



[4410-05OP]

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 571**

[BOP-1168-P]

RIN 1120-AB68

**Compassionate Release**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim rule.

**SUMMARY:** The Bureau of Prisons (Bureau) changes its regulations on compassionate release, to provide that when considering an inmate for reduction in sentence, the General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced; and the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

**DATES:** This rule will be effective [insert date of publication in the FEDERAL REGISTER]. Written comments must be postmarked and electronic comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal

Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. BOP 1168" on all electronic and written correspondence. The Department encourages all comments be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> website for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:**

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at [www.regulations.gov](http://www.regulations.gov). Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on [www.regulations.gov](http://www.regulations.gov).

Personal identifying information identified and located as

set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

**SUPPLEMENTARY INFORMATION:**

The Bureau published a proposed rule revising all of the regulations in 28 CFR part 571, subpart G, on December 21, 2006 (71 FR 76619). We also published an interim rule making a technical change to the regulations on February 28, 2013 (78 FR 13478).

We now withdraw the proposed rule published in 2006. The Bureau is continuing to consider issues relating to compassionate release and the public comments submitted in response to the 2006 notice of proposed rulemaking.

At this time, we are promulgating this interim rule which makes the following changes to the regulations on compassionate release: (1) providing that, when considering an inmate for reduction in sentence, the General Counsel will solicit the opinion of the United States Attorney in the district in which

the inmate was sentenced; and (2) clarifying that the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

Section 571.62 describes procedures the Bureau follows to review a request for reduction in sentence. The request must be reviewed by the Warden, General Counsel, Medical Director (for medical referrals), the Assistant Director (for non-medical referrals), and the Director. During the course of this review, the United States Attorney's Office is consulted and made aware of a request being considered for approval. This is current practice for requests for reduction in sentence.

We now codify this practice to make it clear to inmates and the public that the United States Attorney's Office will be consulted in the course of the review of the Office of General Counsel. We will therefore insert a provision stating that the General Counsel will solicit the opinion of the U.S. Attorney in the district in which the inmate was sentenced.

Also, in § 571.62(a)(2), which describes the Bureau's approval of a request to make a motion for compassionate release, we add a statement clarifying that final decision authority is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

### **Administrative Procedure Act 5 U.S.C. 553**

The two changes made in this interim rule are "matter[s] relating to agency management" as described in 5 U.S.C. 553(a)(1), and are "rules of agency organization, procedure, or practice" as described in section 553(b)(A), and, accordingly, they are not subject to the requirement for prior notice and comment under section 553(b). These changes impose no new restrictions on inmates or the public. Because this rule relates to agency management as described in section 553(a)(1), and is not a "substantive rule" as described in section 553(d), this rule is not subject to a requirement for a delayed effective date. This rule is made effective upon issuance.

### **Congressional Review Act**

The Bureau of Prisons has determined that this action pertains to agency management and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (CRA), (Subtitle E of the Small Business Regulatory Enforcement Fairness Act, (SBREFA)). Therefore, the reports to Congress and the General Accounting Office specified by section 801 of SBREFA are not required.

### **Executive Orders 12866 and 13563**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation, and Executive Order 13563, "Improving Regulation and Regulatory Review". Because this interim rule is "limited to agency organization, management, or personnel matters," within the meaning of Executive Order 12866, section 3(d)(3), it does not fall within the scope of a "regulation" or "rule" that is subject to review under Executive Order 12866. Accordingly this regulation has not been reviewed by the Office of Management and Budget.

#### **Executive Order 13132**

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, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory

Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This regulation 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 regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation 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.

List of Subjects in 28 CFR Part 571

Prisoners.

Thomas R. Kane  
Deputy Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR chapter V, subchapter D, part 571, as follows.

**SUBCHAPTER D -- COMMUNITY PROGRAMS AND RELEASE**

**PART 571 -- RELEASE FROM CUSTODY**

1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569  
(Repealed in part as to offenses committed on or after

November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166 and 4201-4218 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031-5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1-1.10; D.C. Official Code sections 24-101, 24-461, 24-465, 24-467, and 24-468.

**SUBPART G -- COMPASSIONATE RELEASE (PROCEDURES FOR THE IMPLEMENTATION OF 18 U.S.C. 3582(c)(1)(A) AND 4205(g))**

2. In 571.62, the second sentence of paragraph (a)(2) is removed and two sentences are added in its place to read as follows:

**§ 571.62 Approval of request.**

(a) \* \* \*

(2) \* \* \* The General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced. With these opinions, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision, subject to the general supervision and direction of the Attorney General and Deputy Attorney

General.

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