

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Compliance with this AD is required as indicated, unless already done.

To prevent stage 5 and 6 disc crack initiation and propagation leading to uncontained disc failure and damage to the airplane, do the following:

(a) Remove HP compressor rotor rear stage 5 and 6 discs and cone shafts, from service at or before accumulating 7,500 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any HP compressor rotor rear stage 5 and 6 discs and cone shaft, listed in this AD, that exceed 7,500 CSN.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

#### Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

**Note 3:** The subject of this AD is addressed in CAA airworthiness directive 002–08–2002, dated November 22, 2002.

Issued in Burlington, Massachusetts, on March 5, 2003.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 28

[OAG 105; A.G. Order No. 2664–2003]

RIN 1105-AA78

### DNA Sampling of Federal Offenders Under the USA PATRIOT ACT of 2001

**AGENCY:** Department of Justice.

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

**SUMMARY:** The Department of Justice is publishing this proposed rule to implement section 503 of Public Law 107–56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and

Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. This rule amends the list of federal offenses that will be treated as qualifying offenses for purposes of collecting DNA samples from federal offenders.

**DATES:** Written comments must be submitted on or before April 10, 2003.

**ADDRESSES:** Send comments to David J. Karp, Senior Counsel, Office of Legal Policy, Room 7232, Main Justice Building, 950 Pennsylvania Avenue NW., Washington, DC 20530.

#### FOR FURTHER INFORMATION CONTACT:

David J. Karp, Senior Counsel, Office of Legal Policy. Telephone: (202) 514–3273.

**SUPPLEMENTARY INFORMATION:** On June 28, 2001, the Department of Justice published an interim rule to implement section 3 and related provisions of Public Law 106–546, the DNA Analysis Backlog Elimination Act of 2000. 66 FR 34363 (June 28, 2001). That rule, in part, specified the federal offenses that are treated as “qualifying Federal offenses” for purposes of collecting DNA samples from federal offenders. Individuals convicted of one of the specified qualifying federal offenses must have samples of their DNA collected and the resulting information entered into the Combined DNA Index System which the Federal Bureau of Investigation has established pursuant to 42 U.S.C. 14132.

Subsequent to the publication of that interim rule, Congress enacted Public Law 107–56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Section 503 of the USA PATRIOT ACT provided that three additional categories of offenses shall be treated for purposes of DNA sample collection as qualifying federal offenses, as determined by the Attorney General: (1) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code; (2) any crime of violence (as defined in section 16 of title 18, United States Code); and (3) any attempt or conspiracy to commit any of the above offenses. See 42 U.S.C. 14135a(d)(2). The purpose of this proposed rule is to revise a section of the existing regulations, 28 CFR 28.2, to reflect the addition of these three new categories.

The offenses listed in the proposed revision of § 28.2 are generally grouped by title of the United States Code for convenience in readability and application. The derivation of the listing is as follows:

#### Offenses in the Current Rule

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42

U.S.C. 14135a(d)(1)) identifies the qualifying offenses that are reflected in the current § 28.2. These offenses are all carried forward in the proposed revision of § 28.2. In some instances, however, the offenses in the current rule will be subsumed in broader references in the revised listing that reflect the new categories added by section 503 of the USA PATRIOT ACT. See 42 U.S.C. 14135a(d)(2). In particular, under the current listing, only voluntary manslaughter under 18 U.S.C. 1112 is covered. See 42 U.S.C. 14135a(d)(1)(A); 28 CFR 28.2(b). In accordance with section 503 of the USA PATRIOT ACT, however, the expanded offense categories now include crimes of violence as defined in 18 U.S.C. 16. See 42 U.S.C. 14135a(d)(2)(B). The revised listing includes 18 U.S.C. 1112 without qualification, reflecting the Attorney General’s determination that involuntary manslaughter constitutes such an offense.

Likewise, the current listing includes a more limited set of offenses under 18 U.S.C. 1153, an Indian country jurisdictional provision. See 42 U.S.C. 14135a(d)(1)(F); 28 CFR 28.2(d). Specifically, of the offenses identified in 18 U.S.C. 1153, the current listing does not include “assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years,” or “a felony under section 661 of this title.” 18 U.S.C. 1153. However, the previously excluded assaultive crimes are crimes of violence as defined in 18 U.S.C. 16. The revised listing encompasses a broader range of offenses under 18 U.S.C. 1153, excluding only felonies under section 661 of title 18, which defines nonviolent larceny offenses.

#### Offenses Listed in 18 U.S.C. 2332b(g)(5)(B)

Section 503 of the USA PATRIOT ACT added offenses listed in 18 U.S.C. 2332b(g)(5)(B)—a statutory list of crimes that are often committed by terrorists—as qualifying offenses for purposes of DNA sample collection. The proposed revision of 28 CFR 28.2 incorporates all of these offenses.

In some instances, offenses listed explicitly in 18 U.S.C. 2332b(g)(5)(B) are subsumed in broader references in the proposed revision to 28 CFR 28.2. For example, 18 U.S.C. 2332b(g)(5)(B) includes offenses under section “844(f)(2) or (3)” of title 18. Since the offense defined by section 844(f)(1) of title 18 is a crime of violence—and hence includable on the basis of 42

U.S.C. 14135a(d)(2)(B)—the listing in the proposed revision of § 28.2 includes all offenses under 18 U.S.C. 844(f) without qualification.

### **Crimes of Violence**

Section 503 of the USA PATRIOT ACT also added offenses that are crimes of violence under the definition of 18 U.S.C. 16. According to that provision, a crime of violence is “(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

Some offenses that satisfy this definition are independently covered by the original offense categories in 42 U.S.C. 14135a(d)(1) or the listing of offenses in 18 U.S.C. 2332b(g)(5)(B). However, there are a large number of federal crimes which satisfy this definition and are not otherwise included in the offense categories in the DNA sample collection statute. The proposed revision of § 28.2 includes an extensive listing of such provisions.

Many crimes of violence are defined or referenced in discrete sections, subsections, or paragraphs of the United States Code. The listing in proposed § 28.2 identifies such offenses by referring to the appropriate sections, subsections, or paragraphs.

In some instances, however, sections of the United States Code effectively define a number of offenses—some violent and some nonviolent under the definition of 18 U.S.C. 16—with structural subdivisions that can readily be referenced in identifying the violent offenses. For such provisions, the proposed listing in revised § 28.2 identifies the covered crimes of violence by including appropriate phrases that specify the relevant limitations.

For example, 18 U.S.C. 241 generally prohibits conspiracies to violate federally protected rights. The basic offense under the section is punishable by imprisonment for up to 10 years. The section also includes aggravated offenses, punishable by imprisonment for any term of years or for life, for cases in which “death results” or that involve “kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.” The aggravated offenses under 18 U.S.C. 241 are crimes of violence under the definition of 18 U.S.C. 16. Consequently, the listing in proposed § 28.2 refers to offenses under section 241 “involving an offense

punishable by imprisonment for any term of years or for life.” Similarly, the subsequent section of the code, 18 U.S.C. 242, generally prohibits willful deprivations of federally protected rights under color of law, and the basic offense it defines is graded as a misdemeanor. The section also includes aggravated offenses, punishable at the felony level, that constitute crimes of violence. The listing in proposed § 28.2 accordingly covers offenses under section 242 “if a felony.”

Other types of qualifying phrases are also used, as appropriate, in relation to sections that set forth alternative grounds of liability that effectively define both violent and nonviolent offenses under 18 U.S.C. 16. For example, 18 U.S.C. 874 prohibits securing kickbacks from public works employees “by force [or] intimidation,” or alternatively by “threat of procuring dismissal from employment, or by any other manner whatsoever.” The listing in proposed § 28.2 accordingly refers to offenses under section 874 “involving force or intimidation.”

In addition to crimes of violence that are currently included in the United States Code, the listing in the proposed rule includes two sections defining offenses involving rape or sexual abuse of children that have been repealed, 18 U.S.C. 2031 and 2032. Notwithstanding the repeal of these provisions, offenders who were convicted under them may currently be in custody or under supervision. The inclusion of these sections in the rule ensures that DNA samples will be collected from these offenders.

### **Attempts and Conspiracies**

The amendment in section 503 of the USA PATRIOT ACT also provides that any attempt or conspiracy to commit a qualifying federal offense is a qualifying federal offense for purposes of DNA sample collection. See 42 U.S.C.

14135a(d)(1)(G) and (2)(C). In part, this is implemented through the inclusion in proposed § 28.2(a)–(h) of various specific provisions that encompass liability for attempts or conspiracies. However, there are also cross-cutting attempt and conspiracy provisions in the United States Code, including 18 U.S.C. 371 and 844(n) and 21 U.S.C. 846, which apply to categories of offenses that include both offenses that are qualifying federal offenses for DNA sample collection purposes and offenses that are not. Paragraph (i) in proposed § 28.2 makes it clear that any attempt or conspiracy under these provisions is a qualifying federal offense, if the object of the attempt or conspiracy includes an

offense that is a qualifying federal offense.

### **Regulatory Procedures**

#### *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 for the following reason: The regulation concerns the collection by federal agencies of DNA samples from certain offenders.

#### *Executive Order 12866*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

#### *Executive Order 13132*

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 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12988*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### *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 rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This 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, or innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### List of Subjects in 28 CFR Part 28

Crime, Information, Law enforcement, Prisons, Prisoners, Records, Probation and parole.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR chapter I by amending part 28 as follows:

#### PART 28—DNA IDENTIFICATION SYSTEM

1. The authority citation for part 28 is revised to read as follows:

**Authority:** 28 U.S.C. 509, 510; 42 U.S.C. 14132, 14135a, 14135b; 10 U.S.C. 1565; Pub. L. 106–546, 114 Stat. 2726; Pub. L. 107–56, 115 Stat. 272.

#### Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection

2. Revise § 28.2 to read as follows:

##### § 28.2 Determination of offenses.

The following offenses shall be treated for purposes of section 3 of Public Law 106–546 as qualifying Federal offenses:

(a) Any offense under any of the following sections of title 18, United States Code: 32, 33, 34, 36, 37, 43(b), 81, 111, 112(a), 112(b) involving intimidation or threat, 113, 114, 115, 116, 175, 175b, 229, 231, 241 involving an offense punishable by imprisonment for any term of years or for life, 242 if a felony, 245, 247, 248 unless the offense involves only a nonviolent physical obstruction, 351, 372, 373, 593 involving force, threat, or intimidation, 594, 610 involving intimidation or threat, 751 if a felony, 752 if a felony, 753, 757, 758, 831, 842(d), (i), (m), (n), or (p), 844(d), (e), (f), (h), (i), (m), or (o), 871, 874 involving force or intimidation, 875 unless involving only a threat to injure reputation or to accuse a person of a crime, 876 unless involving only a threat to injure reputation or to accuse a person of a crime, 877 unless involving only a threat to injure reputation or to accuse a person of a crime, 878, 879, 892, 894, 922(a)(4), (7), or (8), 922(b)(4), 922(b)(5) involving sale or delivery of armor-piercing ammunition, 922(d), (g), (o), or (p), 924(c), (h), (j), (k), or (o), 929, 930(b) or (c), 956, 970(a), 1030(a)(1),

1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(b)(ii) through (v), 1091, 1111, 1112, 1113, 1114, 1116, 1117, 1118, 1119, 1120, 1121, 1153 unless involving only a felony under section 661, 1201, 1203, 1204, 1361, 1362, 1363, 1364, 1365(a), (d), or (e), 1366, 1368, 1470, the second paragraph of 1501, 1503 involving threat or force, 1505 involving threat or force, 1509, 1512(a), 1512(b) involving threat or force, 1513, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1651, 1652, 1653, 1655, 1659, 1661, 1751, 1791 involving a weapon, 1792, 1859, 1864 if a felony, 1951, 1952(a)(2), 1958, 1959, 1962 (b) or (c) involving a pattern of racketeering activity that includes any act or threat of murder, kidnapping, arson, robbery, or extortion or any act that otherwise constitutes a crime of violence under this rule, 1991, 1992, 1993, 2031 notwithstanding the repeal of that provision, 2032 notwithstanding the repeal of that provision, 2101, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2152 involving injury or destruction of property described in that section, 2153 involving injury or destruction of property described in that section or an attempt or conspiracy to do so, 2155, 2191, 2192, 2193, 2194 involving force or threat, 2231, 2232(a) or (b), 2233, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2252A, 2260(a), 2260(c) involving a conspiracy or attempt to violate 2260(a), 2261, 2261A, 2262, 2272, 2273, 2274, 2275, 2276, 2280, 2281, 2332, 2332a, 2332b, 2339, 2339A, 2339B, 2340A, 2381 involving levying war against the United States, 2383, 2384, 2385, 2389, 2390, 2421, 2422, 2423, 2425, or 2441(c)(4).

(b) Any offense under any of the following sections of title 8, United States Code: 1324(a)(1)(B)(iv) or 1328.

(c) Any offense under any of the following sections of title 16, United States Code: 773g if the offense is a felony or involves a violation of 773e(a)(3), 1859 if the offense is a felony or involves a violation of 1857(1)(E), 2438 involving a violation of 2435(4), (5), or (6), 3637(c) if the offense is a felony or involves a violation of 3637(a)(3), or 5010(b) if the offense is a felony or involves a violation of 5009(6).

(d) Any offense under any of the following sections of title 21, United States Code: 461(c), 675, 841(d), 848(e), 858, or 1041(b).

(e) Any offense under any of the following sections of title 26, United States Code: 5861, 7212(a) involving force or threat, or 7212(b).

(f) Any offense under any of the following sections of title 42, United

States Code: 1973gg–10(1), 2000e–13, 2283, 2284, 3631, or 9152(d) if the offense is a felony or involves a violation of 9151(3).

(g) Any offense under any of the following sections of title 49, United States Code: 46502, 46503, 46504, 46505, 46506(1) unless involving only an act that would violate section 661 or 662 of title 18 if committed in the special maritime and territorial jurisdiction of the United States, 46507 involving false information or a threat relating to the foregoing offenses, 60123(b), or 80501.

(h) Any offense under any of the following sections of the United States Code: section 2146(b) of title 7, section 1463 of title 30 if the offense is a felony or involves a violation of section 1461(4) of that title, section 1232(b)(2) of title 33, section 193f(a) or (b)(6) of title 40 or section 193h of that title involving a violation or attempted violation of section 193f(a) or (b)(6), section 1063 of title 43 involving force, threat, or intimidation, or section 606(b) of title 47.

(i) Any offense that is an attempt or conspiracy to commit any of the foregoing offenses, including any such attempt or conspiracy under section 371 of title 18, section 844(n) of title 18, or section 846 of title 21 of the United States Code.

Dated: March 6, 2003.

**John Ashcroft,**  
Attorney General.

[FR Doc. 03–5861 Filed 3–10–03; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[IN147–1b; FRL–7464–5]

#### Approval and Promulgation of State Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the removal of State rules controlling fluoride emission limitations from existing primary aluminum plants as a revision to the plan for control of fluoride emissions from existing primary aluminum plants (plan) as requested by the State of Indiana on October 17, 2002, and January 22, 2003. Indiana has replaced this rule with another regulation which incorporates by reference current Federal requirements into the Indiana