

equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part to a nonpool distributing plant.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1033.7(a) and (b) or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (6) of this section are not met, or under any of the conditions described in paragraph (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month in which the conditions were not met.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designation in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Loss of producer-handler status.* Notwithstanding paragraph (a) of this section, loss of producer-handler status for exceeding the limits in (c)(2) or for having more than three million pounds (or such lesser maximum volume that the record may so establish) of total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month shall only be effective in the months where the limits are exceeded.

(e) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm locations(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each.

(f) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish by proof satisfactory to the market administrator through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

#### **Proposed by Dairy Programs, Agricultural Marketing Service**

##### *Proposal No. 11*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid

marketing area, or from the Hearing Clerk, United States Department of Agriculture, Room 1083–STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;  
Office of the Administrator,  
Agricultural Marketing Service;  
Office of the General Counsel;  
Dairy Programs, Agricultural  
Marketing Service (Washington Office)  
and the Office of the Market  
Administrator of the Midwest Milk  
Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 14, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–3070 Filed 2–14–05; 4:17 pm]

**BILLING CODE 3410–02–P**

## **NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

### **28 CFR Part 904**

**[NCPPC 108]**

### **Criminal History Record Screening for Authorized Noncriminal Justice Purposes**

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

**ACTION:** Proposed rule, with request for comments.

**SUMMARY:** The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a rule proposing to establish criminal history record screening standards for criminal history record information received from the Interstate Identification Index (III) for authorized noncriminal justice purposes.

**DATES:** Submit comments on or before March 21, 2005.

**ADDRESSES:** Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304)625-5388. To ensure proper handling, please reference "Record Screening Procedures Docket No. 108" on your correspondence. You may view an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via electronic mail at [tcommodo@leo.gov](mailto:tcommodo@leo.gov) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 108 in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, PO Box 1489, Tallahassee, FL 32302, telephone number (850) 410-7100.

**SUPPLEMENTARY INFORMATION:** The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-16, establishes uniform standards and processes for the interstate and Federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999, when ratified by the second state.

Article VI of the Compact establishes a Compact Council "which shall have the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes". The Council is proposing this rule under the authority of Compact Article VI.

The Compact requires that each Party State appoint a Compact officer to regulate the in-state use of records received by means of the III system from the FBI or from other Party States. Since January 2003, Nonparty States may sign a memorandum of understanding (MOU) with the Compact Council voluntarily binding the Signatory Nonparty States to the Council's rules, procedures, and standards for the noncriminal justice use of the III System. The MOUs between Nonparty States and the Compact Council are one mechanism to ensure system policy compliance until the states become Compact signatories. In order to implement Article IV(c), which provides

*inter alia* that records obtained under the Compact by the requesting jurisdiction may only be used for the purpose requested and that the receiving jurisdiction must delete entries that may not legally be used for a particular noncriminal justice purpose, the Compact Council is proposing this rule to ensure that only legally authorized records are used for particular noncriminal justice purposes. This proposed rule will also facilitate national uniformity in criminal history record screening and editing practices applicable to information received via the III System for noncriminal justice purposes.

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

##### *Administrative Procedure 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). 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 904**

Crime, Health, Privacy.

Accordingly, title 28 of the Code of Federal Regulations, chapter IX is proposed to be amended by adding part 904 to read as follows:

#### **PART 904—STATE CRIMINAL HISTORY RECORD SCREENING STANDARDS**

Sec.

904.1 Purpose and authority.

904.2 Interpretation of the criminal history record screening requirement.

904.3 State criminal history record screening standards.

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

##### **§ 904.1 Purpose and authority.**

Pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616, Article IV (c), the Compact Council hereby establishes record screening standards for criminal history record information received by means of the III System for noncriminal justice purposes.

##### **§ 904.2 Interpretation of the criminal history record screening requirement.**

Compact Article IV(c) provides that "Any record obtained under this Compact may be used only for the official purposes for which the record was requested." Further, Article III(b)(1)(C) requires that each Party State appoint a Compact officer who shall "regulate the in-State use of records received by means of the III System from the FBI or from other Party States." To ensure compliance with this requirement, Compact Officers receiving records from the FBI or other Party

States are specifically required to "ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate 'no record' response is communicated to the requesting official." Compact Article IV(c)(3).

#### **§ 904.3 State criminal history record screening standards.**

The following record screening standards relate to criminal history record information received for noncriminal justice purposes as a result of a national search subject to the Compact utilizing the III System.

(a) The State Criminal History Record Repository or an authorized agency in the receiving state will complete the record screening required under § 904.2 for all noncriminal justice purposes.

(b) Authorized officials performing record screening under § 904.3(a) shall screen the record to determine what information may legally be disseminated for the authorized purpose for which the record was requested. Such record screening will be conducted pursuant to the receiving state's applicable statute, executive order, regulation, formal determination or directive of the state attorney general, or other applicable legal authority.

(c) If the state receiving the record has no law, regulation, executive order, state attorney general directive, or other legal authority providing guidance on the screening of criminal history record information received from the FBI or another state as a result of a national search, then the record screening under § 904.3(a) shall be performed in the same manner in which the state screens its own records for noncriminal justice purposes.

Dated: January 29, 2005.

**Donna M. Uzzell,**

*Compact Council Chairman.*

[FR Doc. 05-3041 Filed 2-16-05; 8:45 am]

**BILLING CODE 4410-02-P**

## **NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

### **28 CFR Part 907**

[NCPPC 108]

#### **Compact Council Procedures for Compliant Conduct and Responsible Use of the Interstate Identification Index (III) System for Noncriminal Justice Purposes**

**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 a procedure for ensuring compliant conduct and responsible use of the Interstate Identification Index (III) System for noncriminal justice purposes as authorized by Article VI of the Compact.

**DATES:** Comments must be received on or before March 21, 2005.

**ADDRESSES:** Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625-5388. To ensure proper handling, please reference "Compliant Conduct and Responsible Use of the Interstate Identification Index (III) for Noncriminal Justice Purposes" on your correspondence. You may view an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via electronic mail at [tcommodo@leo.gov](mailto:tcommodo@leo.gov) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 108 in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, 2331 Philips Road, Tallahassee, Florida 32308-5333, telephone number (850) 410-7100.

**SUPPLEMENTARY INFORMATION:** The National Crime Prevention and Privacy Compact, 42 U.S.C. 14616, establishes uniform rules, procedures, and standards 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 provides for the expeditious provision of Federal and State criminal history records to governmental and nongovernmental agencies that use such records for noncriminal justice purposes authorized by pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

To carry out its responsibilities under the Compact, the Compact Council is authorized under Article III and Article

VI to establish III System rules, procedures, and standards concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection and other aspects of III System operation for noncriminal justice purposes. Access to records is conditional upon the submission of the subject's fingerprints or other approved forms of positive identification with the record check request as set forth in Article V of the Compact. Further, any record obtained under the Compact may be used only for the official purposes for which the record was requested.

Article III(a) of the Compact requires the Director of the FBI to appoint a Compact Officer (herein referred to as the FBI Compact Officer) to administer the Compact within the Department of Justice (DOJ) and among Federal agencies and other agencies and organizations that submit search requests to the FBI and to ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with by DOJ and other Federal agencies and other agencies and organizations. Article III(b) requires each Party State to appoint a Compact Officer (herein referred to as the State Compact Officer) who shall administer the Compact within the state, ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with, and regulate the in-state use of records received by means of the III System from the FBI or from other Party States.

#### **Background**

Pursuant to Articles VI and XI respectively, the Compact Council has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes and has the initial authority to make determinations with respect to any dispute regarding interpretation of the Compact, any rule or standard established by the Compact Council pursuant to Article VI of the Compact, and any dispute or controversy between any parties to the Compact. Based upon its authority under the Compact, the Compact Council may impose appropriate sanctions against agencies that do not operate in accordance with the Compact and rules and procedures promulgated by the Compact Council.

The Compact Council is establishing this rule to protect and enhance the accuracy and privacy of III System records, to ensure that only authorized access to records is permitted, and to ensure that records are used and disseminated only for particular authorized noncriminal justice