

§ 541.50 Release from a control unit.

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(b) * * *

(2) To another federal or non-federal institution; or

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[FR Doc. 95-21933 Filed 9-5-95; 8:45 am]
BILLING CODE 4410-05-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

[BOP 1011-I]

RIN 1120-AA17

Religious Beliefs and Practices

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons is amending its regulations on Religious Beliefs and Practices in order to provide for the uniform implementation of a common fare religious diet menu and to simplify and update procedures relating to religious beliefs and practices.

DATES: Effective September 6, 1995; comments due by November 6, 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 Religious Beliefs and Practices. A final rule on this subject was published in the **Federal Register** December 14, 1984 (49 FR 48902).

The Bureau of Prisons is updating its regulations on Religious Beliefs and Practices to include provisions for the implementation of a common fare religious diet. In addition, the regulations have been revised and reorganized for the sake of clarity. A discussion of the specific changes follows.

In § 548.10, paragraph (a) has been revised for the sake of clarity. Paragraph (b) has been revised for the sake of clarity and to provide examples of religious activity or practice. Paragraph (c) has been revised to clarify that an inmate may request at any time to change religious preference by notifying the chaplain in writing. This revision is necessary to provide for adequate documentation (i.e., requiring the

notification in writing) of the inmate's request. The change will then be effected in a timely fashion.

The material in §§ 548.12 through 548.15 has been revised and reorganized as §§ 548.12 through 548.20.

New § 548.12 restates material formerly in old § 548.12(a). As revised, this section on chaplains now also specifies that pastoral care and counseling from representatives in the community are available in accordance with the provisions of new §§ 548.14 and 548.19.

New § 548.13 restates material formerly in old §§ 548.12 (b) and 548.15 (b). As revised, new § 548.13 emphasizes that chaplains are responsible for directing the institution's religious activities and that each institution shall have space designated for the conduct of religious activities.

New § 548.14 restates material formerly in old § 548.12 (c) regarding pastoral care and counseling available from representatives in the community. As revised these provisions may require verification of a volunteer's or contractor's religious credentials from a recognized member of the faith group.

New § 548.15 consolidates material from old § 548.12 (d) and (e). As revised, this section now specifies that attendance at religious activities is voluntary and, unless otherwise specifically determined by the Warden, is open to all.

New § 548.16 consolidates material from old § 548.12 (f) and (g). As revised, paragraph (a) of new § 548.16 clarifies that religious items are considered to be part of the inmate's personal property and are subject to normal considerations of safety and security. This paragraph also provides that the chaplain is to verify the religious significance for the Warden's approval. Paragraph (b) restates the provisions of former § 548.12(f) regarding the wearing of religious items during religious services, ceremonies, and meetings in the chapel or within the institution. Paragraph (c) of new § 548.16 restates the provisions of former § 548.12(g). Revised paragraph (c) also requires that the distribution to inmates of religious literature purchased by or donated to the Bureau is contingent upon the approval of the institution's chaplain. This change is intended to ensure that inmates are not coerced or harassed to change religious affiliation.

New § 548.17 restates provisions from former § 548.14 covering work assignments. As revised, this section broadens applicability by covering instances where a religious tenet is jeopardized by a particular work

assignment and designates the chaplain as being responsible for verifying the specific religious tenets. The revised section clarifies procedures by specifying that the inmate makes the request in writing.

New § 548.18 restates provisions from former § 548.15(a) regarding religious observances. As revised, this section clarifies procedures for the submission of an inmate's request for time off from work to observe a religious holy day and requires that the chaplain work with requesting inmates to accommodate a proper observance of the holy day celebration.

New § 548.19 derives from an expansion of provisions from former § 548.12(c) regarding pastoral visits. As added, this section requires that the chaplain facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith if requested by an inmate and gives the chaplain the discretion to request an NCIC check and documentation of such person's religious credentials when necessary. The revised section specifies that such visits are not considered social visits, in accordance with existing Bureau policy on visiting regulations (see 28 CFR 540.48), and provides for administrative details on the location of such visits.

New § 548.20 restates provisions contained in former § 548.13 (a) and (b) on dietary practices, including religious diets. In the past, religious diets offered by the Bureau were limited to kosher diets and a pilot program offering a common fare menu (i.e., a diet designed to meet nutritional standards and the basic requirements of religious dietary norms).

As revised, paragraph (a) of new § 548.20 specifies procedures for consideration of requests for a religious diet under a common fare menu. References to nutritional standards have been removed because the Bureau believes it is unnecessary in this regulation to restate its basic policy of providing nutritionally adequate meals. The Bureau initially piloted operation of a common fare menu at institutions in its South Central Region and gradually expanded operation of the program nationwide. Review of the small number of inmate complaints on this subject filed under the Administrative Remedy Program has demonstrated the benefits and practicability of the common fare menu. Documentation requirements for processing a request include a written statement from the inmate articulating the religious motivation for participating in the common fare program. Paragraph (b) specifies procedures for withdrawal or removal

from a requested religious diet. The process of reapproving a religious diet ordinarily may extend up to thirty days. Repeated withdrawals may result in longer waiting periods (up to one year). This delay for reinstatement is intended to preserve the integrity and orderly operation of the religious diet program and to prevent fraud. Paragraph (c) contains provisions for accommodations to be made for an annual ceremonial or commemorative meal which specify that such meal is for the members of the particular religious group. The discretionary provisions contained in former § 548.13(b) on the purchase of food to be used for these meals have been removed from the revised regulations because the Bureau believes them to be administrative in nature. Internal staff guidelines specify that Bureau Food Service staff are responsible for procuring such special foods.

Because implementation of a common fare menu provides wider accommodation to the religious needs of inmates and has generally shown its benefits and practicability (based upon the small number of Administrative Remedy filings), the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, and delay in effective date, and is implementing this change as an interim rule. Other regulatory changes in this document are administrative in nature or are restatements or reorganizations made for the sake of clarity. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule 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 (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 548

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 548 in

subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 548—RELIGIOUS PROGRAMS

1. The authority citation for 28 CFR part 548 is revised 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; 42 U.S.C. 1996; 28 CFR 0.95-0.99.

2. Subpart B, consisting of §§ 548.10 through 548.15, is revised to consist of §§ 548.10 through 548.20 as follows:

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.

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548.11 Definition.

548.12 Chaplains.

548.13 Schedules and facilities.

548.14 Community involvement (volunteers, contractors).

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548.19 Pastoral visits.

548.20 Dietary practices.

Subpart B—Religious Beliefs and Practices of Committed Offenders

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and consistent with the security and orderly running of the institution and the Bureau of Prisons.

(b) When considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue a religious activity. Opportunities for religious activities are open to the entire inmate population, without regard to race, color, nationality, or ordinarily, creed. The Warden, after consulting with the institution chaplain, may limit participation in a particular religious activity or practice to the members of that religious group. Ordinarily, when the nature of the activity or practice (e.g., religious fasts, wearing of headwear, work proscription, ceremonial meals) indicates a need for such a limitation, only those inmates whose files reflect the pertinent religious preference will be included.

(c) The Bureau of Prisons does not require an inmate to profess a religious

belief. An inmate may designate any or no religious preference at his/her initial team screening. By notifying the chaplain in writing, an inmate may request to change this designation at any time, and the change will be effected in a timely fashion.

§ 548.11 Definition.

For purposes of this subpart, the term "religious activity" includes religious diets, services, ceremonies, and meetings.

§ 548.12 Chaplains.

Institution chaplains are available upon request to provide pastoral care and counseling to inmates through group programs and individual services. Pastoral care and counseling from representatives in the community are available in accordance with the provisions of §§ 548.14 and 548.19.

§ 548.13 Schedules and facilities.

(a) Under the general supervision of the Warden, chaplains shall schedule and direct the institution's religious activities.

(b) The Warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.

(c) Institutions shall have space designated for the conduct of religious activities.

§ 548.14 Community involvement (volunteers, contractors).

(a) The institution's chaplain may contract with representatives of faith groups in the community to provide specific religious services which the chaplain cannot personally deliver due to, ordinarily, religious prescriptions or ecclesiastical constraints to which the chaplain adheres.

(b) The institution's chaplain may secure the services of volunteers to assist inmates in observing their religious beliefs.

(c) The Warden or the Warden's designee (ordinarily the chaplain) may require a recognized representative of the faith group to verify a volunteer's or contractor's religious credentials prior to approving his or her entry into the institution.

§ 548.15 Equity.

No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation. Attendance at all religious activities is voluntary and, unless otherwise specifically determined by the Warden, open to all.

§ 548.16 Inmate religious property.

(a) Inmate religious property includes but is not limited to rosaries and prayer beads, oils, prayer rugs, phylacteries, medicine pouches, and religious medallions. Such items, which become part of an inmate's personal property, are subject to normal considerations of safety and security. If necessary, their religious significance shall be verified by the chaplain prior to the Warden's approval.

(b) An inmate ordinarily shall be allowed to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, unless the Warden determines that the wearing or use of such items would threaten institution security, safety, or good order. Upon request of the inmate, the Warden may allow the wearing or use of certain religious items throughout the institution, consistent with considerations of security, safety, or good order. The Warden may request the chaplain to obtain direction from representatives of the inmate's faith group or other appropriate sources concerning the religious significance of the items.

(c) An inmate who wishes to have religious books, magazines or periodicals must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Religious literature is permitted in accordance with the procedures governing incoming publications. Distribution to inmates of religious literature purchased by or donated to the Bureau of Prisons is contingent upon the chaplain's granting his or her approval.

§ 548.17 Work assignments.

When the religious tenets of an inmate's faith are violated or jeopardized by a particular work assignment, a different work assignment ordinarily shall be made after it is

requested in writing by the inmate, and the specific religious tenets have been verified by the chaplain. Maintaining security, safety, and good order in the institution are grounds for denial of such request for a different work assignment.

§ 548.18 Observance of religious holy days.

Consistent with maintaining security, safety, and good order in the institution, the Warden shall endeavor to facilitate the observance of important religious holy days which involve special fasts, dietary regulations, worship, or work proscription. The inmate must submit a written request to the chaplain for time off from work to observe a religious holy day. The Warden may request the chaplain to consult with community representatives of the inmate's faith group and/or other appropriate sources to verify the religious significance of the requested observance. The chaplain will work with requesting inmates to accommodate a proper observance of the holy day. The Warden will ordinarily allow an inmate to take earned vacation days, or to make up for missed work, or to change work assignments in order to facilitate the observance of the religious holy day.

§ 548.19 Pastoral visits.

If requested by an inmate, the chaplain shall facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith.

(a) The chaplain may request an NCIC check and documentation of such clergyperson's or faith group representative's credentials.

(b) Pastoral visits may not be counted as social visits. They will ordinarily take place in the visiting room during regular visiting hours.

§ 548.20 Dietary practices.

(a) The Bureau provides inmates requesting a religious diet reasonable

and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a common fare menu. The inmate will provide a written statement articulating the religious motivation for participation in the common fare program. Any approval of a request for religious diets must be documented in writing by the chaplain, who will forward a copy of the approval form to the food service administrator.

(b) An inmate who has been approved for a common fare menu must notify the chaplain in writing if the inmate wishes to withdraw from the religious diet. Approval for an inmate's religious diet may be withdrawn by the chaplain if the inmate is documented as being in violation of the terms of the religious diet program to which the inmate has agreed to in writing. In order to preserve the integrity and orderly operation of the religious diet program and to prevent fraud, inmates who withdraw (or are removed) may not be immediately reestablished back into the program. The process of reapproving a religious diet for an inmate who voluntarily withdraws or who is removed ordinarily may extend up to thirty days. Repeated withdrawals (voluntary or otherwise), however, may result in inmates being subjected to a waiting period of up to one year.

(c) The chaplain may arrange for inmate religious groups to have one appropriate ceremonial or commemorative meal each year for their members as identified by the religious preference reflected in the inmate's file. An inmate may attend one religious ceremonial meal in a calendar year.

[FR Doc. 95-21934 Filed 9-5-95; 8:45 am]

BILLING CODE 4410-05-P