

this section shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: April 4, 2005.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Parts 31 and 36

RIN 1076-AE54

#### Conforming Amendments to Implement the No Child Left Behind Act of 2001

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule deletes provisions of parts 31 and 36 that will become obsolete on May 31, 2005, the effective date of the final rule implementing the No Child Left Behind Act of 2001.

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

**FOR FURTHER INFORMATION CONTACT:** Catherine Freels, Designated Federal Official, P.O. Box 1430, Albuquerque, NM 87103-1430; phone: 505-248-7240; e-mail: [cfreels@bia.edu](mailto:cfreels@bia.edu).

**SUPPLEMENTARY INFORMATION:** Today the Bureau of Indian Affairs is publishing elsewhere in the *Federal Register* the final rule implementing the No Child Left Behind Act of 2001. The Bureau developed this rule using a negotiated rulemaking process that considered the views of all affected tribes and types of schools. This final rule implementing the No Child Left Behind Act affects several provisions in other areas of 25 CFR. This rule removes these conflicting provisions in order to remove potential conflicts from title 25.

#### Compliance Information

1. *Regulatory Planning and Review* (E.O. 12866). This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. It makes only changes necessary to ensure that these sections of 25 CFR conform to the changes made by the new rule being published in final today.

2. *Regulatory Flexibility Act.* The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. *Small Business Regulatory Enforcement Fairness Act (SBREFA).* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. *Unfunded Mandates Reform Act.* This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule makes only changes necessary to ensure that these sections of 25 CFR conform to the changes made by the new rule being published in final today.

5. *Takings (E.O. 12630).* In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

6. *Federalism (E.O. 13132).* In accordance with Executive Order 13132, this rule does not have federalism implications that warrant the preparation of a Federalism Assessment.

7. *Civil Justice Reform (E.O. 12988).* In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and

meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. *Consultation with Indian tribes (E.O. 13175).* In accordance with Executive Order 13175, we have evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes. In drafting the No Child Left Behind rule published today, we consulted extensively with tribes; tribal members of the negotiated rulemaking committee participated in the writing of the rule. These conforming amendments make only changes necessary to ensure that the remainder of 25 CFR is consistent with the provisions of the No Child Left Behind rule.

9. *Paperwork Reduction Act.* This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

10. *National Environmental Policy Act.* This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

11. *Justification for Issuing a Direct Final Rule.*

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rule because of the good cause exception under 5 U.S.C. 553(b)(3)(B). This exception allows the agency to suspend the notice and public procedure requirements when the agency finds for good cause that those requirements are impractical, unnecessary, and contrary to the public interest. This rule deletes provisions made obsolete by rules published today by the Department; it makes no other substantive changes. Failure to immediately revoke these rules would lead to confusion and cause errors in vital educational programs. For these reasons, public comments is unnecessary and good cause exists for publishing this change as a direct final rule.

#### List of Subjects in 25 CFR Parts 31 and 36

Elementary and secondary education programs, Government programs—education, Indians—education, Schools.

Dated: April 20, 2005.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant, Secretary—Indian Affairs.*

■ For the reasons given in the preamble, parts 31 and 36 of title 25 of the Code of

Federal Regulations are amended as set forth below.

## **PART 31—FEDERAL SCHOOLS FOR INDIANS**

■ 1. The authority for part 31 continues to read as follows:

**Authority:** Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

- 2. Section 31.1 is removed.
- 3. Section 31.5 is removed.

## **PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS**

■ 4. The authority for part 36 continues to read as follows:

**Authority:** Section 502, 25 U.S.C. 2001; section 5101, 25 U.S.C. 2001; Section 1101, 25 U.S.C. 2002; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 S.C. 2901, Title I of P.L. 101-477.

- 5. In § 36.1, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b).
- 6. In § 36.2, paragraphs (a), (b), (d), and (e) are removed and the designation “(c)” is removed from the beginning of paragraph (c).
- 7. In § 36.11, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).
- 8. In § 36.20, paragraphs (a) and (b) are removed and paragraphs (c) through (e) are redesignated as paragraphs (a) through (c).
- 9. Subpart G, consisting of §§ 36.60 and 36.61, is removed.
- 10. Subpart H is redesignated as subpart G.

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## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 28**

[Docket No. OAG 109; A.G. Order No. 2762-2005]

RIN 1105-AB10

### **Preservation of Biological Evidence Under 18 U.S.C. 3600A**

**AGENCY:** Department of Justice.

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

**SUMMARY:** The Department of Justice is publishing this interim rule to implement 18 U.S.C. 3600A. That statute requires the Federal Government to preserve biological evidence in Federal criminal cases in which

defendants are under sentences of imprisonment, subject to certain limitations and exceptions. Subsection (e) of the statute requires the Attorney General to promulgate regulations to implement and enforce the statute. This rule adds a new subpart C to 28 CFR part 28 to effect the required implementation and enforcement of 18 U.S.C. 3600A. The new provisions added by this rule explain and interpret the evidence preservation requirement of 18 U.S.C. 3600A, and include provisions concerning sanctions for violations of that requirement.

**DATES:** *Effective Date:* This interim rule is effective April 28, 2005.

*Comment Date:* Comments must be received by June 27, 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. 109 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](mailto:olpregs@usdoj.gov) or by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically you must include OAG Docket No. 109 in the subject box.

**SUPPLEMENTARY INFORMATION:** Public Law 108-405, the Justice for All Act of 2004, was enacted on October 30, 2004. Section 411 of that Act added two sections to title 18 of the United States Code. One of these, 18 U.S.C. 3600 (hereafter, “section 3600”), is a new postconviction remedy by means of which persons convicted and imprisoned for Federal offenses may seek DNA testing in support of claims that they are actually innocent of the crimes for which they were convicted. The Act also added 18 U.S.C. 3600A (hereafter, “section 3600A”), which requires the Government to preserve biological evidence—defined to mean “sexual assault forensic examination kit[s]” and “semen, blood, saliva, hair, skin tissue, or other identified biological material”—that was secured in the investigation or prosecution of a Federal offense for which a defendant is under a sentence of imprisonment, subject to certain limitations and exceptions. The general purpose of section 3600A is to preserve biological evidence for possible DNA testing under section 3600. If a court orders, pursuant to section 3600, DNA testing of biological evidence that has been preserved in the case, the test

results may shed light on the defendant's guilt or innocence of the offense by including or excluding the defendant as the source of the biological material.

Subsection (e) of section 3600A directs the Attorney General to promulgate within 180 days of the date of enactment (*i.e.*, October 30, 2004) regulations to implement and enforce section 3600A, including appropriate disciplinary sanctions to ensure compliance by employees. This interim rule carries out that direction. It adds a new Subpart C, entitled “Preservation of Biological Evidence,” to 28 CFR Part 28; the general subject of 28 CFR Part 28 is “DNA Identification System.” The new Subpart C comprises §§ 28.21 through 28.28.

The first seven sections of the new Subpart, §§ 28.21 through 28.27, primarily explain and interpret the biological evidence preservation requirement of section 3600A. This will ensure that Federal agencies clearly understand their obligations under section 3600A, including both the positive extent of the requirement to preserve biological evidence and the limitations on and exceptions to that requirement under the statute. The final section of the new Subpart, § 28.28, concerns sanctions for violations. The provisions of the regulations are as follows:

### **Section 28.21**

Section 28.21 notes the biological evidence preservation requirement of section 3600A, its general purpose to preserve such evidence for possible DNA testing under 18 U.S.C. 3600, and the requirement of section 3600A(e) to promulgate regulations to implement and enforce section 3600A.

### **Section 28.22**

Section 28.22 provides explanation concerning the applicability, duration, and meaning of the biological evidence preservation requirement, construing subsection (a) of section 3600A.

#### *Paragraph (a)*

Paragraph (a) in § 28.22 notes that the biological evidence preservation requirement applies to evidence retained in cases predating the enactment of section 3600A or the promulgation of this rule, as well as to evidence secured in pending and future cases. This reflects the effective date and applicability provision in section 411 of the Justice for All Act, which states that the provisions enacted by that section (including 18 U.S.C. 3600A) “shall apply with respect to any offense committed, and to any judgment of