COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 812

[CSOSA–0006–F]

RIN 3225–AA04

Collection and Use of DNA Information

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'') is finalizing its interim rule which implemented section 4 of the DNA Analysis Backlog Elimination Act of 2000, in conjunction with District of Columbia laws enacted pursuant to that Act which specify qualifying District of Columbia offenses for purposes of DNA sample collection. The interim regulations set forth the responsibilities of CSOSA for collecting DNA samples from individuals under its supervision who have been convicted of specific offenses identified by District of Columbia statute. The regulations specify that DNA samples are to be collected, handled, preserved, and submitted to the Federal Bureau of Investigation (''FBI'') in accordance with FBI guidelines for inclusion in the Combined DNA Index System (''CODIS''), a national database of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations also specify that CSOSA will cooperate with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of a DNA sample; and define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate. The regulations identify in an appendix the offenses which qualify for DNA collection, as they appear in the District of Columbia public laws, in the District of Columbia Code (1981 ed.), and in the District of Columbia Official Code (2001 ed.).

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on the collection and use of DNA information (28 CFR part 812) which were published in the **Federal Register** on August 21, 2002 (67 FR 54098).

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision 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). The rule implements section 4 of Public Law 106–546 (42 U.S.C. 14135b), which requires the Director of CSOSA to ''collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense'' and requires collection of DNA samples to commence not later than 180 days after the effective date of the Act. Given that section 4(d) authorizes the government of the District of Columbia to ''determine those offenses under the District of Columbia Code that shall be treated * * * as qualifying District of Columbia offenses,'' Congress must have been aware that it would not be feasible within a 180-day time period to enact the required District of Columbia legislation, publish a proposed regulation for notice and comment, as well as a subsequent final rule, and for the period of the final rule's delayed effective date to have run. Public Law 106–546, in conjunction with the District of Columbia legislation, is explicit and comprehensive concerning the types of offenses that will be treated as qualifying District of Columbia offenses and concerning the responsibilities of CSOSA in collecting DNA samples. In light of the short statutory time frame for the implementation of this law and the fact that the formulation of implementing regulations involves the exercise of relatively little discretion, it is impracticable and unnecessary 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).

Moreover, the collection, analysis, and indexing of DNA samples as required by Public Law 106–546 furthers important public safety interests by facilitating the solution and prevention of crime, *see* H.R. Rep. No. 900, 106th Cong., 2d Sess. 8–11 (2000) (House Judiciary Committee Report). Delay in the full implementation of the law—including the absence of a specification of what constitutes a refusal to cooperate in DNA sample collection and what measures are to be taken in response to such a refusal, as set forth in these regulations—would thwart or delay the realization of these public safety benefits. Dangerous offenders who might be successfully identified through DNA matching may reach the end of supervision before DNA sample collection can 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 wrongfully suspected, accused, or convicted of such crimes. Therefore, it would be contrary to the public interest to adopt these regulations 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).

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of its procedures for DNA collection and use. CSOSA did not receive any public comment on the interim regulations. CSOSA is therefore adopting the interim regulations as final. In adopting the interim regulations as final, CSOSA is making two editorial amendments to correct typographical errors.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule

and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

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 $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are 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 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 812

Probation and parole.

■ Accordingly, CSOSA adopts the interim rule published at 67 FR 54098 which added part 812 to chapter VIII, title 28 of the Code of Federal Regulations as a final rule with the following editorial amendments.

Paul A. Quander, Jr.,

Director.

PART 812—COLLECTION AND USE OF DNA INFORMATION

■ 1. The authority citation for part 812 continues to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 106–546 (114 Stat. 2726).

§ 812.4 [Amended]

■ 2. In paragraph (b)(3) of § 812.4, remove the word ''provided'' and insert the word ''provide'' in its place.

Appendix A to Part 812 [Amended]

■ 3. In item (9) of Table 1 of Appendix A to part 812, remove the word ''act'' and insert the word ''Act'' in its place.

[FR Doc. 03–9931 Filed 4–21–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–139–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are announcing the removal of a required amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are removing the required amendment because the Federal regulation upon which the required amendment was based no longer exists.

EFFECTIVE DATE: April 22, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Email: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

In the January 7, 2003, **Federal Register** (68 FR 721), we announced our proposal to remove the required amendment to Pennsylvania's program found at 30 CFR 938.16(ss). OSM proposed to remove the required amendment because the Federal regulation upon which the required amendment was based no longer exists. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 6, 2003. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At 30 CFR 938.16(ss), OSM required Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii), we noted:

Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review