

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 540****[BOP 1071-F]****RIN 1120-AA67****Visiting: Notification to Visitors****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Final Rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on visiting to make the inmate responsible for having a release authorization form mailed to the inmate's proposed visitor in instances where a background investigation is necessary before the visitor can be approved. This amendment is intended to increase consistency in Bureau operations and to reduce the cost to the government in processing additions to an inmate's visitor's list.

EFFECTIVE DATE: June 11, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on visiting (28 CFR part 540, subpart D). A proposed rule on this subject was published in the **Federal Register** September 11, 1997 (62 FR 47894) which requested comment by November 10, 1997. The Bureau received seven identical comments on the proposed rule. A summary of these comments and the Bureau's response follow.

The commenters all identified themselves as inmates at one particular Federal correctional facility. The commenters stated that they had been informed that all of their visitors (including immediate family members) needed to complete and return a release authorization form before being allowed to visit. The commenters stated that to the best of their knowledge all visitors had to complete and submit the form. This statement presumably rebuts the assertion in the proposed rule that the authorization form is necessary when background information is necessary (for example, when the proposed visitor is not a member of the immediate family).

The commenters stated that they did not want the responsibility of sending the forms and then receiving and

transmitting the forms to institution staff. The commenters further stated that they disapproved of the forms as being intrusive in the lives of other people and that they believed their sending the form to potential visitors constituted their personal stamp of approval to the form. The commenters stated that they wanted the Bureau to have total responsibility for sending and receiving the forms.

The commenters also objected to the proposal on the grounds that it constituted an imposition on indigent inmates. The commenters noted that under Bureau policy inmates without funds were eligible to receive a certain amount of stamps for their legal and social mail (see 28 CFR 540.21(d) and (e)). The commenters maintained that sending the authorization forms constituted a business or information gathering use and consequently was an unwarranted imposition upon such inmates.

Finally, the commenters complained about implementation of existing procedures, stating that they were aware of instances in which visitors came to Bureau institutions and were refused admittance presumably because the returned forms were not properly filed.

In response, the Bureau notes that the regulations in 28 CFR 540.51(b)(3) state that if a background investigation is necessary before approving a visitor, the inmate may be held responsible for having a release authorization form forwarded to the proposed visitor. Ordinarily background information is obtained from potential visitors who are not members of the inmate's immediate family. Exception to this procedure may be made when warranted. However, the expectation is that immediate family members generally do not have to provide background information. If an inmate believes that the practice at an institution is not in conformance with Bureau policy, the inmate may bring the matter to the attention of the appropriate Bureau officials through the Administrative Remedy Program (see 28 CFR part 242).

As for the regulatory revision proper, former § 540.51(b)(3) already provided that the inmate could be held responsible for forwarding the authorization form to the potential visitor. As noted in the proposed rule, paragraph (b)(3) was being revised in the interest of reducing costs to the government and for the sake of consistency. There is no change in the regulations with respect to the return of completed forms. Completed forms will continue to be returned to Bureau staff for processing.

Regarding the release authorization form itself, the form is in compliance with information collection standards. Sending the form to a potential visitor therefore need not represent the personal views of the individual sender.

Regarding the impact on inmates without funds, the Bureau believes that the amendment does not unduly burden the inmate because correspondence which conveys the release authorization form to a potential visitor can also serve broader social contact purposes.

Upon due consideration, the Bureau is adopting the proposed revision to § 540.51(b)(3) as final without change. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation 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 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau'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, 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 § 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

We try to write clearly. If you can suggest how to improve the clarity of

these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514-6655.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.51, paragraph (b)(3) is amended by revising the first sentence to read as follows:

§ 540.51 Procedures.

* * * * *

(b) * * *

(3) If a background investigation is necessary before approving a visitor, the inmate shall be held responsible for mailing a release authorization form to the proposed visitor.

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