



[4410-05P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR part 527

[BOP-1165-P]

RIN 1120-AB65

Transfer of Offenders to Foreign Countries

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to streamline its regulations on transferring offenders to foreign countries by eliminating language that constitutes agency guidance to staff. Guidance language will be retained in the relevant Bureau policy.

DATES: Comments due by [Insert date 60 days after publication in Federal Register].

ADDRESSES: Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the

subject box.

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 are made available for public inspection online at 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 has 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.

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.

Proposed Rule.

In this document, the Bureau of Prisons (Bureau) proposes to streamline its regulations on transferring offenders to or from foreign countries by eliminating language that constitutes agency guidance to staff. Guidance language will be retained in the relevant Bureau policy. Below is an analysis of each new proposed section.

Section 527.40 Purpose and scope.

This section more concisely describes the statutory authority (18 U.S.C. § 4100, et seq.) for the Bureau's procedures for transferring offenders to foreign countries and states that the purpose of this subpart is to describe those

procedures. We propose to delete obsolete references to Public Law 95-144, as it has been codified as 18 U.S.C. § 4100, and also propose to delete the recitation of authority which stated that "18 U.S.C. 4102 authorizes the Attorney General to act on behalf of the United States in regard to such treaties. In accordance with the provisions of 28 CFR 0.96b, the Attorney General has delegated to the Director of the Bureau of Prisons, and to designees of the Director, the authority to receive custody of, and to transfer to and from the United States, offenders in compliance with the conditions of the treaty." This authority is stated elsewhere in regulation and in the Authority section preceding these regulations and is therefore not necessary to repeat in these regulations.

Section 527.41 Definitions.

This section continues to define the terms "treaty nation," "state prisoner," "departure institution," and "admission institution." We make a few minor changes to clarify that "treaty nation" is "a country with which the United States has a transfer treaty relationship either through a bilateral treaty or multilateral transfer convention," instead of the former language, which incorrectly stated that countries enter into

treaties "with the United States on the Execution of Penal Sentences." This language is not common to all transfer agreements, which are normally made through bilateral treaties or multilateral transfer conventions with several countries at once or future countries who will accede to the convention.

We also clarify that an inmate can be a "citizen or national" of a foreign country, not just a citizen.

Section 527.42 Limitations on transfer of offenders to foreign countries.

This section more concisely states the previous substantive provisions indicating that an inmate may not be considered for return to the inmate's country of citizenship or nationality unless the inmate satisfies specific requirements imposed by 18 U.S.C. §§ 4100-4115 and the transfer treaties and conventions.

We delete subsection (a), which stated that an inmate in custody for civil contempt may not be considered for return to the inmate's country of citizenship; and subsection (b), which stated that an inmate with a committed fine may not be considered for return to the inmate's country of citizenship without the United States court's permission. Both of these exceptions are obscure limitations that have not arisen for the

Bureau and therefore do not need to be identified in regulation.

In this section, we also propose to delete language indicating that, "[w]hen considered appropriate, the Warden may contact the sentencing court to request the court's permission to process the inmate's application for return to the inmate's country of citizenship." This language is the Director's guidance to the Warden, and is more appropriate for implementing text in policy than regulation text.

Section 527.43 Notification of inmates.

This section continues to state that inmates will be notified regarding information on international offender transfers through the institution's admission and orientation program and by the case manager of an inmate who is a citizen or national of a treaty nation. This section also continues to indicate that the inmate must be given individual notice of the availability of the transfer program, provided with an opportunity to inquire about transfer to the country of which the inmate is a citizen or national, and informed of the procedures set forth in this part. This section was rewritten for clarity. No substantive language or requirements were changed in this section.

Section 527.44 Request for transfer to country of citizenship or nationality.

This section consists only of current § 527.44(a), unchanged, which states that an inmate who is qualified for and desires to return to the inmate's country of citizenship or nationality for service of a sentence imposed in a United States Court must indicate the inmate's interest by completing and signing the appropriate form and giving it to Bureau staff for further processing. The rest of § 527.44 is split between the following two proposed regulations. This reorganization is being proposed for clarity.

Section 527.45 Bureau processing of the transfer request.

This section consists of the substance of current §§ 527.44(b) through (d). It more concisely indicates that the Warden will forward the transfer application to the Assistant Director, Correctional Programs Division, Central Office, who will then review the material, submit it to the Department of Justice for review, and notify the inmate of determinations made by the Department of Justice.

Section 527.46 Transfer procedures.

This section consists of the substance of current § 527.44(e) through (h), which describe transfer procedures. This regulation states that if the Department of Justice approves the transfer request, the treaty nation will be asked to consent to the transfer of its citizen or national, and the inmate will be informed of the determination. If the treaty nation consents, the United States will arrange a consent verification hearing, held before a U.S. Magistrate Judge or other judicial officer as specified in 18 U.S.C. § 4107 and § 4108. If the foreign national prisoner consents to the transfer, the Department of Justice will notify the transfer nation.

This section also indicates that following the verification hearing, the Bureau will arrange for delivery of the inmate to the authorities of the country of citizenship or nationality. We propose to delete two provisions, currently § 527.44(h)(1) and (2), which state that the Assistant Director shall advise the Warden of these arrangements and that the Warden shall arrange for the inmate to be transported to the foreign authorities and assure that the required documentation accompanies each inmate transported. Both of these provisions are guidance to staff and are more appropriately retained in implementing text in policy.

Section 527.47 Transfer of state prisoners to other countries.

This section repeats verbatim current § 527.45, which states that the Bureau may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating the transfer to the treaty nation. Once approved, the state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. § 5003).

Section 527.48 Transfer of American national prisoners from foreign countries.

This section more concisely encompasses current § 527.46, Receiving United States citizens from other countries. We simply state that the Bureau is responsible for sending escorts to foreign countries to retrieve American national prisoners who have been approved for transfer and have had their consent verification hearing. In addition, the Bureau must make transfer arrangements and coordinate with the U.S. Parole Commission for proceedings to determine how the inmate's sentence will be administered.

We propose to delete the following subparagraphs, however, because they are guidance to staff which does not need to be in regulation:

Subparagraph (a) is direction to staff accepting custody of American inmates from a foreign authority to ensure that particular documentation, such as a certified copy of the sentence, a statement detailing the offense, and citizenship papers, is available prior to accepting custody of the inmate.

Subparagraph (b) is direction to the Assistant Director, Correctional Programs Division, to direct staff to escort the offender from the transporting country to the admission institution, citing 28 CFR § 0.96b as the authority to escort the offender. It also directs Wardens to make appropriate housing requirements with a nearby jail if an admission institution is not able to accept the inmate.

Subparagraph (c) requires staff to arrange for a newly arrived inmate to receive a complete physical examination, advise the local U.S. Probation Office of the inmate's arrival, and notify the U.S. Parole Commission of the inmate's arrival and projected release date.

Subparagraph (d) directs staff to implement release procedures if staff determine that an inmate is entitled to immediate release via mandatory release or expiration of

sentence with credits applied, but only after medical clearance and the results of an FBI fingerprint check.

This language is the Director's guidance to staff, and is more appropriate for implementing text in policy than regulation text. It will be retained in policy guidance, as will all staff guidance deleted from these regulations.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1(b), "Principles of Regulation." The Director, Bureau of Prisons, has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed 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 EO 13132, we determine that this proposed 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, under the Regulatory Flexibility Act (5 U.S.C. § 605(b)), reviewed this proposed regulation and, by approving it, certifies that it 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.

List of Subjects in 28 CFR Part 527

Transfer of offenders to or from foreign countries.

Charles E. Samuels, Jr.
Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C § 301 and 28 U.S.C. §§ 509, 510, and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 527 as set forth below:

**SUBCHAPTER B - INMATE ADMISSION, CLASSIFICATION, AND
TRANSFER
PART 527 - TRANSFERS**

1. The authority citation for 28 CFR part 527 continues to read as follows:

Authority: 5 U.S.C. § 301; 18 U.S.C. §§ 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100-4115, 4161-4166, (Repealed in part as to offenses committed on or after November 1, 1987), 4201-4218, 5003, 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. Revise subpart E to read as follows:

Subpart E - Transfer of Offenders to Foreign Countries

Sec.

527.40 Purpose and scope.

527.41 Definitions.

527.42 Limitations on transfer of offenders to foreign countries.

527.43 Notification of inmates.

527.44 Request for transfer to country of citizenship or nationality.

527.45 Bureau determination on request for transfer.

527.46 Transfer procedures.

527.47 Transfer of state prisoners to other countries.

Subpart E - Transfer of Offenders to Foreign Countries

§ 527.40 Purpose and scope.

This subpart describes the Bureau of Prisons (Bureau) procedures regarding its role in the transfer of offenders to foreign countries and the transfer of American offenders back to the United States pursuant to 18 U.S.C. § 4100, et seq., and applicable transfer treaties and conventions.

§ 527.41 Definitions.

For the purpose of this rule, the following definitions apply.

(a) Treaty Nation. A country with which the United States has a transfer treaty relationship either through a bilateral treaty or a multilateral transfer convention.

(b) State Prisoner. An inmate serving a sentence imposed in a court in one of the states of the United States, or in a territory or commonwealth of the United States.

(c) Departure Institution. The Bureau of Prisons institution to which an eligible inmate is finally transferred for return to the country of which the inmate is a citizen or

national.

(d) Admission institution. The Bureau of Prisons institution where a United States citizen or national-inmate is first received from a treaty nation.

§ 527.42 Limitations on transfer of offenders to foreign countries.

The transfer treaties and conventions, as well as 18 U.S.C. §§ 4100-4115, impose specific requirements that an inmate must satisfy in order to be returned to his or her country of citizenship or nationality.

§ 527.43 Notification of inmates.

Foreign national inmates will be notified about the International Prisoner Transfer Program and the procedures to follow to apply for transfer as follows:

- (a) Through information provided in the institution's admission and orientation program; and
- (b) Through individual notice given to an inmate who is a citizen or national of a treaty nation. The notice must:
 - (1) Reiterate the availability of the transfer program;
 - (2) Provide the inmate with an opportunity to inquire

about transfer to the country of which the inmate is a citizen or national; and

(3) Inform the inmates of the procedures set forth in this part.

§ 527.44 Request for transfer to country of which inmate is a citizen or national.

An inmate who is eligible for and desires to transfer to the country of which the inmate is a citizen or national for service of a sentence imposed in a United States Court must indicate the inmate's interest by completing and signing the appropriate form and giving it to Bureau staff for further processing.

§ 527.45 Bureau determination on request for transfer.

The following is the process by which determinations are made on an inmate's request to be transferred to the country of which the inmate is a citizen or national to serve a sentence imposed in a United States Court.

(a) Warden's determination. Upon verifying that the inmate is eligible for transfer, the Warden forwards all relevant information, including a complete application package,

to the Assistant Director, Correctional Programs Division,
Central Office.

(b) Central Office and Department of Justice determination.

(1) The Assistant Director, Correctional Programs Division reviews the submitted material and forwards the application package to the Department of Justice for review.

(2) The Department of Justice notifies the inmate of the determinations made.

§ 527.46 Transfer procedures.

(a) Treaty nation determination. If the Department of Justice approves the transfer request, the treaty nation will be asked if it consents to the transfer of its citizen or national. The inmate will be informed of the determination made by the treaty nation.

(b) Transfer to departure institution. The Bureau and the Department of Justice will arrange for the inmate to be transferred to an appropriate departure institution.

(c) Consent verification hearing. If the treaty nation consents to the transfer, the United States will arrange a consent verification hearing for the prisoner as required by 18 U.S.C. §§ 4107, 4108. This hearing is held before a U.S.

Magistrate Judge or other judicial officer as specified in sections 4107 and 4108. The Bureau must ensure that the prisoner is available and present at the consent verification hearing.

(d) Transfer to departure institution and foreign retrieval of inmate. If the foreign national prisoner gives consent to transfer at the consent verification hearing, the Department of Justice will notify the treaty transfer nation.

§ 527.47 Transfer of state prisoners to other countries.

The Bureau of Prisons may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating the transfer to the treaty nation. Once the state prisoner has consented to the transfer at the consent verification hearing, the Bureau assumes custody of the prisoner. The state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. § 5003).

§ 527.48 Transfer of American national prisoners from foreign countries.

The Bureau of Prisons is responsible for:

(a) Sending escorts to foreign countries to retrieve American national prisoners who have been approved for transfer to the United States and who have had their consent verified at the consent verification hearing specified in 18 U.S.C. § 4108; and

(b) Making logistical arrangements for the transfer and coordinating with the United States Parole Commission for proceedings to determine how the sentence will be administered.

[FR Doc. 2013-31021 Filed 12/31/2013 at 8:45 am;
Publication Date: 01/02/2014]