



[4410-05P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 553

[Docket No. BOP-1163]

RIN 1120-AB63

Contraband and Inmate Personal Property: Technical Amendment

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons makes a minor technical amendment to its regulations on contraband and inmate personal property to maintain consistency in language which describes the purpose of the regulations as ensuring the safety, security, or good order of the facility or protection of the public.

DATES: This interim rule is effective [INSERT DATE 30 DAYS AFTER 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]. Commenters should be aware that the electronic Federal

Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Written comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. You may view an electronic version of this regulation at www.regulations.gov. You may also comment 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 contains confidential business information that 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.

Interim Regulations

In this document, the Bureau of Prisons (Bureau) makes a minor technical change to its regulations on contraband and inmate personal property to maintain consistency in language which describes the

purpose of the regulations as ensuring the "safety, security, or good order of the facility or protection of the public."

Variations on this phrase appear throughout the Bureau's regulations in 28 CFR Chapter V. See 28 CFR §§ 500.1(h), 501.2(b), 501.3(b), 511.10(a), 511.11(a), 511.12(a), 511.15(b), 511.17(b), 540.12(a), 540.14(c) and (d), 540.15(d), 540.40, 540.44(c), 540.51(h), 540.70, 540.71(b) and (d), 540.100(a), 540.101(a), 541.12, 541.43(b), 541.63(c), 543.11(f), 543.14(a) and (c), 543.15(c), 543.16(b), 544.20, 544.21(b), 548.10, 548.16 □ .18, 549.13(b), 549.50, 549.51(b), 551.1, 551.10, 551.12(d), 551.16(a), 551.31(b), 551.34(b), 551.35, 551.71(d), 551.110(a), 551.112(b), 551.113(a), 551.115(a), 552.13(b), 552.20, 552.21(a) and (d), 553.11(h), 553.12(b).

The Bureau has conformed the phrase in all revised regulations since approximately 2005. We now propose to similarly alter our regulations on contraband, an important threat to the safety, security, or good order of the facility or protection of the public.

Currently, the definition of contraband in § 500.1(h) reads as follows: "Contraband is material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution." We now propose to conform the "security, safety, or good order" phrase to the language we have used in recent

years, to read as follows: "Contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security, or good order of the facility or protection of the public."

Likewise, in order to conform the phrase and underscore the importance of prohibiting contraband, we propose to add the phrase to the end of the first sentence of § 553.10, regarding inmate personal property, to read as follows: "It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, *that does not threaten the safety, security, or good order of the facility or protection of the public.*" [Emphasis added.] Further, § 543.12(b) contains another description/definition of contraband, categorizing it as either "hard contraband" or "nuisance contraband." We add the "safety, security" phrase to this regulation as well.

It is important to note that this interim rule changes none of the substantive requirements or obligations relating to petitions for commutation of sentence, nor does it alter the Bureau's responsibilities in this regard.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor technical change. Because this change is a minor clarification of current agency procedure and practice by conforming language, we find that normal notice-and-comment rulemaking is unnecessary. The alternation of the language in this regulation is a minor clarification of current agency procedure, and is therefore exempt from normal notice-and-comment procedures under 5 U.S.C. 553(b) (A). Adding a rote phrase indicating that the purpose of the regulation is to insure the safety, security, and good order of the facility and the protection of the public does not impose any new rights or obligations, nor does it leave the Bureau free to exercise further discretion. See National Ass'n of Broadcasters v. F.C.C., 569 F.3d 416, 426 (D.C. Cir. 2009). Despite the technical nature of the

change, however, we are still allowing the public to comment on this rule change by publishing it as an interim final rule.

Executive Order 12866. This regulation 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 13132. This regulation will not have substantial direct effect 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 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 regulation 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 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 § 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 Parts 500 and 553

Prisoners

Charles E. Samuels, Jr.
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 parts 500 and 553 as follows.

SUBCHAPTER A--GENERAL MANAGEMENT AND ADMINISTRATION

PART 500--GENERAL DEFINITIONS

1. The authority citation for 28 CFR part 500 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 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 § 500.1, paragraph (h) is revised to read as follows:

§ 500.1 Definitions.

* * * * *

(h) Contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security, or good order of the facility or protection of the public.

SUBCHAPTER C - INSTITUTIONAL MANAGEMENT

PART 553 - INMATE PROPERTY

3. The authority citation for 28 CFR part 553 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 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.

4. In § 553.10, revise the first sentence to read as follows:

§ 553.10 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, that does not threaten the safety, security, or good order of the facility or protection of the public. * * *

5. In § 553.12, revise paragraph (b) to read as follows:

§ 553.12 Contraband.

* * * * *

(b) For the purposes of this subpart, there are two types of contraband.

(1) Staff shall consider as hard contraband any item which threatens the safety, security, or good order of the facility or protection of the public and which ordinarily is not approved for possession by an inmate or for admission into the institution. Examples of hard contraband include weapons, intoxicants, and currency (where prohibited).

(2) Staff shall consider as nuisance contraband any item other than hard contraband, which has never been authorized, or which may be, or which previously has been authorized for possession by an inmate, but whose possession is prohibited when it presents a threat to safety, security, or good order of the facility or protection of the public, or its condition or excessive quantities of it present a health, fire, or housekeeping hazard. Examples of nuisance contraband include: personal property no longer permitted for admission to the institution or permitted for sale in the commissary; altered personal property; excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area; food items which are spoiled or retained beyond the point of safe consumption; government-issued items which have been altered, or other items made from government property without staff authorization.

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