

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

611 W. Ottawa Street
Lansing, MI 48909
Phone: 517-335-8658 Fax: 517-335-9512

REQUEST FOR RULEMAKING (RFR)

1. Department:

State Police

2. Bureau:

Criminal Justice Information System

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Criminal Justice Information Systems

5. Rule numbers or rule set range of numbers:

R 28.5101 to R 28.5414

6. Estimated time frame:

6 months

Name of person filling out RFR:

Steven Beatty

E-mail of person filling out RFR:

BeattyS@michigan.gov

Phone number of person filling out RFR:

517-282-8858

Address of person filling out RFR:

MICH STATE POLICE HEADQUARTERS

7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The rules codify requirements for access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network (LEIN), the automated fingerprint information system (AFIS), and other information systems related to criminal justice or law enforcement.

The rules were last updated in June 2009. Various revisions are necessary to clarify when and under what circumstances criminal justice information systems and the information within those systems may be accessed, disseminated, and entered or removed in light of changes in federal and state law and standards since the rules' last revision.

The MSP has identified certain definitions contained in R 28.5101 as being too broad, thereby creating confusion in determining what systems and what information are subject to these rules. Among other definitional revisions, the following definitions will be revised or deleted: "criminal justice information," "criminal justice information systems," and "other information systems."

The requirement that all agencies or entities having access to LEIN pay an annual fee is contained in R 28.5414; however, there is no longer a necessity to fund LEIN through annual user fees because the Legislature has been providing funding for LEIN in the MSP's annual appropriation.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The CJIS Policy Council is provided rulemaking authority under MCL 28.214. The CJIS Policy Council was abolished and its duties transferred to the MSP under EO 2008-17.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 28.214; EO 2008-17 (Executive Reorganization Order No. 2008-2, MCL 28.162).

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Yes, under MCL 28.214, the CJIS Policy Council (i.e., the MSP) shall "promulgate rules governing access, use, and disclosure of information in criminal justice information systems" that address all subjects listed in the statute.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Due to the fact the state maintains its own criminal justice information systems, the MSP is required to promulgate rules regarding access and dissemination under MCL 28.214. Many of the rules also pertain to record responsibility and data quality. While several rules are duplicates of federal policy and/or regulation, duplication of certain rules are and will remain necessary to provide guidance to agencies that access LEIN but do not qualify for access to the federal systems, and because federal policy and regulation purposely leaves many decisions to the individual state.

The definition of "criminal justice information" in rule R 28.5101 is in conflict with the federal definition of "criminal justice information." The state definition is overly broad to include all information collected by an agency. The current rules restrict access to LEIN, AFIS, and other information systems, not to "criminal justice information." The federal definition only applies to and protects information received from federal systems. The changes are intended to revise the rules to work in conjunction with the federal policy.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The subject matter of these rules is currently contained in manuals and instructional bulletins including, but not limited to, the LEIN Operations Manual, the LEIN Terminal Agency Coordinator (TAC) Manual, and the LEIN Policy Manual.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

In addition to ensuring compliance with federal policy and protecting federal data sources, the rules limit access to and protect several Michigan data sources. Federal policy and regulation provides the state CJIS Systems Agency (the MSP) the authority to establish policy to further restrict access to federal systems and information.

The current rules exceed national compliance requirements in that the rules require user agencies "to comply with state and federal statutes, the administrative rules, the Michigan and Federal CJIS security polices and the procedures outlined in the LEIN operations manual." R 28.5201(2)(e).

Additionally, the rules require agencies to pay fees for access to "LEIN services." R 28.5414. The federal government does not charge a fee to the state or the agencies that access federal systems through the state.

The changes would revise the annual user fee requirement, but would generally retain the requirement to comply with state and federal statutes, administrative rules, and state and federal security policies.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The MSP has received complaints and comments from the public concerning the definitions of "criminal justice information" and "criminal justice information systems" contained in R 28.5101. The complaints and comments indicate these definitions are too broad and create confusion in determining what systems and information are subject to the rule.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules were last evaluated in June 2018. Due to advancements in technology, the definition "other information systems" contained in R 28.5101 is too broad. Initially, the Michigan Criminal Justice Information Network (MiCJIN) Portal was intended to provide access only to criminal justice applications; however, it has since been used to deploy other applications which results in these applications being subject to the rules that should not apply to the applications.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

The requirement that all agencies or entities having access to LEIN pay an annual fee under R 28.5414 is no longer a necessity in light of legislative appropriations.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

Yes