violation of the EAR. See §§ 750.7(c) and 764.2(e).

* * * * *

Dated: April 9, 2008.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–8197 Filed 4–17–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 28

[OAG 119; AG Order No. 2957–2008]

RIN 1105–AB24

DNA-Sample Collection Under the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is publishing this proposed rule to implement amendments made by section 1004 of the DNA Fingerprint Act of 2005 and section 155 of the Adam Walsh Child Protection and Safety Act of 2006 to section 3 of the DNA Analysis Backlog Elimination Act of 2000. This rule directs agencies of the United States that arrest or detain individuals, or that supervise individuals facing charges, to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. Unless otherwise directed by the Attorney General, the collection of DNA samples may be limited to individuals from whom an agency collects fingerprints. The Attorney General also may approve other limitations or exceptions. Agencies collecting DNA samples are directed to furnish the samples to the Federal Bureau of Investigation, or to other agencies or entities as authorized by the Attorney General, for purposes of analysis and entry into the Combined DNA Index System.

DATES: Written comments must be submitted on or before May 19, 2008.

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. 119 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. If you wish to submit a comment, the public posting will include voluntarily submitted personal identifying information (such as your name, address, etc.).

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must identify prominently any confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be redacted effectively, all or part of that comment might not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

All 50 States authorize the collection and analysis of DNA samples from convicted state offenders, and enter resulting DNA profiles into the Combined DNA Index System (''CODIS''), which the Federal Bureau of Investigation (''FBI'') has established pursuant to 42 U.S.C. 14132. In addition to collecting DNA samples from convicted state offenders, several states authorize the collection of DNA samples from individuals they arrest.

Until recently, federal DNA-sample collection was more limited. The DNA Analysis Backlog Elimination Act of 2000 (the ''Act'') authorized DNA-sample collection by federal agencies only from persons convicted of certain ''qualifying'' federal, military, and District of Columbia offenses. Public Law 106–546 (2000). The Act also addressed the responsibility of the Federal Bureau of Prisons (''BOP'') and federal probation offices to collect DNA samples from convicted offenders in their custody or under their 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 to implement these provisions. 66 FR 34363. The rule, in part, specified the qualifying federal offenses for which DNA samples could be collected and addressed responsibilities of BOP and the FBI under the Act.

After publication of the interim rule, Congress enacted the USA PATRIOT Act, Public Law 107–56. Section 503 of the USA PATRIOT Act added three additional categories of qualifying federal offenses for purposes of DNA-sample collection: (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. The Department of Justice published a proposed rule in the **Federal Register** on March 11, 2003, to implement this expanded DNA-sample collection authority. 68 FR 11481. On December 29, 2003, the Department published a final rule implementing this authority. 68 FR 74855.

After publication of that final rule, the DNA-sample collection categories again were expanded by Congress pursuant to section 203(b) of the Justice for All Act of 2004, Public Law 108–405. The Justice for All Act expanded the definition of qualifying federal offenses to include any felony, thereby permitting the collection of DNA samples from all convicted federal felons. The Department published an interim final rule implementing this reform on January 31, 2005. 70 FR 4763.

More recently, section 1004 of the DNA Fingerprint Act of 2005 (''DNA Fingerprint Act''), Public Law 109–162, broadened the categories of persons subject to DNA-sample collection to authorize such collection from ''individuals who are arrested or from non-United States persons who are detained under the authority of the United States.'' Before publication of a

rule implementing this new authority, the DNA-sample collection provisions were amended further by section 155 of the Adam Walsh Child Protection and Safety Act of 2006 (''Adam Walsh Act''), Public Law 109–248. The amendments made by that Act left the statute in its current form: ''The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States.'' 42 U.S.C. 14135a(a)(1)(A). This statute also provides that the Attorney General may ''direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.'' *Id.*

Purposes

DNA analysis provides a powerful tool for human identification. DNA samples collected from individuals or derived from crime scene evidence are analyzed to produce DNA profiles that are entered into CODIS. These DNA profiles, which embody information concerning 13 ''core loci,'' amount to ''genetic fingerprints'' that can be used to identify an individual uniquely, but do not disclose an individual's traits, disorders, or dispositions. *See United States* v. *Kincade,* 379 F.3d 813, 818–19 (9th Cir. 2004) (en banc); *Johnson* v. *Quander,* 440 F.3d 489, 498 (DC Cir. 2006). Hence, collection of DNA samples and entry of the resulting profiles into CODIS allow the government to ''ascertain[] and record[] the identity of a person.'' *Jones* v. *Murray,* 962 F.2d 302, 306 (4th Cir. 1992). The design and legal rules governing the operation of CODIS reflect the system's function as a tool for law enforcement identification, and do not allow DNA samples or profiles within the scope of the system to be used for unauthorized purposes. *See* 42 U.S.C. 14132, 14133(b)–(c), 14135e.

The practical uses of the DNA profiles (''genetic fingerprints'') in CODIS are similar in general character to those of actual fingerprints, but the collection of DNA from individuals in the justice system offers important information that is not captured by taking fingerprints alone. Positive biometric identification, whether by means of fingerprints or by means of DNA profiles, facilitates the solution of crimes through database searches that match crime scene evidence to the biometric information that has been collected from individuals. Solving crimes by this means furthers the fundamental objectives of the criminal justice system, helping to bring the guilty to justice and protect the innocent, who might otherwise be wrongly suspected or accused, through the prompt and certain identification of the actual perpetrators. DNA analysis offers a critical complement to fingerprint analysis in the many cases in which perpetrators of crimes leave no recoverable fingerprints but leave biological residues at the crime scene. Hence, there is a vast class of crimes that can be solved through DNA matching that could not be solved in any comparable manner (or could not be solved at all) if the biometric identification information collected from individuals were limited to fingerprints.

In addition, as with taking fingerprints, collecting DNA samples at the time of arrest or at another early stage in the criminal justice process can prevent and deter subsequent criminal conduct—a benefit that may be lost if law enforcement agencies wait until conviction to collect DNA. Indeed, recognition of the added value of early DNA-sample collection in solving and preventing murders, rapes, and other crimes was a specific motivation for the enactment of the legislation that this rule implements. *See* 151 Cong. Rec. S13756–58 (daily ed. Dec. 16, 2005) (remarks of Sen. Kyl, sponsor of the DNA Identification Act) (explaining the value of including all arrestees in the DNA database). Moreover, in relation to aliens who are illegally present in the United States and detained pending removal, prompt DNA-sample collection could be essential to the detection and solution of crimes they may have committed or may commit in the United States. Since in most cases such aliens are not prosecuted for their immigration offenses, there is usually no later opportunity to collect a DNA sample premised on a criminal conviction. Hence, the individual's detention pending removal constitutes a unique opportunity to obtain this critical biometric information—and by that means to solve and hold the individual accountable for any crimes committed in the United States—before the individual's removal from the United States places him or her beyond the ready reach of the United States justice system.

As with fingerprints, the collection of DNA samples at or near the time of arrest also can serve purposes relating directly to the arrest and ensuing proceedings. For example, analysis and database matching of a DNA sample collected from an arrestee may show that the arrestee's DNA matches DNA found in crime scene evidence from a murder, rape, or other serious crime. Such information helps authorities to assess whether an individual may be released safely to the public pending trial and to establish appropriate conditions for his release, or to ensure proper security measures in the case of his continued detention. The collection of a DNA sample may also provide an alternative means of directly ascertaining or verifying an arrestee's identity, where fingerprint records are unavailable, incomplete, or inconclusive. Hence, conducted incident to arrest, DNA-sample collection offers a legitimate means to obtain valuable information regarding the arrestee. *See Anderson* v. *Virginia,* 650 S.E.2d 702, 706 (2006) (upholding a state statute authorizing DNA-sample collection from arrestees based on ''the legitimate interest of the government in knowing for an absolute certainty the identity of the person arrested, in knowing whether he is wanted elsewhere, and in ensuring his identification in the event he flees prosecution'' (internal citation omitted)).

In sum, this rule implements new statutory authority that will further the government's legitimate interest in proper identification of persons ''lawfully confined to prison'' or ''arrested upon probable cause.'' *Jones,* 962 F.2d at 306. By expanding CODIS pursuant to statutory authority to include persons arrested, facing charges, or convicted, and non-United States persons detained, this rule enhances the accuracy and efficacy of the United States criminal justice system.

Practical Implementation

The rule allows DNA samples generally to be collected, along with a subject's fingerprints, as part of the identification process. As discussed above, the uses of DNA for law enforcement identification purposes are similar in general character to the uses of fingerprints, and these uses will be greatly enhanced as a practical matter if DNA is collected regularly in addition to fingerprints. Law enforcement agencies routinely collect fingerprints from individuals whom they arrest. *See Anderson,* 650 S.E.2d at 706 (''Fingerprinting an arrested suspect has long been considered a part of the routine booking process.''); *Kincade,* 379 F.3d at 836 n.31 (''[E]veryday 'booking' procedures routinely require even the merely accused to provide fingerprint identification, regardless of whether investigation of the crime involves fingerprint evidence.''); *Jones,* 962 F.2d at 306 (noting ''universal

approbation of 'booking' procedures * * * whether or not the proof of a particular suspect's crime will involve the use of fingerprint identification''). In addition, agencies that detain non-United States persons (*i.e.*, persons who are not U.S. citizens or lawful permanent residents),[1] such as the Department of Homeland Security (''DHS''), often collect fingerprints from such individuals.

Accordingly, the Attorney General is directing all agencies of the United States that arrest or detain individuals or supervise individuals facing charges to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States, pursuant to 42 U.S.C. 14135a(a)(1)(A), if the agency takes fingerprints from such individuals.

The Department recognizes, however, that there may be some circumstances in which agencies collect fingerprints but in which the collection of DNA samples would not be warranted or feasible. For example, in relation to non-arrestees, DHS will not be required to collect DNA samples from aliens who are fingerprinted in processing for lawful admission to the United States, or from aliens from whom DNA-sample collection is otherwise not feasible because of operational exigencies or resource limitations. If any agency believes that such circumstances exist within its sphere of operations, the agency should bring these circumstances to the attention of the Department, and exceptions to the DNA-sample collection requirement may be allowed with the approval of the Attorney General.

The Department also recognizes that some federal agencies exercising law enforcement authority do not collect fingerprints routinely from all individuals at a stage comparable to the arrest phase. For example, military personnel involved in court martial proceedings may not be fingerprinted because their fingerprints already are on file. In addition, persons facing federal charges in the District of Columbia may not be fingerprinted by any federal agency if they are fingerprinted by the Metropolitan Police Department. Nonetheless, the collection of DNA samples from such individuals serves the same purposes, and is warranted to the same degree, as DNA-sample collection from other federal arrestees and defendants. Therefore, if directed by the Attorney General, certain agencies will be required to collect DNA samples from individuals from whom they would not otherwise collect fingerprints.

Agencies will be authorized to enter into agreements with other federal agencies, with state and local governments, and with private entities to carry out the required DNA-sample collection. Agencies that arrest, detain, or supervise individuals will not be required to duplicate DNA-sample collection if arrangements have been made to have the collection done by another authorized agency or entity, but will be responsible for ensuring that the DNA samples are collected and submitted for analysis and entry into CODIS. For example, an agency that arrests and fingerprints an individual and then transfers the individual to another agency (such as the United States Marshals Service) for detention cannot transfer responsibility for DNA-sample collection to the detention agency unless that agency agrees to assume responsibility for that function.

The Department of Justice understands that agencies will need to revise their current procedures in order to implement these new DNA-sample collection requirements. In addition, sample-collection kits will need to be distributed to the agencies and agency personnel will need to be trained in the proper collection techniques. Therefore, although the Attorney General is directing all agencies to implement DNA-sample collection as soon as feasible, agencies not able to collect samples from all covered individuals immediately may phase in their DNA-sample collection activities as resources allow. Agencies must implement fully their collection programs by December 31, 2008. However, if sample-collection kits authorized by the Attorney General have not been made available to an agency in sufficient numbers to allow collection of DNA samples from all covered individuals, the Attorney General will grant an exception allowing the agency to limit its DNA-sample collection program to the extent necessary.

The collection of DNA samples by agencies will be performed in accordance with procedures and standards established by the Attorney General.

Under the pre-existing DNA-sample collection program for federal convicts, BOP and federal probation offices have taken blood samples for this purpose, utilizing sample-collection kits provided by the FBI. In earlier stages of the program, these samples generally were obtained through venipuncture (blood drawn from the arm), but currently the FBI provides kits that allow a blood sample to be collected by means of a finger prick. However, the states that collect DNA samples from arrestees typically do so by swabbing the inside of the person's mouth (''buccal swab''), and many states use the same method to collect DNA samples from convicts. Therefore, although even blood tests ''are a commonplace in these days of periodic physical examinations and experience with them teaches * * * that for most people the procedure involves virtually no risk, trauma, or pain,'' *Schmerber* v. *California,* 384 U.S. 757, 771 (1966) (footnote omitted), the rule permits and facilitates the use of buccal swabs to collect DNA samples.

Revisions to Existing Regulations

The proposed rule would revise a section of the existing regulations, 28 CFR 28.12, to reflect the expansion of DNA-sample collection to include persons arrested, facing charges, or convicted, and non-United States persons detained under the authority of the United States.

Section 28.12, in paragraph (a), is revised to require BOP to collect DNA samples from all federal (including military) convicts in its custody, as well as from individuals convicted of qualifying District of Columbia offenses. The expansion of DNA-sample collection to include all federal or military convicts in BOP custody, whether or not they fall within the previously covered categories of persons convicted of qualifying federal or military offenses, is based on the Attorney General's authority under 42 U.S.C. 14135a(a)(1)(A). The requirement for BOP to collect samples from individuals convicted of qualifying District of Columbia offenses appears in 42 U.S.C. 14135b(a)(1).

A new paragraph (b) will be inserted in section 28.12 to implement the new authority to collect DNA samples from federal arrestees, defendants, and detainees. As discussed above, agencies of the United States that arrest or detain individuals or supervise individuals facing charges will be required to collect DNA samples if they collect fingerprints from such individuals, subject to any limitations or exceptions the Attorney General may approve. This paragraph

[1] Defining the scope of ''non-United States persons'' to mean persons who are not U.S. citizens or lawful permanent residents follows the common understanding of this term in other provisions of law. *See, e.g.*, 10 U.S.C. 2241 note, Pub. L. 108–7, div. M, § 111(e)(2)–(3), Feb. 20, 2003, 117 Stat. 536 (defining ''non-United States person'' as ''any person other than a United States person'' and ''United States person'' in the manner set forth in 50 U.S.C. 1801(i)); 50 U.S.C. 1801(i) (defining ''United States person,'' in relation to individuals, as ''a citizen of the United States * * * [or] an alien lawfully admitted for permanent residence'').

also specifies certain categories of aliens from whom DHS will not be required to collect DNA samples, even if DHS collects fingerprints. A new paragraph (c) is added that specifies a time frame for the implementation of the expanded DNA-sample collection program.

Current paragraph (c) is redesignated as paragraph (d) and is revised to reflect the expansion of the categories of individuals from whom DNA samples will be collected and the agencies that conduct DNA-sample collection. *See* 42 U.S.C. 14135a(a)(1)(A), 14135a(a)(4)(A). The current version of that paragraph only refers to the collection of DNA samples from persons convicted of qualifying offenses by BOP.

A new paragraph (e), replacing current paragraphs (b) and (d), provides in part that agencies required to collect DNA samples under the section may enter into agreements with other federal agencies, in addition to units of state or local governments or private entities, to carry out DNA-sample collection. The authority to make such arrangements with state and local governments and with private entities is explicit in 42 U.S.C. 14135a(a)(4)(B), and the Attorney General is delegating this authority to other federal agencies pursuant to 42 U.S.C. 14135a(a)(1)(A). The latter provision (42 U.S.C. 14135a(a)(1)(A)) also sufficiently supports allowing such arrangements between federal agencies, since it authorizes the Attorney General to delegate DNA-sample collection to any Department of Justice component and to any other federal agency that arrests or detains individuals or supervises individuals facing charges.

The new paragraph (e) also identifies three circumstances in which an agency need not collect a sample. The first is when arrangements have been made for some other agency or entity to collect the sample under that paragraph. The second is when CODIS already contains a DNA profile for the individual, an exception expressly authorized by 42 U.S.C. 14135a(a)(3). The third is when waiver of DNA-sample collection in favor of collection by another agency is authorized by 42 U.S.C. 14135a(a)(3) or 10 U.S.C. 1565(a)(2), statutes that provide that BOP and the Department of Defense need not duplicate DNA-sample collection with respect to military offenders.

Current paragraph (e) is redesignated as paragraph (f) and is revised to require agencies subject to the rule to carry out DNA-sample collection utilizing buccal-swab collection kits provided by the Attorney General or other means authorized by the Attorney General. The samples then must be sent to the FBI, or to another agency or entity authorized by the Attorney General, for purposes of analysis and indexing in CODIS. This paragraph also is amended to require taking of another sample if the original sample is flawed and hence cannot be analyzed to derive a DNA profile that satisfies the requirements for entry into CODIS.

A new paragraph (g) is added to clarify that the authorization of DNA-sample collection under this rule pursuant to the DNA Analysis Backlog Elimination Act does not limit DNA-sample collection by an agency pursuant to any other authority.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 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, analysis, and indexing by federal agencies of DNA samples from certain individuals. *See* 5 U.S.C. 605(b).

Executive Order 12866—Regulatory Planning and Review

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

The cost of buccal swab kits is expected to be similar to the cost of finger-prick kits, which the FBI has provided in the existing program for the collection of DNA samples from federal convicts. Resulting per-sample analysis and storage costs also are expected to be similar. A finger-prick DNA-sample collection kit costs approximately $7.50, and it costs the FBI approximately $28.50 to analyze the DNA sample and $1.50 to store the sample (for a total of $37.50). The individuals from whom DNA-sample collection is authorized under the proposed rule, not covered by previous law and practice, generally fall into two broad categories: (1) Persons arrested for or charged with (but not yet convicted of) federal crimes; and (2) illegal aliens arrested or detained by DHS. According to the Department of Justice's 2004 Compendium of Federal Justice Statistics, over 140,000 suspects were arrested for federal offenses in fiscal year 2004. *See* Bureau of Justice Statistics, U.S. Dep't of Justice, Office of Justice Programs, Compendium of Federal Justice Statistics, 2004, *available at http://ojp.usdoj.gov/bjs/abstract/cfjs04.htm,* at 1, 13, & 18. According to the DHS 2006 Yearbook of Immigration Statistics, 1,206,457 aliens were apprehended. Based on these figures, the Department estimates that on an annual basis the number of individuals from whom DNA-sample collection is authorized under this rule will be approximately 1.2 million. The actual number of individuals from whom DNA samples are collected will be less to the extent that the Attorney General grants exceptions or the Secretary of Homeland Security exercises his discretion to limit DNA-sample collection in accordance with proposed 28 CFR 28.12(b), and to the extent that individuals entering the system through arrest or detention previously have had DNA samples collected and repetitive collection is not required.

Executive Order 13132—Federalism

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 in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 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, Prisoners, Prisons, Probation and parole, Records.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR 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; Public Law 106–546, 114 Stat. 2726; Public Law 107–56, 115 Stat. 272; Public Law 108–405, 118 Stat. 2260; Public Law 109–162, 119 Stat. 2960; Pub. L. 109–248, 120 Stat. 587.

2. Section 28.12 is revised to read as follows:

§ 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 Federal offense (including any offense under the Uniform Code of Military Justice); or

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

(b) Any agency of the United States that arrests or detains individuals or supervises individuals facing charges shall collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. For purposes of this paragraph, ''non-United States persons'' means persons who are not United States citizens and who are not lawfully admitted for permanent residence as defined in 8 CFR 1.1(p). Unless otherwise directed by the Attorney General, the collection of DNA samples under this paragraph may be limited to individuals from whom the agency collects fingerprints and may be subject to other limitations or exceptions approved by the Attorney General. The DNA-sample collection requirements for the Department of Homeland Security in relation to non-arrestees do not include, except to the extent provided by the Secretary of Homeland Security, collecting DNA samples from:

(1) Aliens lawfully in, or being processed for lawful admission to, the United States;

(2) Aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings;

(3) Aliens held in connection with maritime interdiction; or

(4) Other aliens with respect to whom the Secretary of Homeland Security, in consultation with the Attorney General, determines that the collection of DNA samples is not feasible because of operational exigencies or resource limitations.

(c) The DNA-sample collection requirements under this section shall be implemented by each agency as soon as feasible, and in any event shall be implemented fully by each agency no later than December 31, 2008.

(d) Each individual described in paragraph (a) or (b) of this section shall cooperate in the collection of a DNA sample from that individual. Agencies required to collect DNA samples under this section 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) or (b) who refuses to cooperate in the collection of the sample.

(e) Agencies required to collect DNA samples under this section may enter into agreements with other agencies described in paragraph (a) or (b) of this section, with units of state or local governments, and with private entities to carry out the collection of DNA samples. An agency may, but need not, collect a DNA sample from an individual if—

(1) Another agency or entity has collected, or will collect, a DNA sample from that individual pursuant to an agreement under this paragraph;

(2) The Combined DNA Index System already contains a DNA analysis with respect to that individual; or

(3) Waiver of DNA-sample collection in favor of collection by another agency is authorized by 42 U.S.C. 14135a(a)(3) or 10 U.S.C. 1565(a)(2).

(f) Each agency required to collect DNA samples under this section shall—

(1) Carry out DNA-sample collection utilizing sample-collection kits provided or other means authorized by the Attorney General, including approved methods of blood draws or buccal swabs;

(2) Furnish each DNA sample collected under this section to the Federal Bureau of Investigation, or to another agency or entity as authorized by the Attorney General, for purposes of analysis and entry of the results of the analysis into the Combined DNA Index System; and

(3) Repeat DNA-sample collection from an individual who remains or becomes again subject to the agency's jurisdiction or control if informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into the Combined DNA Index System.

(g) The authorization of DNA-sample collection by this section pursuant to Public Law 106–546 does not limit DNA-sample collection by any agency pursuant to any other authority.

Dated: April 11, 2008.

Michael B. Mukasey,

Attorney General.

[FR Doc. E8–8339 Filed 4–17–08; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 930

[SATS No. ND–050–FOR; Docket ID OSM–2008–0004; North Dakota Amendment No. XXXVIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to rules that would change self-bonding requirements, update terminology used for describing native grasslands, and correct a cross reference error. At its own initiative, it intends to revise its program to improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. May 19, 2008. If requested, we will hold a public hearing on the amendment on May 13, 2008. We will