

(g) *Effective date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003.

**§ 301.7430–7T [Removed]**

■ **Par. 3.** Section 301.7430–7T is removed.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 19, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 28**

[OAG 101; AG Order No. 2699–2003]

RIN 1105–AA78

**Regulations Under the DNA Analysis Backlog Elimination Act of 2000**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is publishing this final rule to implement section 3 and related provisions of the DNA Analysis Backlog Elimination Act of 2000, as amended by the USA PATRIOT Act. The rule specifies the Federal offenses that will be treated as qualifying offenses for purposes of collecting DNA samples from Federal offenders, sets forth the responsibilities of the Federal Bureau of Prisons for collecting DNA samples from individuals in its custody, and sets forth related responsibilities of the Federal Bureau of Investigation for analyzing and indexing DNA samples.

**DATES:** *Effective date:* This rule is effective January 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** David J. Karp, Senior Counsel, Office of Legal Policy. Telephone: (202) 514–3273.

**SUPPLEMENTARY INFORMATION:** All 50 states authorize the collection and analysis of DNA samples from convicted State offenders, and entry of resulting information into the Combined DNA Index System (“CODIS”), which the Federal Bureau of Investigation (“FBI”) has established pursuant to 42 U.S.C. 14132. The DNA Analysis Backlog Elimination Act of 2000 (the “Act”), Public Law 106–546, similarly authorized the collection, analysis, and indexing of DNA samples from

convicted Federal, military, and District of Columbia offenders.

Section 3 of the Act addresses the offenses that are to be treated as qualifying Federal offenses for purposes of DNA sample collection, which determines the categories of Federal offenders from whom DNA samples are collected. Section 3 also addresses the responsibility of the Federal Bureau of Prisons (“BOP”) and federal probation offices to collect DNA samples from offenders in their custody or supervision, and the responsibility of the FBI to analyze and index DNA samples. On June 28, 2001, the Department of Justice published an interim rule in the **Federal Register**, pursuant to subsection (e) of section 3, which provides that, with the exception of the activities of the probation offices, the section shall be carried out under regulations prescribed by the Attorney General. See 66 FR 34363 (June 28, 2001). The interim rule also addressed certain responsibilities of BOP and the FBI under other sections of the Act that are closely related to the matters addressed in section 3.

Subsequent to the publication of the interim rule, Congress enacted Public Law 107–56, the USA PATRIOT Act. 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 Department of Justice published a proposed rule in the **Federal Register** on March 11, 2003, to implement this expanded sample collection authority. See 68 FR 11481 (March 11, 2003).

The Department received comments from two individuals concerning the interim rule published on June 28, 2001. No comments were received concerning the proposed rule published on March 11, 2003. One commenter on the interim rule claimed that the rule violated numerous provisions of the Constitution. The other commenter asked about the relationship of the interim rule to statute of limitations provisions and its consistency with the Constitution’s prohibition of ex post facto laws. The Department of Justice has considered the constitutional question and is confident that the interim rule, the proposed rule, this final rule, and the statutory provisions that they implement, are consistent with

the Constitution. See, e.g., *United States v. Kimler*, 335 F.3d 1132 (10th Cir. 2003); *Shaffer v. Saffle*, 148 F.3d 1180 (10th Cir. 1998); *Rise v. Oregon*, 59 F.3d 1556 (9th Cir. 1995); *Gilbert v. Peters*, 55 F.3d 237 (7th Cir. 1995); *Jones v. Murray*, 962 F.2d 302 (4th Cir. 1992). But see *United States v. Kincaide*, 345 F.3d 1095 (9th Cir. 2003). These rules have no effect on the statutory limitation periods for commencing the prosecution of crimes.

The interim rule published on June 28, 2001, added a new part 28 to title 28 CFR relating to the DNA identification system. The proposed rule published on March 11, 2003, involved a modification of § 28.2 in the new part 28, to reflect the expanded range of qualifying federal offenses authorized by section 503 of the USA PATRIOT Act. This final rule integrates the proposed rule’s revision of § 28.2 with the other regulatory provisions adopted by the interim rule. The list of offenses in the final version of § 28.2 is generally the same as in the proposed rule, but includes two additional offenses (18 U.S.C. 2332f and 2339C) that appear in the listing of 18 U.S.C. 2332b(g)(5)(B), as discussed below. In addition, some citations have been updated or added for conformity to the current versions of the cited statutes, or to ensure consistent coverage of attempts and conspiracies to commit offenses that are otherwise covered. The changes affect specifically the citations relating to provisions of 18 U.S.C. 43, 1512, 1513, and 1594, and also involve substituting citations relating to 40 U.S.C. 5104 and 5109 for former citations relating to 40 U.S.C. 193f and 193h.

Like the interim rule published on June 28, 2001, this final rule sets forth a part 28 of title 28 CFR relating to the DNA identification system. Part 28 contains subparts A and B, which relate respectively to the federal offenses for which DNA samples will be collected, and the responsibilities of BOP and the FBI in collecting, analyzing, and indexing DNA samples:

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

Subpart A of the rule specifies qualifying federal offenses for purposes of DNA sample collection. Section 3 of the Act, in part, requires BOP and probation offices to collect DNA samples from individuals in their custody or supervision who are, or have been, convicted of a “qualifying Federal offense.” Subsection (d)(1) of section 3 of the Act states that qualifying Federal offenses include those in a specified list, as determined by the Attorney General.

The offense list in subsection (d)(1) was included in the Act as originally enacted and is, for the most part, explicit about which code sections are covered. Subsection (d)(2) of section 3 of the Act identifies additional categories of offenses that are qualifying Federal offenses, as determined by the Attorney General, reflecting the expansion of the range of covered offenses by section 503 of the USA PATRIOT Act.

Section 28.2 in this final rule provides a comprehensive listing of qualifying Federal offenses, reflecting both subsection (d)(1) and subsection (d)(2) of section 3 of the Act. The offenses listed in § 28.2 as revised 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 Original Act and Rule**

Section 3(d)(1) of the Act (42 U.S.C. 14135a(d)(1)) identifies the qualifying offenses authorized by the original version of the Act. These offenses were specified in the original version of 28 CFR § 28.2 that was adopted by the interim rule published on June 28, 2001. The rationale for the specification of these offenses in the original § 28.2 is explained in the preamble to the interim rule. See 66 FR 34363, 34363–64 (June 28, 2001).

These offenses from the earlier rule are all carried forward in the final version of § 28.2. In some instances, however, offenses in the earlier rule are subsumed in broader references in the final rule 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 original § 28.2 listing, only voluntary manslaughter under 18 U.S.C. 1112 was covered, reflecting a limitation in the original statute. See 42 U.S.C. 14135a(d)(1)(A). 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 in the final version of § 28.2 includes 18 U.S.C. 1112 without qualification, reflecting the Attorney General's determination that involuntary manslaughter constitutes such an offense.

Likewise, the original listing in § 28.2 included a narrower set of offenses under 18 U.S.C. 1153, an Indian country jurisdictional provision, based on limited statutory language. See 42 U.S.C. 14135a(d)(1)(F). Specifically, of the offenses identified in 18 U.S.C. 1153, the original listing did 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 final version 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 final version of 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 final version of § 28.2 includes all offenses under 18 U.S.C. 844(f) without qualification.

The offenses listed in the final version of § 28.2 on the basis of 18 U.S.C. 2332b(g)(5)(B) are the same as those listed in the version of § 28.2 in the proposed rule published on March 11, 2003, with two additions: Legislation enacted to implement international counterterrorism conventions created two new offenses in the terrorism chapter of the criminal code, 18 U.S.C. 2332f and 2339C, and added these new offenses to the offense list in 18 U.S.C. 2332b(g)(5)(B). See Public Law 107–197, 116 Stat. 721 (June 25, 2002). The final version of § 28.2 accordingly includes these offenses.

#### **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 that satisfy this definition and are not otherwise included in the offense categories in the DNA sample collection statute. The final version 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—without structural subdivisions that can readily be referenced in identifying the violent offenses. For such provisions, the listing in the final version of § 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 the final version of § 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 the final version of § 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 final 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 Act provides that any attempt or conspiracy to commit a qualifying Federal offense is a qualifying Federal offense for the purpose 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 § 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 § 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.

In addition to enlarging the offense listing in § 28.2 to reflect the USA PATRIOT Act amendment, the final rule makes a conforming change in § 28.1. Section 28.1 of the original rule stated in part that section 3(d) of the Act “states that the offenses that shall be treated as qualifying Federal offenses are offenses under title 18, United States Code, contained in a list of descriptive terms and code sections, as determined by the Attorney General.” This statement is no longer accurate in light of the USA PATRIOT Act’s addition of a second offense list in section 3(d)(2) of the Act (42 U.S.C. 14135a(d)(2)) that

covers many offenses outside of title 18. The final rule accordingly revises this sentence in § 28.1.

#### Subpart B—DNA Sample Collection, Analysis, and Indexing

Section 28.11 in the rule provides definitions for “DNA sample” and “DNA analysis” that are taken verbatim from section 3(c) of the Act.

Section 28.12, in paragraph (a), directs BOP to collect a DNA sample from each individual in its custody who is, or has been, convicted of a qualifying Federal offense, a qualifying military offense, or a qualifying District of Columbia offense. The requirement that BOP collect DNA samples from individuals convicted of qualifying Federal offenses and qualifying military offenses appears in section 3(a)(1) of the Act. The requirement to collect samples from individuals convicted of qualifying District of Columbia offenses appears in section 4, rather than section 3, of the Act (specifically, section 4(a)(1)). It is included in this regulation for logical completeness in describing BOP’s DNA sample collection responsibilities under the Act.

Section 28.12, in paragraph (b), qualifies paragraph (a)’s requirement by affording BOP discretion about taking a DNA sample from an individual who is already in CODIS, or from whom a DNA sample has been collected pursuant to the provisions for collection of DNA samples from military offenders by the Department of Defense. This discretionary authority, which BOP could utilize to avoid duplicative sample collection, tracks sections 3(a)(3) and 4(a)(3) of the Act.

Section 28.12, in paragraph (c), provides in part that individuals described in paragraph (a) shall cooperate in the collection of DNA samples by BOP. This obligation on inmates is correlative to BOP’s legal duty to collect DNA samples from them, and arises directly from sections 3(a)(5) and 4(a)(5) of the Act, which prescribe criminal penalties for individuals who fail to cooperate in DNA sample collection authorized by the Act.

Section 28.12, in paragraph (c), further provides that BOP may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) who refuses to cooperate in the collection of the sample. This is taken directly from sections 3(a)(4) and 4(a)(4) of the Act. While inmates will normally cooperate voluntarily in DNA sample collection, or be persuaded to do so by the prospect of disciplinary action if

they refuse to cooperate, taking a sample involuntarily from a recalcitrant individual may occasionally be necessary. The involuntary taking of a blood sample may in some instances be required under existing procedures for other purposes, such as medical evaluation, *see* 28 CFR 549.13, or compliance with a court order to take such a sample for evidentiary purposes. Existing regulations regarding the use of force where necessary to enforce institutional regulations or for other purposes will continue to apply in relation to inmates who refuse to cooperate in the collection of a DNA sample. *See* 28 CFR part 552, Subpart C.

Section 28.12, in paragraph (d)—tracking sections 3(a)(4)(B) and 4(a)(4)(B) of the Act—states that BOP may enter into agreements with units of State or local government or with private entities to provide for the collection of DNA samples. This provision makes it clear, for example, that BOP can arrange to have DNA samples collected from inmates in contract facilities by contract facility personnel.

Section 28.12, in paragraph (e), directs BOP to furnish each DNA sample to the FBI (for purposes of analysis and indexing in CODIS). This is explicitly required by sections 3(b) and 4(b) of the Act.

Section 28.13 directs the FBI to carry out a DNA analysis on each DNA sample furnished to it pursuant to section 3(b) or 4(b) of the Act, and to include the results in CODIS. The cited statutory provisions explicitly require the FBI to carry out these functions. Section 28.13 further provides that the FBI must include in CODIS the results of analyses furnished by the Department of Defense, which is required by 10 U.S.C. 1565(b)(2). The FBI is not required to analyze the samples collected by the Department of Defense, because the Department of Defense is responsible for carrying out that function, as provided in 10 U.S.C. 1565(b)(1).

#### 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 reasons: The regulation concerns the collection, analysis, and indexing 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—Civil Justice Reform**

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

**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 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 revises 28 CFR Chapter I part 28 to read as follows:

**PART 28—DNA IDENTIFICATION SYSTEM****Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection**

Sec.

28.1 Purpose.

28.2 Determination of offenses.

**Subpart B—DNA Sample Collection, Analysis, and Indexing**

28.11 Definitions.

28.12 Collection of DNA samples.

28.13 Analysis and indexing of DNA samples.

**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****§ 28.1 Purpose.**

Section 3 of Public Law 106–546 directs the collection, analysis, and indexing of a DNA sample from each individual in the custody of the Bureau of Prisons or under the supervision of a probation office who is, or has been, convicted of a qualifying Federal offense. Subsection (d) of that section states that the offenses that shall be treated as qualifying Federal offenses are offenses in certain listed code sections or categories, as determined by the Attorney General.

**§ 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)(3)–(4), 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), 1513(a) or (b), the final subsection of 1513 involving a conspiracy to violate 1513(a) or (b), 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1594(a), 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, 2332f, 2339, 2339A, 2339B, 2339C, 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 5104(e)(1) or (2)(F) of title 40 or section 5109 of that title involving a violation or attempted violation of section 5104(e)(1) or (2)(F), 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.

### Subpart B—DNA Sample Collection, Analysis, and Indexing

#### § 28.11 Definitions.

*DNA analysis* means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

*DNA sample* means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

#### § 28.12 Collection of DNA samples.

(a) The Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of—

(1) A qualifying Federal offense as described in § 28.2;

(2) A qualifying military offense, as determined under 10 U.S.C. 1565; or

(3) A qualifying District of Columbia offense, as determined under section 4(d) of Public Law 106-546.

(b) Notwithstanding paragraph (a) of this section, the Bureau of Prisons may, but need not, collect a DNA sample from an individual described in paragraph (a) of this section if the Combined DNA Index System contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under 10 U.S.C. 1565.

(c) Each individual described in paragraph (a) of this section shall cooperate in the collection of a DNA sample from that individual by the Bureau of Prisons. The Bureau of Prisons may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) of this section who refuses to cooperate in the collection of the sample.

(d) The Bureau of Prisons may enter into agreements with units of State or local government or with private entities to provide for the collection of samples under this section.

(e) The Bureau of Prisons shall furnish each DNA sample collected under this section to the Federal Bureau of Investigation.

#### § 28.13 Analysis and indexing of DNA samples.

(a) The Federal Bureau of Investigation shall carry out a DNA analysis on each DNA sample furnished to the Federal Bureau of Investigation pursuant to section 3(b) or 4(b) of Public Law 106-54, and shall include the results in the Combined DNA Index System.

(b) The Federal Bureau of Investigation shall include in the Combined DNA Index System the results of each analysis furnished to the Federal Bureau of Investigation pursuant to 10 U.S.C. 1565(b)(2).

Dated: December 16, 2003.

*John Ashcroft,*

*Attorney General.*

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 548

[BOP-1105-F]

RIN 1120-AB04

#### Religious Beliefs and Practices: Nomenclature Change

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Bureau amends its regulations on religious beliefs and practices to rename the special diet with which it accommodates inmates' religious dietary practices. The special diet, formerly known as the common fare menu, will now be called the religious diet menu. This change in name is necessary in order to reflect more equitably the variety of faith groups with religious dietary needs.

**EFFECTIVE DATE:** December 29, 2003.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) amends its regulations on religious beliefs and practices (28 CFR part 548). We published a final rule on this subject in the **Federal Register** on September 6, 1995 (60 FR 46486) and amended it on August 22, 1997 (62 FR 44836).

#### What Change Is the Bureau Making?

The Bureau's regulations on religious dietary practices (§ 548.20) note that inmate requests to observe religious dietary practices are addressed through a common fare menu or program. The Bureau renames the "common fare menu or program" as "the religious diet menu or program".

#### Why Is the Bureau Making This Change?

The common fare menu originated in 1983 as a pilot program designed to meet the needs of Jewish and Muslim inmates. The menu used food acceptable (or "common") to both religious groups to meet nutritional standards. The number of religious groups within the inmate population has increased during the last few years. The increase in the number of religious groups has also increased the variety in religious dietary needs.