**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of rubbing between the control wheel shaft and the bush in the control column, which may cause wear or damage to the control wheel shaft where the shaft connects to the control column. This damage may lead to the aileron control becoming stiff or locking. The actions specified in this AD are intended to detect and correct damage of the pilot and co-pilot control wheels and aileron cable operating arm shafts that could result in the aileron controls becoming stiff or locking, which could lead to loss of control of the airplane.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the pilot and co-pilot control column wheel and aileron cable operating arm shafts for damage. | Perform the initial inspection within 50 hours time-in-service (TIS) after March 4, 2005 (the effective date of this AD). | Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004. |
| (2) If no damage is found, continue repetitive inspections. | Perform repetitive inspections every 300 hours TIS until steel operating arm shafts are replaced with bronze operating arm shafts. Replacement of steel operating arm shafts with bronze operating arm shafts is terminating action for this AD on the side that was replaced. If one steel shaft requires replacement, all of the shafts on that side (pilot or co-pilot) must be replaced with bronze shafts. If only one side (pilot or co-pilot) is replaced, repetitive inspections are still required for the side that was not replaced. | Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004. |
| (3) For airplanes where damage is found:<br>(i) If damage can be repaired by polishing out marks or scratches so that material removed does not exceed 0.005 inches, repair the shaft. You can not repair by polishing out marks or scratches more than one time.<br>(ii) If damage can not be repaired by polishing out marks or scratches so that that material removed does not exceed 0.005 inches or you have already repaired the damage by polishing out marks or scratches previously, the damed steel operating arm shaft must be replaced with a bronze operating arm shaft. When a shaft (pilot or co-pilot) requires replacement, you must install new bronze shafts in all areas of the affected side | If damage is found, repair or replace operating arm shafts prior to further flight. If airplane is repaired, repetitively inspect every 300 hours TIS after repair until replacement of the operating arm shafts. Replacement of the steel operating arm shafts with bronze operating arm shafts is terminating action for this AD. If only one side (pilot or co-pilot) is replaced with bronze shafts, you must still repetitively inspect the other side that was not replaced. | Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004. |
| (4) As of the effective date of this AD, do not install shafts that are not bronze on any affected Model GA8 airplane. | As of March 4, 2005 (the effective date of this AD). | Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4059; facsimile: 816–329–4090.

**Is There Other Information That Relates to This Subject?**

(g) Australian Civil Aviation Safety Authority Airworthiness Directive AD/GA8/2, dated September 17, 2004, and Gippsland Aeronautics Pty., Ltd., Service Bulletin SB–GA8–2004–11, dated August 25, 2004, also address the subject of this AD.

**Does This AD Incorporate Any Material by Reference?**

(h) You must do the actions required by this AD following the instructions in Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Gippsland Aeronautics Pty. Ltd., Latrobe Regional Airport, P.O. Box 881, Morwell, Victoria 3840, Australia; telephone: 61 (0) 3 5172 1200; facsimile: 61 (0) 3 5172 1201. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19442.

Issued in Kansas City, Missouri, on January 20, 2005.

**David A. Downey,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–1511 Filed 1–28–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

## 28 CFR Part 28

**[Docket No. OAG 108; A.G. Order No. 2753–2005]**

**RIN 1105–AB09**

## DNA Sample Collection From Federal Offenders Under the Justice for All Act of 2004

**AGENCY:** Department of Justice.

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

**SUMMARY:** The Department of Justice is publishing this interim rule to implement section 203(b) of Pub. L. 108–405, the Justice for All Act of 2004. The Justice for All Act of 2004 authorizes the Department of Justice to treat offenses in certain specified categories as qualifying Federal offenses for purposes of DNA sample collection. This rule amends regulations to reflect new categories of Federal offenses subject to DNA sample collection. The Justice for All Act amendment added ''[a]ny felony'' as a specified offense category in 42 U.S.C. 14135a(d)—thereby permitting the collection of DNA samples from all convicted Federal felons. This rule includes the new ''any felony'' category and does not change the coverage of misdemeanors in certain categories already included under prior law.

**DATES:** *Effective Date:* This interim rule is effective January 31, 2005.

*Comment Date:* Comments must be received by April 1, 2005.

**ADDRESSES:** Comments may be mailed to David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 108 on your correspondence. You may view an electronic version of this interim rule at *http://www.regulations.gov.* You may also comment via the Internet to the Justice Department's Office of Legal Policy (OLP) at *olpregs@usdoj.gov* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include OAG Docket No. 108 in the subject box.

**SUPPLEMENTARY INFORMATION:** On December 29, 2003, the Department of Justice published a 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. 68 FR 74855. That rule, in part, specified the Federal offenses that will be treated as qualifying offenses for purposes of DNA sample collection. As provided by law, DNA samples are collected from persons who have been convicted of these offenses. See 42 U.S.C. 14135a. Reflecting statutory law (42 U.S.C. 14135a(d)) as it was at the time, DNA sample collection from Federal offenders under that rule was confined to offenders who had been convicted of crimes of violence, or offenses in a limited list of other offense categories specified in the statute.

Subsequent to the publication of that final rule, Congress enacted Pub. L. 108–405, the Justice for All Act of 2004. Section 203(b) of that Act expands the categories of offenses that shall be treated for purposes of DNA sample collection as qualifying Federal offenses to include the following offenses, as determined by the Attorney General: (1) Any felony; (2) any offense under chapter 109A of title 18, United States Code; (3) any crime of violence (as defined in section 16 of title 18, United States Code); and (4) any attempt or conspiracy to commit any of the above offenses. See 42 U.S.C. 14135a(d). This reform brings the authorized scope of DNA sample collection for Federal offenders more into line with that generally authorized for State offenders. About 35 States had enacted legislation authorizing DNA sample collection from all felons by the time of the Justice for All Act's enactment of the corresponding reform for federal cases.

The purpose of this interim rule is to revise a section of the existing regulations, 28 CFR 28.2, to reflect the expansion of the statutory DNA sample collection categories. The rule also makes a minor conforming change in 28 CFR 28.1. The new versions of these regulations are as follows:

**Section 28.1**

This section notes that section 3 of Pub. L. 106–546 (42 U.S.C. 14135a) directs the collection, analysis, and indexing of DNA samples 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.'' These requirements apply both to Federal offenders who are currently incarcerated or under supervision on the basis of qualifying Federal offenses, and to Federal offenders who are currently incarcerated or under supervision on the basis of other Federal offenses, but who have been convicted at some time in the past of a qualifying Federal offense.

The change from the previous version of 28 CFR 28.1 is limited to some modification of the wording in the second sentence, for accuracy in describing the version of 42 U.S.C. 14135a(d) enacted by the Justice for All Act.

**Section 28.2(a)**

Section 28.2(a), in substance, defines ''felony'' as it is ordinarily understood—*i.e.*, as referring to offenses for which the maximum authorized term of imprisonment exceeds one year. See 18 U.S.C. 3559(a). The definition cross-references the pertinent statutory provision that sets forth this understanding, stating in part that ''felony'' means ''an offense that would be classified as a felony under 18 U.S.C. 3559(a).'' 18 U.S.C. 3559(a)(1)–(5) provides the following classifications of offenses as felonies based on the maximum term of imprisonment: (i) Life imprisonment (or if the maximum penalty is death)—Class A felony; (ii) twenty-five years or more—Class B felony; (iii) less than twenty-five years but ten or more years—Class C felony; (iv) less than ten years but five or more years—Class D felony; (v) less than five years but more than one year—Class E felony.

However, 18 U.S.C. 3559(a) is not applied to determine the classification of offenses that are specifically classified by letter grade as Class A, B, C, D, or E felonies. For example, 33 U.S.C. 1232(b)(2) provides that a person who engages in certain proscribed conduct ''commits a Class C felony.'' In such cases, the statute on its face identifies the offense as a felony—obviating the need for any further inquiry to determine its classification—and the authorized prison terms are set by 18 U.S.C. 3581(b). The definition in revised 28 CFR 28.2(a)(1) accordingly states that ''felony'' means an offense classifiable as such under 18 U.S.C. 3559(a) ''or that is specifically classified by a letter grade as a felony.''

In most instances, Federal criminal statutes do not include specific letter grade classifications. Hence, the status of Federal offenses as felonies or non-felonies usually must be determined under the criteria of 18 U.S.C. 3559(a) by examining the statutes defining the offenses or associated penalty provisions. For example, maiming within the special maritime and territorial jurisdiction under 18 U.S.C. 114 is a felony, because the defining statute authorizes imprisonment in excess of one year (specifically, up to 20 years). In other cases, the relevant penalties appear in different statutes from those defining the offenses. For example, the penalties authorized for the explosive offenses defined by 18 U.S.C. 842 appear in 18 U.S.C. 844. Most of these offenses are felonies, as provided in section 844(a), but some are misdemeanors, as provided in section 844(b). While the penalties for Federal offenses are normally specified in Federal statutes, it is occasionally necessary to look outside of the United States Code to determine whether the maximum prison term authorized for a Federal offense exceeds one year, and hence whether it is a felony. For

example, under 18 U.S.C. 1153, an Indian country jurisdictional provision, the penalties for most offenses prosecutable under that section are provided by other Federal statutes defining offenses in the special maritime and territorial jurisdiction of the United States—*e.g.*, murder under 18 U.S.C. 1111, kidnapping under 18 U.S.C. 1201(a)(2), and robbery under 18 U.S.C. 2111. But there are no Federal offenses of ''incest'' or ''burglary'' defined for the special maritime and territorial jurisdiction, so the penalties for incest and burglary offenses prosecuted under 18 U.S.C. 1153 are determined by the laws of the State in which the offense was committed, as provided in section 1153(b).

Many statutes define both misdemeanor and felony offenses, often without structural subdivisions in the statute to separate them. The presence of non-felony offenses in the same statute does not vitiate the status of felony offenses defined by such a statute under 18 U.S.C. 3559(a) or this rule. For example, the unaggravated offense under 18 U.S.C. 242 (relating to willful deprivation of rights under color of law) is a misdemeanor, punishable by not more than one year of imprisonment. But the same statute authorizes lengthier prison terms for case in which bodily injury results to a victim or other specified aggravating factors are present. These aggravated offenses under 18 U.S.C. 242 are accordingly felonies, notwithstanding the misdemeanor status of the base offense under the statute.

In applying 18 U.S.C. 3559(a), only the statutory maximum term of imprisonment is considered. Limitations on the length of sentences of imprisonment under the Federal sentencing guidelines are not relevant to the determination whether an offense is a felony.

**Section 28.2(b)(1)**

Section 28.2(b)(1) states that qualifying Federal offenses for purposes of DNA sample collection include any felony, as authorized by 42 U.S.C. 14135a(d)(1).

Overall, the amended regulation is much simpler and shorter than the previous version of 28 CFR 28.2, because the amendment's inclusion of all felonies as qualifying Federal offenses encompasses the vast majority of the offenses that were specifically listed in the previous rule, as well as many others. In the previous version, it was necessary to attempt to provide a comprehensive listing of ''crimes of violence'' under Federal law. However, because the current version of the sample-collection statute and the new version of 28 CFR 28.2 cover all felonies—whether or not they are crimes of violence—it only remains necessary to list code sections separately in the rule if these sections define crimes of violence that are not felonies. This shorter list of code sections—to ensure DNA sample collection from persons convicted of misdemeanor crimes of violence—appears in paragraph (b)(3) of revised 28 CFR 28.2 (discussed below).

**Section 28.2(b)(2)**

Section 28.2(b)(2) includes among qualifying Federal offenses any offense under chapter 109A of title 18 (the ''sexual abuse'' chapter of the Federal criminal code), as authorized by 42 U.S.C. 14135a(d)(2). Most of the offenses in chapter 109A are independently covered as felonies, but some are misdemeanors. See 18 U.S.C. 2243(b), 2244(a)(4), (b). The inclusion of chapter 109A offenses without qualification means that all persons who have been convicted of any Federal offense under that chapter, whether a felony or a misdemeanor, are subject to DNA sample collection.

**Section 28.2(b)(3)**

Section 28.2(b)(3) includes offenses under 30 code sections which (wholly or in part) define misdemeanors, on the ground that these misdemeanors are ''crimes of violence,'' as authorized by 42 U.S.C. 14135a(d)(3). The inclusion of these misdemeanors in the rule as qualifying Federal offenses reflects the Attorney General's determination that they are crimes of violence as defined in 18 U.S.C. 16, and that persons convicted of these misdemeanors should be subject to DNA sample collection. Many felonies are also crimes of violence as defined in 18 U.S.C. 16, but there is no need to list them individually in the revised regulation, because they are encompassed in 28 CFR 28.2(a)(1)'s inclusion of all felonies (whether violent or non-violent) as qualifying Federal offenses.

''Crimes of violence,'' whether felonies or misdemeanors, were already included in the statutory DNA sample collection categories prior to the Justice for All Act amendment of 42 U.S.C. 14135a(d). Hence, such offenses were listed in the previous version of 28 CFR 28.2. In particular, all of the offenses listed in paragraph (b)(3) of the revised regulation were already covered as qualifying Federal offenses under the previous regulation. This rule, therefore, does not expand the class of misdemeanors that are qualifying Federal offenses.

As noted, the specific listing of code sections in paragraph (b)(3) is necessary to ensure the consistent collection of DNA samples from persons convicted of crimes of violence, regardless of the penalty grading of such crimes. For example, 18 U.S.C. 245, a civil rights offense, only authorizes imprisonment for ''not more than one year'' in some circumstances, but all offenses defined by that section are crimes of violence, requiring interference with the exercise of certain rights ''by force or threat of force.'' Section 245 is accordingly included in the listing of title 18 sections in paragraph (b)(3)(A), to ensure consistent coverage of offenses, including misdemeanor offenses, under that section for DNA sample collection purposes. Likewise, offenses under 18 U.S.C. 115—relating to violence against federal officials or members of their families—are usually independently covered as felonies, but subsection (b)(1) of that section provides that assaults in violation of the section shall be punished as provided in 18 U.S.C. 111, and 18 U.S.C. 111 only provides misdemeanor penalties in cases of simple assault. So a reference to 18 U.S.C. 115 in paragraph (b)(3)(A) is necessary to cover misdemeanor assaults under that section.

In some instances, the reference in paragraph (b)(3) to a code section or subsection includes some qualifying phrase. For example, the listing of title 18 provisions in paragraph (b)(3)(A) refers to offenses under section ''1153 involving assault against an individual who has not attained the age of 16 years.'' Section 1153 is the major crimes act for Indian country cases, and most offenses prosecutable under that section are independently covered as felonies under paragraph (b)(1) of this rule. However, section 1153 includes ''assault against an individual who has not attained the age of 16 years,'' and applicable penalty provisions, appearing in 18 U.S.C. 113(a)(5), authorize only misdemeanor penalties for the simple assault form of that offense. An express reference in the rule is accordingly necessary to make it clear that this crime of violence under 18 U.S.C. 1153—simple assault against a child below the age of 16—is a qualifying Federal offense.

A number of the qualifying phrases accompanying cited code sections in paragraph (b)(3) reflect the fact that some code sections 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 rule identifies the covered crimes of violence by including appropriate phrases that specify the relevant limitations.

For example, paragraph (b)(3)(B) refers to a number of penalty provisions in title 16 of the United States Code which include authorizations of misdemeanor penalties for certain violations under regulatory programs. The misdemeanor offenses under these provisions are not uniformly crimes of violence, but they are crimes of violence in cases in which the violation occurs under a provision that prohibits forcibly assaulting or resisting officers who are carrying out inspections or other specified functions. The formulation of paragraph (b)(3)(B) accordingly reflects this distinction, *e.g.*, in referring to ''section 773g [of title 16] if the offense involves a violation of section 773e(a)(3).''

As a final illustration, 49 U.S.C. 46506(1) provides that certain offenses defined for the special maritime and territorial jurisdiction apply as well in the special aircraft jurisdiction of the United States. Most of these offenses are crimes of violence and/or felonies, but the referenced offenses include certain theft-related offenses under 18 U.S.C. 661 and 662 that are not crimes of violence, and are also not felonies in cases where the value of the stolen property is below $1,000. Consequently, these theft-related offenses under 49 U.S.C. 46506(1) involving property whose value is below $1,000 are outside of the statutory DNA sample collection categories, and paragraph (b)(3)(I) qualifies its reference to offenses under 49 U.S.C. 46506(1) by excluding offenses that ''involve[] only an act that would violate section 661 or 662 of title 18 and would not be a felony if committed in the special maritime and territorial jurisdiction of the United States.''

**Section 28.2(b)(4)**

Section 28.2(b)(4) includes among qualifying Federal offenses any attempt or conspiracy to commit an offense which is otherwise included as a qualifying Federal offense, as authorized by 42 U.S.C. 14135a(d)(4). In most cases such attempt and conspiracy offenses are independently covered as felonies under 28 CFR 28.2(b)(1), but in some instances they will be misdemeanors which are not otherwise covered. For example, a conspiracy to commit a misdemeanor offense under chapter 109A of title 18, prosecuted under 18 U.S.C. 371, would itself be a misdemeanor pursuant to the second paragraph of 18 U.S.C. 371. Likewise, a conspiracy to commit a misdemeanor crime of violence listed in paragraph (b)(3) of this rule, prosecuted under 18 U.S.C. 371, would itself be a misdemeanor. 28 CFR 28.2(d)(4) ensures that DNA samples will be collected from persons convicted of such attempt or conspiracy offenses, regardless of whether the offenses are felonies or misdemeanors.

**Section 28.2(c)**

Section 28.2(c) makes it clear that the subsequent repeal or modification of an offense does not affect the requirement of DNA sample collection from an offender convicted of such an offense. This point applies both to offenses that presently exist or are hereafter enacted and constitute qualifying Federal offenses under the rule's criteria, and to offenses that were repealed or modified prior to the enactment of the statutory authorization for DNA sample collection from Federal offenders or the issuance of this rule, but would have been classified as qualifying Federal offenses under the criteria of this rule. Paragraph (c) mentions by way of illustration the old statutes defining offenses involving rape or sexual abuse of children—18 U.S.C. 2031 and 2032—which have been repealed and have been effectively replaced by offenses now appearing in chapter 109A of title 18 of the United States Code. These old offenses were included in the previous version of 28 CFR 28.2 because they are crimes of violence, and their status as felonies provides an additional reason for including them in the current rule. Notwithstanding their repeal, they remain relevant for DNA sample collection purposes, because there may be Federal offenders who were convicted of offenses under 18 U.S.C. 2031 or 2032 prior to their repeal and who remain incarcerated or under supervision for those offenses, or who are incarcerated or under supervision for some other offense but have been convicted at some time in the past of an offense under 18 U.S.C. 2031 or 2032. 28 CFR 28.2(c) as revised makes it clear that an offense which was or would have been a qualifying Federal offense at the time of conviction, according to the definition of that concept in the rule, remains a qualifying Federal offense—and a person convicted of such an offense accordingly remains subject to DNA sample collection—even if the provision or provisions defining the offense or assigning its penalties have subsequently been repealed, superseded, or modified.

**Administrative Procedure Act**

The implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), for circumstances in which ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). This rule implements the provisions of section 203(b) of the Justice For All Act, amending 42 U.S.C. 14135a(d), which governs the authorized scope of DNA sample collection from Federal offenders. The prior notice and comment period normally required under 5 U.S.C. 553(b) and the delayed effective date normally required under 5 U.S.C. 553(d) are unnecessary because the formulation of this rule involves no new significant exercises of judgment or discretion. The Justice for All Act reform primarily authorizes DNA sample collection from all Federal offenders convicted of felonies. The notion of a ''felony'' is a standard, familiar concept in Federal criminal law, and this rule simply refers to existing statutory provisions for its definition. The Justice for All Act provisions also encompass chapter 109A offenses, crimes of violence (as defined in 18 U.S.C. 16), and attempts or conspiracies to commit offenses which are otherwise covered. However, these categories were already covered under 42 U.S.C. 14135a(d) and 28 CFR 28.2 prior to the Justice for All Act's amendment of 42 U.S.C. 14135a(d). Moreover, the statutory categories of an offense under chapter 109A, and of an offense constituting an attempt or conspiracy to commit an offense which is otherwise covered, require no particular interpretation or elaboration. The Attorney General may need to make judgments in determining which particular offenses constitute ''crimes of violence'' as defined in 18 U.S.C. 16—but these judgments were already made, following public notice and the receipt of comments, in the version of 28 CFR 28.2 that was published on December 29, 2003, and went into effect on January 28, 2004. The revised regulation does not change these determinations. In all instances, the non-felony offenses covered as ''crimes of violence'' in this rule were already covered as qualifying Federal offenses under the previous version of the regulation. The revised regulation also includes a paragraph (c) which states in so many words that the repeal or modification of an offense does not affect its status as a qualifying Federal offense, but this principle was already reflected in the previous version of 28 CFR 28.2, which included repealed statutes (18 U.S.C. 2031 and 2032) in its listing of qualifying Federal

offenses. Hence, nothing new of substance needed to be determined in the formulation of this interim rule.

Moreover, the collection of DNA samples from all Federal felons authorized by the Justice for All Act amendment furthers important public safety interests by facilitating the solution and prevention of crimes. Issuance by the Attorney General of an effective implementing regulation for 42 U.S.C. 14135a(d), as amended, is needed to provide a secure basis for commencing DNA sample collection pursuant to this broadened statutory authorization. See 42 U.S.C. 14135a(d) (qualifying Federal offenses for purposes of DNA sample collection are offenses in specified categories ''as determined by the Attorney General''); 42 U.S.C. 14135a(e) (section is generally to be ''carried out under regulations prescribed by the Attorney General''). The absence of such an effective regulation could accordingly delay the implementation of the current version of 42 U.S.C. 14135a(d), thereby thwarting or delaying the realization of the public safety benefits that the Justice for All Act amendment was enacted to secure. Dangerous offenders who could be successfully identified through DNA matching could be released from prison or reach the end of supervision before DNA sample collection could be carried out, thereby remaining at large to engage in further crimes against the public. Furthermore, delay in collecting, analyzing, and indexing DNA samples, and hence in the identification of offenders, may foreclose prosecution due to the running of statutes of limitations. Failure to identify, or delay in identifying, offenders as the perpetrators of crimes through DNA matching also increases the risk that innocent persons may be wrongly suspected, accused, or convicted of such crimes. Therefore, it would be impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). Countenancing such delay in the implementation of the DNA sample collection provisions for Federal offenders under the Justice for All Act would disserve Congress's objective in the Justice for All Act of ensuring the prompt identification of the perpetrators of rapes, murders, and other serious crimes through the use of the DNA identification system, and would be inappropriate in light of Congress's concerns reflected in the Justice for All Act about the harm caused by delay in securing and utilizing available DNA information for law enforcement identification purposes. See H.R. Rep. No. 711, 108th Cong., 2d Sess. (2004); H.R. Rep. No. 321, 108th Cong., 1st Sess. (2003); Cong. Rec. S12293–97 (Oct. 1, 2003).

**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—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 amends 28 CFR Chapter I part 28 as follows:

## PART 28—DNA IDENTIFICATION SYSTEM

■ 1. The authority citation for part 28 is amended 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; Pub. L. 108–405, 118 Stat. 2260.

■ 2. Sections 28.1 and 28.2 are revised to read as follows:

### § 28.1 Purpose.

Section 3 of Pub. L. 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 any felony and certain other types of offenses, as determined by the Attorney General.

### § 28.2 Determination of offenses.

(a) *Felony* means a Federal offense that would be classified as a felony under 18 U.S.C. 3559(a) or that is specifically classified by a letter grade as a felony.

(b) The following offenses shall be treated for purposes of section 3 of Pub. L. 106–546 as qualifying Federal offenses:

(1) Any felony.

(2) Any offense under chapter 109A of title 18, United States Code, even if not a felony.

(3) Any offense under any of the following sections of the United States Code, even if not a felony:

(i) In title 18, section 111, 112(b) involving intimidation or threat, 113, 115, 245, 247, 248 unless the offense involves only a nonviolent physical obstruction and is not a felony, 351, 594, 1153 involving assault against an individual who has not attained the age of 16 years, 1361, 1368, the second paragraph of 1501, 1509, 1751, 1991, or 2194 involving force or threat.

(ii) In title 16, section 773g if the offense involves a violation of section 773e(a)(3), 1859 if the offense involves a violation of section 1857(1)(E), 3637(c) if the offense involves a violation of section 3637(a)(3), or 5010(b) if the offense involves a violation of section 5009(6).

(iii) In title 26, section 7212.

(iv) In title 30, section 1463 if the offense involves a violation of section 1461(4).

(v) In title 40, section 5109 if the offense involves a violation or attempted violation of section 5104(e)(2)(F).

(vi) In title 42, section 2283, 3631, or 9152(d) if the offense involves a violation of section 9151(3).

(vii) In title 43, section 1063 involving force, threat, or intimidation.

(viii) In title 47, section 606(b).

(ix) In title 49, section 46506(1) unless the offense involves only an act that would violate section 661 or 662 of title 18 and would not be a felony if committed in the special maritime and territorial jurisdiction of the United States.

(4) Any offense that is an attempt or conspiracy to commit any of the foregoing offenses, even if not a felony.

(c) An offense that was or would have been a qualifying Federal offense as defined in this section at the time of conviction, such as an offense under 18 U.S.C. 2031 or 2032, remains a qualifying Federal offense even if the provision or provisions defining the offense or assigning its penalties have subsequently been repealed, superseded, or modified.

Dated: January 25, 2005.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 05–1691 Filed 1–28–05; 8:45 am]

**BILLING CODE 4410–19–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1 and 38

**RIN 2900–AM10**

### Relocation of National Cemetery Administration Regulations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** Previously the regulations administered by the National Cemetery Administration (NCA) of the Department of Veterans Affairs (VA) were set forth in Part 1 of Title 38 of the Code of Federal Regulations. Recently, NCA was assigned Part 38 of Title 38 for its regulations. Accordingly, we are moving the regulations administered by NCA and located in Part 1 to new Part 38. We have made non-substantive changes to headings of regulations, but we have not made any changes to the text other than conforming changes to section numbers.

**DATES:** *Effective Date:* January 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Karen Barber, Program Analyst, Legislative and Regulatory Division (41C3), National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone: (202) 273–5183 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Regulations administered by NCA are currently located in Part 1 of Title 38 of the Code of Federal Regulations along with general provisions that are applicable to VA offices and programs other than NCA. The current placement of NCA regulations in Part 1 with regulations that are not particular to NCA programs may be confusing to users who want to quickly and easily reference information about NCA benefits. Additionally, as NCA expands its body of regulations, users will find it increasingly more difficult to reference information about NCA benefits unless NCA regulations are re-located and consolidated in a separate part of Title 38.

NCA was recently assigned new Part 38 of Title 38 for its regulations. Relocation and consolidation of NCA regulations in a separate Part is intended to help readers reference information about NCA benefits more easily. Although certain headings are being changed and conforming changes to section numbers are being made, the amendments made by this notice are non-substantive and will not affect benefits entitlement or otherwise result in new costs. This final rule merely moves NCA regulations to a new location in the Code of Federal Regulations without any substantive changes.

**Administrative Procedure Act**

We are publishing this document as a final rule without prior notice and comment and without a delayed effective date. This document contains only non-substantive changes. Because this document merely restates existing regulations without substantive change, it is exempt from those procedures under 5 U.S.C. 553(b)(3)(A) and (d)(2). Additionally, VA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) for dispensing with those procedures, because a comment period and a delayed effective date are unnecessary in the absence of any substantive change to existing regulations.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

**Paperwork Reduction Act**

This document does not contain new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers for this document are 64.201 and 64.202.

**List of Subjects in 38 CFR Parts 1 and 38**

Administrative practice and procedure, Cemeteries, Veterans, Claims, Crime, Criminal offenses.

Approved: December 14, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, we are amending 38 CFR Chapter 1 as follows:

## PART 1—GENERAL PROVISIONS

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