

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 540**

[BOP-1082-P]

RIN 1120-AA77

Visiting Regulations: Prior Relationship

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document the Bureau of Prisons is proposing to revise its visiting regulations to require that regular visiting privileges at all institutions ordinarily will be extended to friends and associates only when the relationship had been established prior to confinement. This requirement is currently applicable at Medium Security Level, High Security Level, and Administrative institutions, but not at Low and Minimum Security Level institutions. The purpose of this revision is to provide for uniformity of visiting procedures for all security levels and to maintain the security and good order of the institution while continuing to afford inmates with reasonable and equitable access to visiting. Because the prior relationship requirement is to apply to regular visitors, the Bureau is also clarifying in its regulations the distinction between regular and special visitors.

DATES: Comments due by July 19, 1999.**ADDRESSES:** Rules 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 proposing to amend its regulations on visiting (28 CFR part 540, subpart D). A final rule on this subject was published in the **Federal Register** on June 30, 1980 (45 FR 44232), and was amended on July 18, 1986 (51 FR 26127), February 1, 1991 (56 FR 4159), and July 21, 1993 (58 FR 39095).

The Bureau of Prisons encourages visiting by family, friends, and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members or others in the community. Currently, Bureau of Prisons regulations provide that for Medium Security Level, High Security Level, and Administrative institutions, regular visiting privileges are extended to friends and associates having an

established relationship with the inmate prior to confinement. This requirement for a prior established relationship does not currently extend to inmates confined in Minimum Security Level and Low Security Level institutions.

As part of a general review of security measures at Bureau institutions, the Bureau is proposing to require that the regular visiting privilege shall ordinarily be extended to friends and associates having a prior established relationship with the inmate at all Bureau institutions, including Minimum Security Level and Low Security Level institutions.

Exceptions to the prior relationship rule may continue to be made, particularly for inmates without other visitors, provided the proposed visitor is reliable and poses no threat to the security or the good order of the institutions.

By restricting visits from people who have no prior established relationship with inmates, the Bureau is also ensuring that inmates who do have established prior relationships with their visitors will have reasonable and equitable access to visiting.

The requirement for the prior relationship is not intended to affect visiting for special purposes. In order to emphasize the Bureau's intentions in this regard, the Bureau is amending the introductory text governing regular visitors (§ 540.44) to include a cross reference to the requirements for special visitors. Existing provisions in §§ 540.45 through 540.48 pertaining to business visits, consular visits, visits from representatives of the community, and special visits have been reorganized and revised in a new § 540.45 entitled "Qualification as special visitor," with cross-references to attorney and media visits in new §§ 540.46 and 540.47. As a consequence of making the distinction between regular visitors and special visitors more clear, the Bureau is also amending the section on procedures (§ 540.51) to note that necessary background investigations for special visitors are processed differently from background investigations for regular visitors.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file

for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule 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 12612

This 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, in accordance with Executive Order 12612, it is determined that this 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, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation 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.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

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 540 in subchapter C of 28 CFR, chapter V, is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 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 § 540.44, the section heading, the introductory text and paragraph (c) are revised to read as follows:

§ 540.44 Qualification as regular visitor.

An inmate desiring to have regular visitors must submit a list of proposed visitors to the designated staff. See § 540.45 for qualification as special visitor. Staff are to compile a visiting list for each inmate after suitable investigation in accordance with § 540.51(b). The list may include:

* * * * *

(c) *Friends and associates.* The visiting privilege ordinarily will be extended to friends and associates having an established relationship prior to confinement, unless such visits could reasonably create a threat to the security and good order of the institution. Exceptions to the prior relationship rule may be made, particularly for inmates

without other visitors, when it is shown that the proposed visitor is reliable and poses no threat to the security or good order of the institution.

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3. Section 540.45 is revised to read as follows:

§ 540.45 Qualification as special visitor.

Persons in the categories listed in this section may qualify as special visitors rather than as regular visitors. Visits by special visitors ordinarily are for a specific purpose and ordinarily are not of a recurring nature. Except as specified, the conditions of visiting for special visitors are the same as for regular visitors.

(a) *Business visitor.* Except for pretrial inmates, an inmate is not permitted to engage actively in a business or profession. An inmate who was engaged in a business or profession prior to commitment is expected to assign authority for the operation of such business or profession to a person in the community. Pretrial inmates may be allowed special visitors for the purpose of protecting the pretrial inmate's business interests. In those instances where an inmate has turned over the operation of a business or profession to another person, there still may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. The Warden accordingly may permit a special business visit in such cases. The Warden may waive the requirement for the existence of an established relationship prior to confinement for visitors approved under this paragraph.

(b) *Consular visitors.* When it has been determined that an inmate is a citizen of a foreign country, the Warden must permit the consular representative of that country to visit on matters of legitimate business. The Warden may not withhold this privilege even though the inmate is in disciplinary status. The requirement for the existence of an established relationship prior to confinement does not apply to consular visitors.

(c) *Representatives of community groups.* The Warden may approve visits on a recurring basis to representatives from community groups (for example, civic, volunteer, or religious organizations) who are acting in their official capacity. These visits may be for

the purpose of meeting with an individual inmate or with a group of inmates. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to representatives of community groups.

(d) *Clergy, former or prospective employers, sponsors, and parole advisors.* Visitors in this category ordinarily provide assistance in release planning, counseling, and discussion of family problems. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to visitors in this category.

4. Section 540.46 is revised to read as follows:

§ 540.46 Attorney visits.

Requirements for attorney visits are governed by the provisions on inmate legal activities (see §§ 543.12 through 543.16 of this chapter). Provisions pertinent to attorney visits for pretrial inmates are contained in § 551.117 of this chapter.

5. Section 540.47 is revised to read as follows:

§ 540.47 Media visits.

Requirements for media visits are governed by the provisions on contact with news media (see subpart E of this part). A media representative who wishes to visit outside his or her official duties, however, must qualify as a regular visitor or, if applicable, a special visitor.

§ 540.48 [Removed and reserved]

6. Section 540.48 is removed and reserved.

7. In § 540.51, paragraphs (c) through (g) are redesignated as paragraphs (d) through (h), and a new paragraph (c) is added to read as follows:

§ 540.51 Procedures.

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(c) *Verification of special visitor credentials.* Staff must verify the qualifications of special visitors. Staff may request background information and official assignment documentation from the potential visitor for this purpose.

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