

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP-1026-F]

RIN 1120-AA30

Classification and Program Review

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on Classification and Program Review to require program reviews for an inmate at least once every 90 days when an inmate is within twelve months of the projected release date. This amendment is intended to allow for the more efficient use of Bureau staff.

EFFECTIVE DATE: July 27, 1995.

ADDRESSES: 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 Classification and Program Review. A proposed rule on this subject was published in the *Federal Register* November 1, 1994 (59 FR 54782).

Program reviews provide the inmate with an opportunity to discuss staff's assessment of the inmate's performance in the institution's programming. Previously, regulations in 28 CFR 524.12(b) had required a program review for an inmate every 180 days until the inmate was within two years of the projected release date. When an inmate was within two years of projected release, a program review was required at least once every ninety days. In the interest of making better use of staff resources, the Bureau proposed to continue the conducting of program reviews every 180 days until the inmate is within twelve months of the projected release date.

Three comments were received on the proposed rule. One commenter supported the adoption of the proposed rule, and two commenters either opposed or offered suggested revisions to the proposed rule.

One commenter objected to the use of the phrase "projected release date," stating that it was not appropriate to inmates convicted under the Sentencing Guidelines. This commenter recommended use of the phrase

"Mandatory Release Date" or "projected date for change of Classification or Transfer to Lower Level or CCC [community corrections center]," urged retention of the phrase "following initial classification," and argued that the times allowed for consideration and processing are such that the 90 day schedule should be maintained. Other questions raised by this commenter pertained to the implementation at Bureau institutions of specific provisions of 28 CFR part 524, subpart B. These latter questions are appropriately addressed through the Bureau's Administrative Remedy Program (28 CFR part 542) rather than through this rulemaking procedure.

Another commenter acknowledged that the proposed rule would save time for unit staff, but questioned whether inmates would be adversely affected in the consideration and planning for community corrections center placement (for example as part of a work cadre program or as part of release to the community). This commenter recommended that the 90 day schedule be instituted at the 18 month mark, rather than at the 12 month mark.

The Bureau disagrees that the phrase "projected release date" is not appropriate for inmates sentenced under the guidelines United States Sentencing Commission. The statutory release date under such guidelines may need to be recalculated in accordance with the status of an inmate's good conduct time. Consequently, the phrase "projected release date" adequately expresses the contingent nature of a statutory release date. The Bureau also believes the phrase "following initial classification" is not necessary, given the logical expectation when a review would occur.

With respect to the scheduling of program reviews, the Bureau believes that a program review every 180 days until the final year before release is more than adequate. Monitoring work cadre availability, relocation efforts, community corrections center processing, or other critical release-related matters have always been carefully monitored by unit team staff outside of program review meetings. Should the inmate, during the second year before release, wish to discuss one of these issues or another important matter with the unit team before his or her next 180 day scheduled review, there is a provision in rules (§ 524.14) to allow staff to hold additional and special program reviews when necessary. Additionally, the status of release preparation paperwork has always been communicated to inmates through individual counseling, and not solely through unit team meetings.

Reducing the frequency of program reviews during the second year before release will increase the amount of time staff have for the processing of such paperwork.

In this final rule, the Bureau is also correcting a typographical error ("and" rather than "an") in § 524.14 which was noted by one of the commenters.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Public Law 96-354), does not have a significant impact on a substantial number of small entities.

Members of the public may submit comment concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,
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 524 in subchapter B of 28 CFR chapter V is amended as set forth below.

Subchapter B—Inmate Admission, Classification, and Transfer

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521-3528, 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; 21 U.S.C. 848; 28 U.S.C. 509, 510; title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C. chapter 223); 28 CFR 0.95-0.99.

2. In § 524.12, paragraph (b) is revised to read as follows:

§ 524.12 Initial classification and program reviews.

* * * * *

(b) Staff shall conduct a program review for each inmate at least once every 180 days. When an inmate is within twelve months of the projected release date, a program review shall be conducted at least once every 90 days.

* * * * *

3. Section 524.14 is amended by revising the second sentence to read as follows:

§ 524.14 Unscheduled reviews.

* * * Upon request of either the inmate or staff, and with the concurrence of the team chairperson, an advanced program review may occur.

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