

Transmission of Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus," *Journal of the American Medical Association*, 254(15): pp. 2051 to 2054, 1985.

6. Winklestein, Jr., W. et al., "Sexual Practices and Risk of Infection by the Human Immunodeficiency Virus," *Journal of the American Medical Association*, 253(3): pp. 321 to 325, 1987.

7. Stone, K. M. et al., "Primary Prevention of Sexually Transmitted Diseases," *Journal of the American Medical Association*, 255(13): pp. 1763 to 1766, 1986.

8. Peterman, T. A., and J. W. Curran, "Sexual Transmission of Human Immunodeficiency Virus," *Journal of the American Medical Association*, 256(16): pp. 2222 to 2226, 1986.

9. "Use of International Standard ISO-10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,'" ODE "Blue Book," General Program Memorandum #G95-1, FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Rockville, MD 20857, May 1, 1995.

10. "Testing Guidance for Male Condoms Made From New Materials," FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Obstetrics-Gynecology Devices Branch, Rockville, MD 20857, June 29, 1995.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any

significant impact of a rule on small entities. FDA believes that only one firm, which previously distributed a glans sheath type of device in 1989, may be affected and required to submit a PMA at a cost of approximately \$1.2 million. However, because this type device has been classified into class III since December 29, 1994, and any manufacturer of this device that was legally in commercial distribution before May 28, 1976, or found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing during FDA's review of the PMA or notice of completion of the PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The burden hours required for § 884.5320(c) are included in the collection entitled "Premarket Approval of Medical Devices—21 CFR Part 814," submitted on January 27, 1999 (64 FR 4112), for OMB approval.

IX. Submission of Comments with Data

Interested persons may, on or before August 9, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before May 26, 1999 submit to the Dockets Management Branch a written request to change the classification of the glans sheath. Two copies of any request are to be submitted except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5320 is amended by revising paragraph (c) to read as follows:

§ 884.5320 Glans sheath.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any glans sheath that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**) been found to be substantially equivalent to a glans sheath that was in commercial distribution before May 28, 1976. Any other glans sheath shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: April 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

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DEPARTMENT OF JUSTICE

28 CFR Parts 0, 16, 20, and 50

[AG Order No. 2218-99]

RIN 1105-AA63

Federal Bureau of Investigation, Criminal Justice Information Services Division Systems and Procedures

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice (DOJ) proposes amending DOJ regulations relating to criminal justice information systems of the Federal Bureau of Investigation (FBI) to address the following programmatic and nomenclature changes: to permit access to criminal history record information (CHRI) and related information, subject to appropriate controls, by a private entity under a specific agreement with an authorized governmental agency to perform an administration of criminal justice function (privatization); to

permit access to CHRI and related information, subject to appropriate controls, by a noncriminal justice governmental agency that is performing criminal justice dispatching functions or data processing/ information services for a criminal justice agency; to acknowledge access to CHRI and related information by the National Instant Criminal Background Check System (NICS) under the Brady Handgun Violence Prevention Act of 1993; to add express authority for the Director of the FBI from time to time to determine and establish revised fee amounts; and to modernize language to ensure that the regulations accurately reflect current FBI practices, names of systems and programs, and addresses.

DATES: Written comments must be received on or before June 9, 1999.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Harold M. Sklar, Attorney-Advisor, Federal Bureau of Investigation, CJIS Division, Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

FOR FURTHER INFORMATION CONTACT: Mr. Harold M. Sklar, Attorney-Advisor, telephone number (304) 625-2000.

SUPPLEMENTARY INFORMATION: The FBI manages two systems for the exchange of criminal justice information: the National Crime Information Center (NCIC) and the Fingerprint Identification Records System (FIRS). This rule proposes changes to regulations relating to CHRI and related information maintained in these systems. The changes proposed in this rule fall into five categories, discussed below.

1. *Access to CHRI and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization).* Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest

such disclosure be viewed as unauthorized.

In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice

governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to perform properly services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

2. *Access to CHRI and Related Information, Subject to Appropriate Controls, by a Noncriminal Justice Governmental Agency Performing Criminal Justice Dispatching Functions or Data Processing/Information Services for a Criminal Justice Agency.*

Noncriminal justice governmental agencies are sometimes tasked to perform dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such delegated tasks involve the administration of criminal justice, the performance of those tasks does not convert an otherwise noncriminal justice agency into a criminal justice agency. This regulation authorizes the delegation of such tasks to noncriminal justice agencies if done pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to CHRI to accomplish that limited function. We propose to revise 28 CFR 20.33(a)(6) and the appendix in order to confirm the authority of these noncriminal justice governmental agencies to receive CHRI and related information when approved by the FBI, subject to appropriate controls that may be imposed by the FBI.

3. *Access to CHRI and Related Information by the National Instant Criminal Background Check System (NICS).* The Brady Handgun Violence Prevention Act of 1993, Public Law 103-159, provides for the establishment of a National Instant Criminal Background Check System (NICS). Prior to transferring a firearm to a non-licensee, a federal firearm licensee must check the NICS (via a criminal justice agency) to see if the prospective transferee is prohibited under federal or state law from possessing a firearm. Because CHRI may contain information relevant to determining if possession of a firearm by a person is prohibited, the NICS will execute an NCIC check as part of each NICS query. Follow-up access to

the FIRS may also be necessary to resolve questions of identity. We propose to revise 28 CFR 20.33(a)(5) to confirm authority for the dissemination of CHRI and related information to criminal justice agencies for the conduct of background checks under the NICS.

4. *Authority for the Director of the FBI Periodically To Revise Fee Amounts.* Part 16, subpart C of title 28 of the Code of Federal Regulations establishes procedures by which an individual may obtain a copy of his or her identification record to review and may request a change, correction, or update to that record. Under 28 CFR 16.33, an individual requesting production of his or her identification record pays a fee of \$18 for each such request. The authority for this fee is the Independent Offices Appropriation Act (31 U.S.C. 9701), as implemented by guidelines issued by the DOJ, *User Fee Program* (Supplement, *Department of Justice Budget Formulation and Execution Calls*), and Office of Management and Budget (OMB) Circular Number A-25, Revised (July 8, 1993). These authorities generally require that a benefit or service provided to or for any person by a federal agency be self-sustaining to the fullest extent possible, that charges be fair and equitable, and that fee amounts be periodically reassessed and adjusted as warranted.

We propose to revise 28 CFR 16.33 by adding express authority for the Director of the FBI from time to time to determine and establish a revised fee amount. The exercise of this authority by the Director of the FBI will be subject to all applicable laws, regulations, or directions of the Attorney General of the United States, and the Director of the FBI will publish in the **Federal Register** appropriate notice of revised fee amounts.

5. *Update of Nomenclature and Addresses.* Throughout the parts of title 28 affected by this proposed rule, the language is modernized to reflect accurately current FBI practices, the current names of systems and programs, and the name and address of the new FBI facility in West Virginia where the systems are located. The broader term "fingerprints" has been substituted for "fingerprint cards" to encompass both "hard copy" fingerprint cards as well as the electronic submission of fingerprint data. The term "fingerprints" is further intended to encompass not only all depictions of physical fingerprints (for example, inked images, electronic images, and electronic encoding) but also all related biographical or other information typically appearing on a fingerprint card. The terms "computerized criminal history" and

"CCH" are changed to "Interstate Identification Index" and "IIL." The FBI "Identification Division" is changed to "Criminal Justice Information Services Division" or "CJIS." "NCIC Advisory Policy Board" is changed to "CJIS Advisory Policy Board." Minor modifications are being made to the definitions in 28 CFR part 20, subpart A; definitions are being added for the terms "Control Terminal Agency," "criminal history records repository," "Federal Service Coordinator," "Fingerprint Identification Records System" (FIRS), "Interstate Identification Index System" (IIS System), "National Crime Information Center" (NCIC), "National Fingerprint File" (NFF), and "National Identification Index" (NII); the definition of "Department of Justice criminal history record information system" is being eliminated; and the definitions are being placed in alphabetical order. In addition to the foregoing changes, the Department of Justice is currently reviewing additional changes to these regulations to be promulgated in future rulemaking. We note that 28 CFR part 20, subpart B, which also contains dated nomenclature and addresses, would not be directly changed by this proposed rule. The Department of Justice may consider possible changes to 28 CFR part 20, subpart B at some later time.

Applicable Administrative Procedures and Executive Orders; Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Most of the matters addressed by this proposed rule relate to nomenclature changes and to intra- and intergovernmental authorities not involving the private sector, or to governmental interaction with individuals in non-business contexts. The one change that relates to the private sector provides expanded authority for the dissemination of criminal justice information to private entities with whom authorized governmental agencies have contracted for criminal justice support services. Far from having any adverse effect on small entities, this change will, if anything, result in expanded opportunities for the private sector to conduct business with criminal justice agencies.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with

Executive Order 12866, section (1)(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is not a significant regulatory action under Executive Order 12866, section 3(f) and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

In view of the FBI's desire to provide this increased flexibility to the states as soon as possible, a thirty day comment period is considered appropriate.

Executive Order 12612

This regulation will not have substantial, direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects*28 CFR Part 0*

Authority delegations (Government agencies), Government employees, Organization and functions (Governmental agencies), Whistleblowing.

28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

28 CFR Part 50

Administrative practice and procedure.

Accordingly, Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.85 [Amended]

2. Amend § 0.85 as follows:

a. Remove the two references in paragraph (b) to “fingerprint cards” and add in their place the term “fingerprints”;

b. Revise paragraph (j) to read as follows:

§ 0.85 General functions.

* * * * *

(j) Exercise the power and authority vested in the Attorney General to approve and conduct the exchanges of identification records enumerated at § 50.12(a) of this chapter.

* * * * *

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

3. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

4. Section 16.30 is revised to read as follows:

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation (FBI) concerning procedures to be followed when the subject of an identification record requests production of that record to review it or to obtain a change, correction, or updating of that record.

5. Section 16.31 is revised to read as follows:

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a “rap sheet,” is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprints submitted in connection with federal employment, naturalization, or military service. The identification record includes the name of the agency or institution that submitted the fingerprints to the FBI. If the fingerprints concern a criminal offense, the identification record includes the date of arrest or the date the individual was received by the agency submitting the fingerprints, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Criminal Justice Information Services Division is not the source of the arrest data reflected on an identification record.

6. Section 16.32 is amended by revising the first sentence to read as follows:

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306.

* * *

7. Section 16.33 is amended by adding a sentence at the end of this section to read as follows:

§ 16.33 Fee for production of identification record.

* * * Subject to applicable laws, regulations, and directions of the Attorney General of the United States, the Director of the FBI may from time to time determine and establish a

revised fee amount to be assessed under this authority. Notice relating to revised fee amounts shall be published in the **Federal Register**.

§ 16.34 [Amended]

8. Section 16.34 is amended as follows:

a. Remove the reference to the former address, from “Assistant Director” through zip code “20537–9700,” and add in its place the following new address: “FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306”;

b. Remove the remaining reference to “FBI Identification Division” and add in its place “FBI CJIS Division.”

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

9. The authority citation for part 20 continues to read as follows:

Authority: 28 U.S.C. 534; Public Law 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Public Law 99–169, 99 Stat. 1002, 1008–1011, as amended by Public Law 99–569, 100 Stat. 3190, 3196.

10–11. Section 20.1 is revised to read as follows:

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.

12. Section 20.3 is revised to read as follows:

§ 20.3 Definitions.

As used in these regulations:

(a) *Act* means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, *et seq.*, as amended.

(b) *Administration of criminal justice* means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(c) *Control Terminal Agency* means a duly authorized state, foreign, or international criminal justice agency with direct access to the National Crime Information Center telecommunications network providing statewide (or equivalent) service to its criminal justice users with respect to the various

systems managed by the FBI CJIS Division.

(d) *Criminal history record information* means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

(e) *Criminal history record information system* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

(f) *Criminal history record repository* means the state agency designated by the governor or other appropriate executive official or the legislature to perform centralized recordkeeping functions for criminal history records and services in the state.

(g) *Criminal justice agency* means:

(1) Courts; and

(2) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.

(h) *Direct access* means having the authority to access systems managed by the FBI CJIS Division, whether by manual or automated methods, not requiring the assistance of or intervention by any other party or agency.

(i) *Disposition* means information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental

incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(j) *Executive order* means an order of the President of the United States or the Chief Executive of a state that has the force of law and that is published in a manner permitting regular public access.

(k) *Federal Service Coordinator* means a non-Control Terminal Agency that has a direct telecommunications line to the National Crime Information Center network.

(l) *Fingerprint Identification Records System* or "FIRS" means the following FBI records: criminal fingerprints and/or related criminal justice information submitted by authorized agencies having criminal justice responsibilities; civil fingerprints submitted by federal agencies and civil fingerprints submitted by persons desiring to have their fingerprints placed on record for personal identification purposes; identification records, sometimes referred to as "rap sheets," which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FIRS; and a name index pertaining to all individuals whose fingerprints are maintained in the FIRS. See the FIRS Privacy Act System Notice periodically published in the **Federal Register** for further details.

(m) *Interstate Identification Index System* or "III System" means the cooperative federal-state system for the exchange of criminal history records, and includes the National Identification Index, the National Fingerprint File, and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(n) *National Crime Information Center* or "NCIC" means the computerized information system, which includes telecommunications lines and any message switching facilities that are authorized by law, regulation, or policy approved by the Attorney General of the United States to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC includes, but is not limited to, information in the III System. See the

NCIC Privacy Act System Notice periodically published in the **Federal Register** for further details.

(o) *National Fingerprint File* or "NFF" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(p) *National Identification Index* or "NII" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(q) *Nonconviction data* means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; information disclosing that the police have elected not to refer a matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed; and information that there has been an acquittal or a dismissal.

(r) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Statute* means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

13. Subpart C is revised to read as follows:

Subpart C—Federal Systems and Exchange of Criminal History Record Information

- 20.30 Applicability.
- 20.31 Responsibilities.
- 20.32 Includable offenses.
- 20.33 Dissemination of criminal history record information.
- 20.34 Individual's right to access criminal history record information.
- 20.35 Criminal Justice Information Services Advisory Policy Board.
- 20.36 Participation in the Interstate Identification Index System.
- 20.37 Responsibility for accuracy, completeness, currency, and integrity.
- 20.38 Sanction for noncompliance.

Subpart C—Federal Systems and Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to the III System and the FIRS, and to duly authorized local, state, tribal, federal, foreign, and international criminal justice agencies

to the extent that they utilize the services of the III System or the FIRS. This subpart is applicable to both manual and automated criminal history records.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall manage the NCIC.

(b) The FBI shall manage the FIRS to support identification and criminal history record information functions for local, state, tribal, and federal criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Public Law 92-544, 86 Stat. 1115, Presidential executive order, or regulation or order of the Attorney General of the United States.

(c) The FBI CJIS Division may manage or utilize additional telecommunication facilities for the exchange of fingerprints, criminal history record related information, and other criminal justice information.

(d) The FBI CJIS Division shall maintain the master fingerprint files on all offenders included in the III System and the FIRS for the purposes of determining first offender status; to identify those offenders who are unknown in states where they become criminally active but are known in other states through prior criminal history records; and to provide identification assistance in disasters and for other humanitarian purposes.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in the III System and the FIRS shall include serious and/or significant adult and juvenile offenses.

(b) The FIRS excludes arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run), when unaccompanied by a § 20.32(a) offense. These exclusions may not be applicable to criminal history records maintained in state criminal history record repositories, including those states participating in the NFF.

(c) The exclusions enumerated above shall not apply to federal manual criminal history record information collected, maintained, and compiled by the FBI prior to the effective date of this subpart.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment, pursuant to Public Law 92-544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7).

(c) Nothing in these regulations prevents a criminal justice agency from

disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

(d) Criminal history records received from the III System or the FIRS shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

§ 20.34 Individual's right to access criminal history record information.

The procedures by which an individual may obtain a copy of his or her identification record from the FBI to review and request any change, correction, or update are set forth in §§ 16.30-16.34 of this chapter. The procedures by which an individual may obtain a copy of his or her identification record from a state or local criminal justice agency are set forth in section 20.34 of the appendix to this part.

§ 20.35 Criminal Justice Information Services Advisory Policy Board.

(a) There is established a CJIS Advisory Policy Board, the purpose of which is to recommend to the FBI Director general policy with respect to the philosophy, concept, and operational principles of various criminal justice information systems managed by the FBI's CJIS Division.

(b) The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations.

(c) All members of the Board will be appointed by the FBI Director.

(d) The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

§ 20.36 Participation in the Interstate Identification Index System.

(a) In order to acquire and retain direct access to the III System, each Control Terminal Agency and Federal Service Coordinator shall execute a CJIS User Agreement (or its functional equivalent) with the Assistant Director in Charge of the CJIS Division, FBI, to abide by all present rules, policies, and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter recommended by the CJIS

Advisory Policy Board and adopted by the FBI Director.

(b) Entry or updating of criminal history record information in the III System will be accepted only from state or federal agencies authorized by the FBI. Terminal devices in other agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency, and integrity.

It shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

Access to systems managed or maintained by the FBI is subject to cancellation in regard to any agency or entity that fails to comply with the provisions of subpart C.

14. The appendix to part 20 is amended by revising the commentary for subparts A and C to read as follows:

Appendix to Part 20—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

Subpart A—§ 20.3(d). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/III System (OBTS/III) data elements. If notations of an arrest, disposition, or other formal criminal justice transaction occurs in records other than the traditional "rap sheet," such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, and ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(g). The definitions of criminal justice agency and administration of criminal justice in § 20.3(b) of this part must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies, as well as subunits of noncriminal justice agencies that perform the administration of criminal justice pursuant to a federal or state statute or executive order and allocate a substantial portion of their budgets to the administration of criminal justice. The above subunits of noncriminal justice agencies would include, for example, the Office of Investigation of the Food and Drug Administration, which has as its principal function the detection and

apprehension of persons violating criminal provisions of the Federal Food, Drug and Cosmetic Act. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services, such as New York's Division of Criminal Justice Services.

§ 20.3(i). Disposition is a key concept in section 524(b) of the Act and in §§ 20.21(a)(1) and 20.21(b) of this part. It therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other, unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(q). The different kinds of acquittals and dismissals delineated in § 20.3(i) are all considered examples of nonconviction data.

* * * * *

Subpart C—§ 20.31. This section defines the criminal history record information system managed by the Federal Bureau of Investigation. Each state having a record in the III System must have fingerprints on file in the FBI CJIS Division to support the III System record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for local, state, tribal, and federal agencies.

§ 20.32. The grandfather clause contained in paragraph (c) of this section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses that were stored prior to February, 1973. In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will also appear in the arrest segment of the III System record.

§ 20.33(a)(3). This paragraph incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the federal government for noncriminal justice purposes.

§ 20.33(a)(6). Noncriminal justice governmental agencies are sometimes tasked to perform criminal justice dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such inter-governmental delegated tasks involve the administration of criminal justice, performance of those tasks does not convert an otherwise non-criminal justice agency to a criminal justice agency. This regulation authorizes this type of delegation if it is effected pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to criminal history record information to accomplish that limited function. An example of such delegation would be the Pennsylvania Department of Administration's Bureau of Consolidated Computer Services, which performs data processing for several state agencies, including the Pennsylvania State Police. Privatization of the data processing/

information services or dispatching function by the noncriminal justice governmental agency can be accomplished pursuant to § 20.33(a)(7) of this part.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are set forth in 28 CFR 16.30–16.34.

The procedures by which an individual may obtain a copy of his III System record are as follows: If an individual has a criminal record supported by fingerprints and that record has been entered in the III System, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain his III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the III System.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart B in order to allow for processing time that may be needed by the states before forwarding the disposition to the FBI.

PART 50—STATEMENTS OF POLICY

15. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 *et seq.*, 1973c.

16. Section 50.12 is revised to read as follows:

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92-544, 86 Stat. 1115. Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), and 42 U.S.C. 2169, respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants. The records also may be exchanged in other instances as authorized by federal law.

(b) The FBI Director is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to

ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Dated: April 29, 1999.

Janet Reno,

Attorney General.

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD 05-99-016]

RIN 2115-AE46

Special Local Regulations for Marine Events; Night in Venice, Great Egg Harbor, City of Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for the Night in Venice, a marine event held annually in Great Egg Harbor, by redefining the regulated area. This action is necessary to provide a current description of the event area. This action is intended to enhance the safety of life and property during the event.

DATES: Comments must reach the Coast Guard on or before July 9, 1999.

ADDRESSES: You may mail comments to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or hand-deliver to Room 119 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6204. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address between 9:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05-99-016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations at 33 CFR 100.54 establish special local regulations for the Night in Venice, a marine event held annually in Great Egg Harbor Bay. The purpose of these regulations is to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. The regulated area was initially described in the current regulations by referencing prominent aids to navigation in the event area. Since the initial publication of the regulations at 33 CFR 100.504, the referenced buoys and markers have been renamed and/or repositioned.

Discussion of Proposed Rule

The Coast Guard proposes to amend the special local regulations previously established for this event by redefining the regulated area, using current aids to navigation and prominent landmarks. The general shape and overall size of the regulated area will remain the same.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not