spent adjudicating disputes in matters in which the Council has already invested significant time and effort and on which interested parties have had ample opportunity to comment. However, while a formal dispute on the merits of a rule may not be raised under these procedures, nothing prevents further discussion of the merits of the rule or efforts seeking its revocation at regularly scheduled Council meetings.

Section 902.3 of the proposed rule provides that disputes are preliminarily referred to the Council's Dispute Resolution Committee for a recommendation to the Council Chairman regarding whether a hearing should be held on the matter. Creating and utilizing a Dispute Resolution Committee enhances efficiency by

having a small group assess pertinent information and make recommendations to the Chairman and full Council.

The hearing procedures provided for in the proposed rule ensure that disputants, as well as Compact Parties charged with violating Council rules, are given a full and fair opportunity to present matters to the Council both orally and in writing. Due to the Council's historically busy agenda and the costs involved in assembling the 15-member Council and its administrative support, the Council Chairman may limit the number of and the length of time allowed to presenters or witnesses. The Chairman also maintains the discretion to limit input, both orally and in writing, of other persons or organizations who may wish to participate in an adjudication proceeding.

Given the affected interests of the Compact Council, the proposed rule requires that appropriate notice of an appeal under Article XI be communicated to the Council Chairman by the appealing party to ensure that timely notice is provided to Council members and other appropriate individuals.

**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 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.

*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, National Crime Prevention and Privacy Compact Council.

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 this 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 must be raised by a Party State, the FBI, or a person, organization, or government entity directly aggrieved within the meaning of paragraph (b) of this section and 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) 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 § 902.2(a)(4), 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.

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

(c) In making a decision as to whether to recommend a hearing, the Dispute Resolution Committee shall lean toward recommending hearings to all disputants who raise issues that are not clearly frivolous or without merit.

(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 Federal Bureau of Investigation or a Party State may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact (see § 902.6).

(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 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 shall be transcribed, as necessary. A record of the proceedings will be made and provided 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 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 1, 2002.

**Wilbur Rehmman,**

*Compact Council Chairman.*

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**BILLING CODE 4410-02-P**

## **FEDERAL MEDIATION AND CONCILIATION SERVICE**

### **29 CFR Part 1404**

**RIN 3076AA09**

#### **Arbitration Schedule of Fees**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Mediation and Conciliation Service is proposing to revise the Appendix to 29 CFR Part 1404 to replace the fee schedule item for processing requests for panels of arbitrators with two new fee schedule categories—one for processing requests on-line and the other for requests which require processing by FMCS staff. In addition, FMCS proposes to increase the rates for requests which require staff processing and for requests for lists and biographic sketches of arbitrators.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before January 24, 2003.

**ADDRESSES:** Send comments to Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427 or by fax to (202) 606-3749. See **SUPPLEMENTARY INFORMATION** for other information concerning comments.

Submit copies of electronic comments to [vtraynham@fmcs.gov](mailto:vtraynham@fmcs.gov). See **SUPPLEMENTARY INFORMATION** for other information concerning electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone, (202) 606-5111; Fax (202) 606-3749.

**SUPPLEMENTARY INFORMATION:** In this rulemaking, FMCS proposes to amend its regulations in the Appendix to 29 CFR part 1404 by replacing the general category on the fee schedule for requests for panels with two new categories, one for processing electronic requests for panels and the other for requests which require processing by FMCS staff.

Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of

arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with fact finding and interest arbitration issues as well. On October 1, 1997, the Office of Arbitration Services (OAS) began charging a nominal fee for all requests for panels, lists and other major services. FMCS now proposes to amend the Appendix to 29 CFR part 1404 by adding a new category on the fee schedule for electronic requests and to increase the fees in other categories to take into account increases in the costs of processing the requests.

In May 2000, the OAS developed its electronic system to issue panels of arbitrators. Since the inception of the on-line system, nearly 500 labor and/or management representatives have utilized this on-line system, thereby reducing the time period for them to receive panels of arbitrators. The on-line system permits the parties to receive panels almost instantly—by fax, e-mail or mail. Ninety percent of all electronic requests are either faxed or e-mailed to the parties.

To encourage the use of electronic processing and receipt of panels, OAS is adding an entry on its fee schedule for on-line processing of panel requests. The on-line processing category will maintain the costs for this service at the fee of \$30.00—the amount currently in effect for all requests for panels of arbitrators—since the costs for electronic processing have not significantly increased.

The proposed revision to the arbitration fee schedule in the Appendix to 29 CFR part 1404 would create another category for requests that have to be processed by FMCS staff. FMCS proposes to increase the fees in this category from the current \$30.00 to \$50.00 for each panel. The increase in cost is based on several factors. The complexity of the requests received and processed by the staff in OAS has increased greatly. Parties are requesting more than the standard seven names on a panel, and they are requesting multiple panels with up to 15 names on each panel that require manual exclusions, based on a collective bargaining agreement. As a result, the staff time to process these requests has increased, as well as the cost to mail the panels. In addition, several increases in postage have occurred since the agency began charging for panels in October 1997.

Finally, FMCS proposes to revise the Appendix to 29 CFR part 1404 by increasing the cost for lists and biographical sketches of arbitrators in specific areas from \$10.00 per request