

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

[BOP-1066-F]

RIN 1120-AA61

Searching and Detaining or Arresting Persons Other Than Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on searching/detaining of non-inmates to authorize the Warden to conduct visual searches of visitors suspected of introducing contraband into a low and above security level institution (or administrative institution, or in a pretrial or in a jail unit within any security level institution) when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Previously, such searches were authorized at medium and higher security level institutions (or administrative institution, or in a pretrial or in a jail unit within any security level institution). This amendment is intended to provide for the continued secure and safe operation of Bureau institutions.

EFFECTIVE DATE: April 9, 1998.

ADDRESSES: Rulemaking Unit, 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 searching/detaining non-inmates. A proposed rule on this subject was published in the Federal Register on March 5, 1997 (62 FR 10164).

Current regulations in § 511.12(d) permit the Warden to authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit in a medium or high security level institution, or administrative institution, or in a

pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Any visitor who objects to the search procedure has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.

Low security level institutions, like medium and higher security level institutions, maintain secure perimeter barriers and, to various degrees, are characterized by security factors similar to those of medium and higher security level institutions. Consistent with the needs of these secure institutions, the Bureau proposed to authorize the use of a visual search at low security level institutions. Minimum security level institutions are unaffected by this proposal.

As an editorial change, the Bureau proposed to revise the title of the regulation to "Searching and Detaining or Arresting Persons Other Than Inmates." This title more completely reflects the scope of the regulation.

No comment was received on the proposed rule, and the Bureau is therefore adopting the proposed rule as final without change. Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

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 (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because 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 (including contact with the public), its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 511

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 511 in subchapter A of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

1. The authority citation for 28 CFR part 511 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed 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, 6.1.

2. In 28 CFR part 511, the heading for subpart B is revised to read as follows:

Subpart B—Searching and Detaining or Arresting Persons Other Than Inmates

3. In § 511.12, paragraph (d) is revised to read as follows:

§ 511.12 Procedures for searching visitors.

* * * * *

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a low and above security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.

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