



DEPARTMENT OF HOMELAND SECURITY  
U.S. CUSTOMS AND BORDER PROTECTION  
DIRECTIVE

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**PROGRAM OFFICE:**

**DNA Sample Collection for CODIS**

**1 PURPOSE**

1.1 This directive outlines U.S. Customs and Border Protection (CBP) policy and procedures concerning the collection of deoxyribonucleic acid (DNA) samples from certain persons in CBP custody for submission to the Department of Justice (DOJ)/Federal Bureau of Investigations (FBI) Combined DNA Index System (CODIS).

1.2 CBP's principal purpose of CODIS DNA sample collection is to submit DNA samples of known subjects for the centralized Federal DNA database program owned, operated, and managed by the Federal DNA Database Unit (FDDU)/FBI Laboratory. This policy applies specifically to the FBI's CODIS DNA collection program and outlines modified internal booking and processing procedures to facilitate CBP's collection, recordation, and submission of DNA samples to the FBI for inclusion in CODIS.

1.3 This directive does not apply or limit CBP's authority to collect any biometric for CBP mission related uses and purposes and does not apply to CBP's submission of latent or unknown samples to the FDDU/FBI Laboratory for DNA analysis and inclusion in CODIS unknown indices. DNA collected for entry into CODIS is not intended for use as evidence and therefore CBP chain of custody procedures do not apply to DNA samples collected under this directive.

**2 POLICY**

2.1 Pursuant to 34 U.S.C. § 40702, *Collection and Use of DNA Identification Information from Certain Federal Offenders*, the United States Attorney General has the authority to "collect DNA samples for submission to CODIS 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." *Id.* at § 40702(a)(1)(A).

2.2 The regulations implementing 34 U.S.C. § 40702 require federal agencies 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." 28 CFR § 28.12(b). As noted in the Federal Register publication of the final rule, published on March 9, 2020, "[this] rule requires, DNA sample collection both for persons arrested on Federal criminal charges and for non-United States persons in detention for immigration violations[.]" *DNA Sample Collection from Immigration Detainees* (Final Rule), 85 FR 13483, 13484 (Mar. 9, 2020).

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- 2.3 CBP is required to collect DNA samples and accompanying biographical data for submission to CODIS from all persons in CBP custody that are arrested on federal criminal charges and from non-U.S. persons detained under CBP's authority, who are not otherwise exempt from the collection requirement.
- 2.4 Effective January 2020, CBP began collecting DNA samples for submission to CODIS from any person in CBP custody who is subject to fingerprinting, unless otherwise exempt. This includes collection from non-U.S. persons as well as from U.S. citizens and Lawful Permanent Residents .
- 2.5 CBP's collection of DNA for submission into CODIS does not include:
- Aliens under the age of 14;
  - Aliens lawfully in or being processed for lawful admission into the United States;
  - Aliens held at a POE during consideration of admissibility, and not subject to further detention or proceedings;
  - Aliens held in connection with maritime interdiction;
  - Persons the agency does not fingerprint;
  - When the National Crime Information Center (NCIC) indicates CODIS already contains a DNA profile for the individual;
  - When there is a memorandum of understanding (MOU) between CBP and another agency, unit of state or local government, or private entity for that agency or entity to collect the DNA sample for submission to CODIS on behalf of CBP; and
  - When CBP encounters an individual with a state want or warrant for a state crime and there is no federal criminal or immigration activity at issue.<sup>1</sup>
- 2.6 To ensure consistency with the FBI's requirements and quality assurance standards, it is imperative that CBP personnel adhere to the CODIS DNA sample collection, recordation, and submission procedures outlined in this directive.

### **3 AUTHORITIES:**

34 U.S.C. § 40702, 28 C.F.R. § 28.12, 34 U.S.C. § 12592.

### **4 BACKGROUND**

- 4.1 The DNA Identification Act of 1994 (42 U.S.C. §14132) authorized the establishment of a collective database of DNA profiles and indices. The National DNA Index System (NDIS) contains several different indices of DNA profiles contributed by federal, state, and local participating forensic laboratories such as the unidentified human remains index, the missing person index, offender index, forensic index, the arrestee index, and the detainee index, among others. The Act further specifies quality assurance, privacy, and expungement requirements, as well as the categories of data the FBI may maintain within the legal authority of collection governing each index.

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<sup>1</sup> Each state has its own laws specifying which profiles can be included in state DNA index systems and may differ from federal laws.

- 4.2 The Combined DNA Index System (CODIS) is the software program and network, managed by the FBI that connects local, state and federal DNA laboratories. CODIS blends forensic science and computer technology into a tool that compares unknown and known DNA profiles and links serial violent crimes to each other, as well as to known offenders. In this directive, CODIS is the generic term used to describe the FBI's program of DNA database and indices (NDIS), as well as the software and networks used to run, search, match DNA profiles, and generate investigative leads.
- 4.3 Federal law has required the collection of DNA samples from certain categories for inclusion in CODIS, since the DNA Fingerprint Act was enacted in 2006. The regulations implementing 34 U.S.C. § 40702 require all DHS law enforcement components in specified circumstances to collect DNA samples and furnish each DNA sample collected to the FBI for DNA analysis, DNA profile development, and upload to CODIS. 28 C.F.R. Part 28.
- 4.4 The rule requires DNA-sample collection both for persons arrested on federal criminal charges and for non-United States persons detained under the authority of the United States. Specific to CBP, the arrestee index includes persons in CBP custody that are arrested on federal criminal charges and the detainee index includes non-U.S. persons detained under CBP's authority.
- 4.5 The FBI authorized method of CODIS DNA sample collection is the buccal (cheek) swab, and the authorized method of recordation is the FBI National DNA Database Entry Form (FD-936). Everything necessary for this process is contained in the sample collection kits/packages provided by the FBI without charge for this purpose. For privacy reasons, the CODIS database does not contain personal identifying information associated with the DNA profile. The FD-936 form, the collection device, and envelopes contain matching unique barcodes and must remain together throughout the entire process.
- 4.6 These unique barcodes are used to ensure sample integrity, tracking purposes at the FBI Laboratory, DNA profile entries into CODIS, and link to biographical data stored elsewhere.

**5 DEFINITIONS** The following definitions apply for the purpose of this directive only and are not intended to define these terms for the Agency:

- 5.1 **Arrestee Index:** Part of the National DNA Index System (NDIS) that consists of DNA records of persons who have been arrested or indicted or charged in an information with a crime and are required by law to provide DNA samples. For the purpose of DNA sample collection under this directive and in adherence with the FBI's DNA sample collection requirements, this population of arrestees consists of subjects arrested by CBP). Additionally, profiles generated from samples documented as "A" on the National DNA Database Entry Form (FD-936) are placed in the NDIS arrestee index.

- 5.2 Booked/Booking: Submission of an arrestee's biographical information, biometric data and criminal charges to create or update a Criminal Master File in FBI's Next Generation Identification database.
- 5.3 Buccal Swab (DNA collection device): A specialized applicator with a sponge or Dacron tip that is dragged on the inside of an individual's cheek to collect a DNA sample.
- 5.4 CBP automated solution: The automated process uses electronic data capture technology to replace manual input, while maintaining the integrity of sample collection kits and unique barcodes. Biographical data entered in CBPs booking systems auto-populate the FD-936 form, electronically transfer fingerprints from the booking package, and link the identity associated with the fingerprints with the corresponding data on the unique barcode DNA collection device, the FD-936 form, and the return envelope.
- 5.5 CODIS (Combined DNA Index System): The FBI's program of support for local, state, and national criminal justice DNA databases as well as the computer software used to run these databases. NDIS is considered one part of CODIS—the national level—containing the DNA profiles contributed by federal, state, and local participating forensic laboratories. CODIS is a computer software program that operates local, state, and national databases of DNA profiles from known and unknown sources. CODIS enables crime laboratories to link crimes and identify subjects by matching unknown DNA profiles to known DNA profiles.
- 5.6 CODIS Hit: Submitting agency known DNA sample profile match to a DNA sample profile in CODIS. Matches provide law enforcement with the identity of suspects, link crime scenes to each other or to serial offender, and generate investigative leads.
- 5.7 Detainee Index: Part of the National DNA Index System (NDIS) consists of DNA records from non-U.S. persons detained under the authority of the U.S. that are required by law to provide a DNA sample. For the purpose of DNA sample collection under this directive, and in adherence with the FBI's DNA sample collection requirements, this population of detainees consists of subjects detained under CBP's immigration authority. Additionally, profiles generated from samples documented as "D" on the National DNA Database Entry Form (FD-936) are placed in the NDIS detainee index.
- 5.8 DNA Analysis: Analysis of the deoxyribonucleic acid (DNA) identification information from the DNA sample to produce a DNA profile.
- 5.9 DNA Profile: The genetic constitution of an individual at defined locations (also known as loci) in the DNA. A DNA profile derived from nuclear DNA contained in a DNA sample typically consists of one or two alleles at several loci (e.g., short tandem repeat or (STR) loci). The DNA profile derived from mitochondrial DNA is described in relation to the revised Cambridge Reference Sequence (Nature Genetics 1999, 23:147). STR loci originate in "non-coding" regions of the DNA strand and do not contain genetic, racial, gender, or other sensitive data.

- 5.10 DNA Sample: A DNA sample means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.
- 5.11 Non-United States Persons: Persons who are not United States citizens and who are not lawfully admitted for permanent residence as defined in 8 CFR § 1.2.
- 5.12 Sample Collection Kits/Packages: Kits approved and provided by the FBI for the collection of DNA samples for submission to CODIS.
- 5.13 United States Persons: Persons who are United States citizens (USCs) and Lawful Permanent Residents (LPRs) as defined in 8 CFR § 1.2.
- 5.14 Universal Precautions: An infection control approach developed by the Center for Disease Control (CDC) that assumes every direct contact with body fluid is infectious and requires employees exposed to direct contact to be protected as though such body fluids were infected.

## **6 RESPONSIBILITIES**

- 6.1 United States Border Patrol (USBP), Chief and Office of Field Operations (OFO), Executive Assistant Commissioner (EAC). The Chief and the EAC responsibilities include:
  - 6.1.1 National program management within the USBP and the OFO, respectively, including the provisions of this directive to all sectors and ports of entry.
  - 6.1.2 Internal communication processes regarding CODIS hits.
  - 6.1.3 Management of internal controls to identify and implement necessary procedural changes to ensure successful CODIS DNA sample collections.
  - 6.1.4 Generate reports and responses to internal and external requests related to CBP's CODIS DNA sample collection data.
  - 6.1.5 Development and implementation of component specific CODIS DNA sample collection, recordation, and submission training. This may include modifying and updating training as needed to ensure consistent and precise procedures across CBP and incorporation of CBP CODIS DNA sample collection procedures in future onboarding training.
  - 6.1.6 Development and maintenance of component specific systems for continued use of automated capability which align with FBI requirements, expectations, and future modifications.
  - 6.1.7 Ensure Sector/Station Chief Patrol Agents and Directors of Field Operations/Port Directors:



- 6.1.7.1 Implement policy and training related to CODIS DNA sample collection and comply with the collection, recordation, and submission procedures.
  - 6.1.7.2 Establish appropriate standard operating procedures to ensure sufficient CODIS DNA collection sample kits at respective location(s).
- 6.1.8 Ensure USBP agents and OFO officers complete CBP CODIS collection training and adhere to CODIS DNA sample collection, recordation, and submission procedures.
- 6.2 Operations Support (OS), Laboratories and Scientific Services Directorate (LSSD) Technical Advisor assists CBP with the technical aspects of DNA collection when requested by other CBP offices.
  - 6.2.1 Advisor provides assessments on sound scientific compliance of comparison findings for reports and intelligence briefs.
- 6.3 Privacy and Diversity Office, CBP Privacy Officer. The CBP Privacy Office responsibilities include:
  - 6.3.1 Ensure CBP's CODIS DNA sample collection operations are in compliance with Departmental and Agency Privacy Policies and legal requirements.
  - 6.3.2 Assess CBP's CODIS DNA sample collection compliance with the DHS Fair Information Practice Principles.
  - 6.3.3 Ensure adequate safeguards of privacy-sensitive information maintained by CBP.
  - 6.3.4 Provide notice and transparency to the public about privacy sensitive technologies, biometrics, and other privacy-sensitive information collections.
  - 6.3.5 Ensure privacy considerations are included as CBP's CODIS DNA sample collection efforts are expanded or modified.

## **7 PROCEDURES**

- 7.1 Agents /Officers will practice universal precautions at all times while handling the buccal collection device. This includes consideration of the work environment, procedures outlined in the Job Hazard Analysis, and other appropriate cautionary measures to reduce the potential for contamination of themselves and/or the sample.
- 7.2 CBP stations and ports of entry will take all reasonable efforts to maintain a sufficient number of kits and ensure orders are placed within timeframes provided by the FBI so that locations are well-stocked and order requests may be timely fulfilled.
- 7.3 The collection of CODIS DNA samples from persons in CBP custody is carried out as a routine booking measure parallel to fingerprinting. If an individual is booked and

fingerprinted, CBP agents/officers will collect a DNA sample for submission to CODIS, as appropriate.

- 7.3.1 If the NCIC indicates a DNA profile already exists in CODIS, CBP agents/officers will not collect a sample and will update relevant CBP systems to reflect a DNA sample was not collected for this reason.
- 7.3.2 If an agreement is in place between CBP and another agency, unit of state or local government, or private entity for that agency or entity to collect the DNA sample for submission to CODIS on behalf of CBP, agents/officers will not collect a sample and will update relevant CBP systems to reflect a DNA sample was not collected for this reason.
- 7.4 Samples from persons in CBP custody subject to CODIS DNA sample collection are placed in either the arrestee index or the detainee index as indicated on the FD-936 form "Qualifying Reason for Sample Collection." The following guidance is provided to ensure consistent recordation across CBP.
  - 7.4.1 Arrestee Index: Persons arrested on federal criminal charges. This category pertains primarily to USCs and LPRs, but also includes non-U.S. persons referred to criminal court. Persons in CBP custody arrested for a federal offense and referred for prosecution shall be documented as an "A" on the FD-936 form for profile placement in the NDIS arrestee index.
    - 7.4.1.1 CBP agents/officers may never document USCs and LPRs as "D" on the FD-936 for profile placement in the detainee index.
  - 7.4.2 Detainee Index: Non-U.S. persons detained under immigration authority. This category is limited to non-U.S. persons in CBP custody charged with immigration violations, subject to further detention or proceedings (including administrative and enforcement actions), and fingerprinted. Non-U.S. persons in CBP custody subject to DNA collection shall be documented as "D" on the FD-936 form for profile placement in the detainee index.
  - 7.4.3 In the event a non-U.S. person is issued a Notice to Appear for an immigration violation and arrested for a federal criminal offense, the arrestee index shall take precedence and shall be documented as an "A" on the FD-936 form for profile placement in the arrestee index.
- 7.5 **Non-Compliant Subjects:**
  - 7.5.1 CBP will not use force to effectuate CODIS DNA collection and may refer persons who fail to cooperate in the collection of a DNA sample for prosecution, consistent with 34 U.S.C. § 40702(a)(5).

## **7.6 CODIS Hits**

7.6.1 If after the FBI informs the originating agency<sup>2</sup> of a match to a sample CBP submitted to an existing record in CODIS and the originating agency submits an appropriate request, CBP will take all appropriate action to provide available biographic and biometric information to the originating agency.

7.6.2 Third agency party rules and applicable laws apply to any release of information outside of DHS.

## **8 RECORDKEEPING**

8.1 CBP does not use the DNA samples collected under this directive for any purpose beyond submission to the FBI in accordance with 34 U.S.C. § 40702(a)(1)(A). All completed and printed FD-936 forms and used buccal swabs are mailed directly to the FDDU/FBI Laboratory. These records are not used, stored, or maintained by CBP and do not have new, significant, or substantial changes to existing CBP records management requirements.

8.2 Electronic records generated from this policy are covered under existing system of records (SORN) and disposition schedules. This policy does not have new, significant, or substantial changes to existing electronic records management requirements.

## **9 MEASUREMENT**

9.1 CBP will continue to develop and maintain appropriate mechanisms to evaluate the effectiveness and efficiency of CODIS DNA sample collection processes and compliance.

## **10 POINT OF CONTACT**

Direct all CODIS DNA sample collection questions, training, or data requests to [REDACTED]

## **11 NO PRIVATE RIGHTS CREATED.**

This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits for any person or party.

## **12 DISCLOSURE.**

This document contains information that may be exempt from disclosure to the public under federal law. No part of this document shall be disclosed to the public without express authority from U.S. Customs and Border Protection Headquarters.

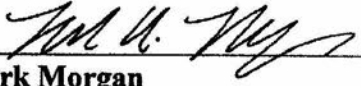
**13 TERMINATION:** This directive remains in effect until superseded or explicitly cancelled.

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<sup>2</sup> The state, local, or federal agency that enrolled the original profile, to which the CBP profile matches.





  
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**Mark Morgan**

U.S. Customs and Border Protection  
Chief Operating Officer and  
Senior Official Performing the Duties of the Commissioner

12.30.21  
**Date**