

the American Dietetic Association, 97(6):612–618, June 1997.

84. Fasano, A., I. Berti, T. Gerarduzzi, et al., “Prevalence of Celiac Disease in At-Risk and Not-At-Risk Groups in the United States. A Large Multicenter Study,” *Archives of Internal Medicine*, 163:286–292, 2003.

85. U.S. Census Bureau, Population Division, “U.S. POPClock Projection,” Web page, accessible at <http://www.census.gov/population/www/popclockus.html> on August 18, 2005

86. Blast, A., National Foundation for Celiac Awareness, Public Statement, Transcript of the Center for Food Safety and Applied Nutrition, Food and Drug Administration Public Meeting on Gluten-Free Food Labeling held in College Park, MD, p. 287, August 19, 2005, accessible at <http://www.fda.gov/ohrms/dockets/dockets/05n0279/05n-0279-tr00001-01-vol16.doc> June 22, 2006. (Also see errata sheet for transcript accessible at <http://www.fda.gov/ohrms/dockets/dockets/05n0279/05n-0279-tr00001-02-erratta-vol16.doc> June 22, 2006.)

87. Schluckebier, M., “Food Labeling Concerns for CD/DH,” Presentation, Transcript of the Center for Food Safety and Applied Nutrition, Food and Drug Administration Public Meeting on Gluten-Free Food Labeling held in College Park, MD, p. 200, August 19, 2005, accessible at <http://www.fda.gov/ohrms/dockets/dockets/05n0279/05n-0279-tr00001-01-vol16.doc> on June 22, 2006. (Also see errata sheet for transcript accessible at <http://www.fda.gov/ohrms/dockets/dockets/05n0279/05n-0279-tr00001-02-erratta-vol16.doc> on June 22, 2006.)

88. Bureau of Labor Statistics, U.S. Department of Labor (USDOL), “Employer Costs for Employee Compensation Summary,” USDOL: 05–2279, December 9, 2005.

89. Kaukinen, K., P. Collin, K. Holm, et al., “Wheat Starch-Containing Gluten-Free Flour Products in the Treatment of Coeliac Disease and Dermatitis Herpetiformis. A Long Term Follow-Up Study,” *Scandinavian Journal of Gastroenterology*, 34:163–169, 1999.

90. McCrae, W.M., M.A. Eastwood, M.R. Martin, et al., “Neglected Coeliac Disease,” *Lancet*, 1:187–190, 1975.

91. Sdepanian V.L., I.C.A. Scaletsky, U. Fagundes-Neto, et al., “Assessment of Gliadin in Supposedly Gluten-Free Foods Prepared and Purchased by Celiac Patients,” *Journal of Pediatric Gastroenterology and Nutrition*, 32:65–70, January 2001.

92. Codex Alimentarius Commission, Food and Agriculture Organization (FAO) of the United Nations, World Health Organization (WHO), Joint FAO/WHO Food Standards Programme, Codex Committee on Nutrition and Foods for Special Dietary Uses, Twenty-fifth Session, “Proposed Draft Revised Standard for Gluten-Free Food At Step 7,” Comments from Sweden, Finland, AOECs—Association of European Coeliac Societies, IWGA—International Wheat Gluten Association, CX/NFSDU 03/4—Add. 1, pp. 1–11, October 2003.

93. Lohiniemi, S., M. Mäki, K. Kaukinene, et al., “Gastrointestinal Symptoms Rating Scale in Coeliac Disease Patients on Wheat Starch-Based Gluten-Free Diets,”

*Scandinavian Journal of Gastroenterology*, September, 35(9):947–949, October 2000.

94. Peräaho, M., K. Kaukinen, K. Paasikivi, et al., “Wheat-Starch-Based Gluten-Free Products in the Treatment of Newly Detected Coeliac Disease: Prospective and Randomized Study,” *Alimentary Pharmacology & Therapeutics*, 17(4):587–594, February 2003.

95. Faulkner-Hogg, K.B., W.S. Selby, and R.H. Loblay, “Dietary Analysis in Symptomatic Patients With Coeliac Disease on a Gluten-Free Diet: The Role of Trace Amounts of Gluten and Non-Gluten Products,” *Scandinavian Journal of Gastroenterology*, 34(38):784–789, August 1999.

## List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Food and Drug Administration proposes to amend 21 CFR part 101 as follows:

## PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.91 is added to subpart F to read as follows:

### § 101.91 Gluten-free labeling of food.

(a) **Definitions.** (1) The term “prohibited grain” means any one of the following grains or their crossbred hybrids (e.g., triticale, which is a cross between wheat and rye):

(i) Wheat, including any species belonging to the genus *Triticum*;

(ii) Rye, including any species belonging to the genus *Secale*; or

(iii) Barley, including any species belonging to the genus *Hordeum*.

(2) The term “gluten” means the proteins that naturally occur in a prohibited grain and that may cause adverse health effects in persons with celiac disease (e.g., prolamins and glutelins).

(3) The labeling claim “gluten-free” or similar claim (e.g., “free of gluten,” “without gluten,” “no gluten”) means that the food bearing the claim in its labeling does not contain any of the following:

(i) An ingredient that is a prohibited grain (e.g., spelt wheat);

(ii) An ingredient that is derived from a prohibited grain and that has not been processed to remove gluten (e.g., wheat flour);

(iii) An ingredient that is derived from a prohibited grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per

million (ppm) or more gluten in the food (i.e., 20 micrograms or more gluten per gram of food);

(iv) 20 ppm or more gluten.

(b) **Requirements.** (1) A food that bears the claim “gluten-free” or similar claim in its labeling and fails to meet the conditions specified in paragraph (a)(3) of this section will be deemed misbranded.

(2) With the exception of foods made from oats, a food that does not inherently contain any gluten from a prohibited grain (e.g., milk, corn, frozen concentrated orange juice) and that bears the claim “gluten-free” in its labeling will be deemed misbranded unless:

(i) The claim refers to all foods of that same type (e.g., “milk, a gluten-free food,” “all milk is gluten-free”); and

(ii) The food does not contain 20 ppm or more gluten.

(3) A food made from oats that bears the claim “gluten-free” or similar claim in its labeling will be deemed misbranded if the claim refers to all foods of the same type (e.g., “all oats are gluten-free”) or if the food contains 20 ppm or more gluten.

(c) **Compliance.** When compliance with paragraph (b) of this section is based on an analysis of the food, FDA will use a method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products.

Dated: January 16, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7–843 Filed 1–22–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### 28 CFR Part 20

[Docket No. FBI 113; AG Order No. 2855–2007]

**RIN 1110-AA24**

### Carriage of Concealed Weapons Pursuant to Public Law 108–277; the Law Enforcement Officers Safety Act of 2003

**AGENCY:** Federal Bureau of Investigation (FBI), Department of Justice.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Department of Justice (the Department) is amending Title 28 of the Code of Federal Regulations to authorize access to FBI-maintained criminal justice information systems for

the conduct of background checks for the purpose of issuing identification documents to retired law enforcement officers.

**DATES:** Written comments must be received on or before March 26, 2007.

**ADDRESSES:** All comments may be submitted to Assistant General Counsel Harold M. Sklar, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Module E-3, Clarksburg, West Virginia, 26306, or by telefacsimile to (304) 625-3944. To ensure proper handling, please reference FBI Docket No. 113 on your correspondence. You may view an electronic version of this proposed rule at [www.regulations.gov](http://www.regulations.gov). You may also comment via electronic mail at [enexreg@leo.gov](mailto:enexreg@leo.gov) or by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically you must include FBI Docket No. [2855-2007] in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Assistant General Counsel Harold M. Sklar, telephone number (304) 625-2000.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department is amending part 20 of Title 28, "Criminal Justice Information Systems," to authorize criminal justice agencies to access FBI criminal history record information appearing in the National Crime Information Center (NCIC) Interstate Identification Index (III) and the Fingerprint Identification Record System (FIRS) to support implementation of Public Law 108-277.

On July 22, 2004, the Law Enforcement Officers Safety Act of 2003 (Pub. L. 108-277) became law. Public Law 108-277 amended Title 18, United States Code, to exempt "qualified" current and retired law enforcement officers (LEOs) from State laws prohibiting the carrying of concealed firearms (except when state law restricts the possession of concealed firearms on public property or permits private property owners to restrict the possession of concealed firearms on their property). Under the new 18 U.S.C. 926C(d), retired LEOs seeking to exercise this privilege are required to possess photographic identification issued by the criminal justice agency (CJA) from which they retired from service.

On January 31, 2005, the Attorney General issued guidance on Public Law 108-277 mandating that Department of Justice (DOJ) Criminal Justice Components issue photographic identification (ID cards) to its eligible

retired LEOs that identify their status as "retired law enforcement officers" and provide the date of retirement.

Additionally, various CJAs have asked the FBI whether they may access the III database to screen their retired LEOs prior to issuing ID cards under the Act.

Section 534 of title 28, United States Code, generally permits the dissemination of III and FIRS information to CJAs for "official use." Section 534 is implemented in this regard by 28 CFR part 20. Since 1974, access to and dissemination of III information under part 20 has been largely restricted to "criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies \* \* \*." 28 CFR 20.33(a)(1).

Although the term "criminal justice purpose" referenced in § 20.33(a)(1) is not specifically defined in the regulations, it has traditionally been considered to include activities within the definition of "administration of criminal justice" in § 20.3(b): "performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders." Taken together, these regulations currently do not clearly support access to III and FIRS for the purpose of issuing identification documents to retired LEOs.

As a result, the FBI sought and obtained the concurrence of the Criminal Justice Information Services Advisory Policy Board (CJIS APB) (a body created pursuant to the Federal Advisory Committee Act, § 2, 5 U.S.C. App. 2) to amend the definition of "administration of criminal justice" to include background checks conducted for the purpose of issuing identification documents to retired LEOs pursuant to section 926C(d) of Public Law 108-277. To provide regulatory consistency, we also propose to relocate the reference in § 20.33(a)(1) to "the screening of employees or applicants for employment hired by criminal justice agencies" to the definition of "administration of criminal justice" appearing at § 20.3(b). We are also making clear in section 20.3(b) that the term "criminal justice purpose" includes activities defined as the "administration of criminal justice."

This amendment will expressly authorize access to the III and the FIRS by Federal, state, and local CJAs for the purpose of issuing identification documents to eligible retired LEOs pursuant to Public Law 108-277.

Further, inasmuch as the definitions appearing in 28 CFR 20.3 apply to both 28 CFR subparts B and C, this change resolves any ambiguity about the existing authority to access state criminal justice systems (in the absence of contrary state authority) to screen CJA applicants and employees.

#### Applicable Administrative Procedures and Executive Orders

##### *Executive Order 12866—Regulatory Planning and Review*

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a significant regulatory action under section 3(f) of Executive Order 12866.

##### *Executive Order 13132—Federalism*

This rule will not have a substantial, direct effect 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*

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

##### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule imposes minimal costs on businesses, organizations, or governmental jurisdictions (whether large or small).

##### *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 the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2). This proposed rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or have 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.

*Paperwork Reduction Act of 1995*

The rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is not required.

**List of Subjects in 28 CFR Part 20**

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

Accordingly, part 20 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS**

1. The authority citation for part 20 continues to read as follows:

**Authority:** 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, et seq.; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

2. Section 20.3 is amended by revising paragraph (b) to read as follows:

**§ 20.3 Definitions.**

As used in these regulations:

\* \* \* \* \*

(b) *Administration of criminal justice* means the performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term “criminal justice purpose” in 20 CFR 20.33(a)(1) includes activities defined as the “administration of criminal justice.” The administration of criminal justice also includes

(i) Criminal identification activities and the collection, storage, and dissemination of criminal history record information;

(ii) The screening of employees or applicants for employment hired by criminal justice agencies; and

(iii) The issuance of identification documents to current and retired law enforcement officers pursuant to Public Law 108–277.

\* \* \* \* \*

3. Section § 20.33 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 20.33 Dissemination of criminal history record information.**

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes;

\* \* \* \* \*

Dated: January 2, 2007.

**Alberto R. Gonzales,**

*Attorney General.*

[FR Doc. E7–150 Filed 1–22–07; 8:45 am]

**BILLING CODE 4410–02–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DoD–2006–OS–0033; 0790–A110]

**32 CFR Part 311****Office of the Secretary Privacy Program**

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposed updates and implements policies and procedures for the Privacy Act Program in the Office of the Secretary of Defense and organizations provided administrative support by the Washington Headquarters Services.

**DATES:** Comments must be received by March 26, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at

<http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Irvin, 703–696–4940.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866, “Regulatory Planning and Review”**

It has been determined that 32 CFR part 311 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

**Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Certification is required.

**Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

**Executive Order 13132, “Federalism”**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;