

2010). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

By the Commission.

Dated: January 5, 2011.

**Elizabeth M. Murphy**,  
Secretary.

[FR Doc. 2011-378 Filed 1-10-11; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 570

[BOP Docket No. 1144-F]

RIN 1120-AB44

#### Inmate Furloughs

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) revises its federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs. Also, under this rule, the Bureau is expanding the authority of its Wardens to consider all inmates potentially eligible for non-transfer furloughs, as opposed to the current rule, which limits consideration to inmates with community custody status.

**DATES:** This rule is effective on February 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:** The Bureau revises its federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs. Through this change, we also seek to reorganize and clarify the rules, while eliminating language that constitutes agency guidance to staff. Any such guidance language will be retained in the relevant Bureau policy. Also, under this rule, the Bureau is expanding the authority of its Wardens to consider all inmates potentially eligible for non-transfer furloughs, as opposed to the current rule, which limits consideration to inmates with community custody status.

A proposed rule on this subject was published on December 6, 2006 (71 FR 70696). We received three comments, which we respond to below.

#### **Payment for Urinalysis, Breathalyzer, and Other Comparable Tests Upon Return From Furlough**

Section 570.38(b)(4) of the proposed rule stated that a furlough will only be approved if an inmate agrees to certain conditions, including the condition that the inmate may "be thoroughly searched and given a urinalysis, breathalyzer, and other comparable test, during the furlough or upon return to the institution, and must prepay the cost of such test(s) if the inmate or family members are paying the other costs of the furlough." Further, this regulation provides that the inmate "must pre-authorize all testing fee(s) to be withdrawn directly from his/her inmate deposit fund account."

One commenter questioned the payment process described in § 570.38. The commenter suggested that the inmate should pay for all potential testing before he/she be "allowed to leave." This is not practical. Depending on Bureau resources, the inmate's particular situation, and the particular circumstances surrounding the furlough, it is possible that the inmate will not undergo all of the available testing upon the inmate's return from furlough. It is therefore unnecessary and impractical to require an inmate to pre-pay the costs of tests that he/she may not be required to undergo.

The commenter then suggested that "charging an inmate that is on an emergency non-transferral furlough is not reasonable before they be allowed to leave. Postponing their payment until they return seems to be more reasonable." The Bureau agrees with this statement, which is why the regulation

requires not that inmates pre-pay, but only that the inmate sign a form pre-authorizing payment for testing that will be conducted upon the inmate's return.

For clarity, we have modified that part of the regulation to state that the inmate "must pre-authorize the cost of such test(s) if the inmate or family members are paying the other costs of the furlough."

#### **Conditions Under Which a Furlough May Be Granted**

One commenter stated that the rule "does not make clear that inmates in Low, Medium, or High security institutions are categorically ineligible for emergency or other non-transfer furloughs."

However, according to the regulation as proposed, "inmates in Low, Medium, or High security institutions" are not "categorically ineligible for emergency or other non-transfer furloughs," but instead will be considered on a case-by-case basis, in accordance with these regulations and in the Warden's discretion.

§ 570.36 specifies the conditions under which a non-transfer furlough may be granted. This section contains a chart which clarifies the eligibility requirements for non-transfer furloughs and describes the types of non-transfer furloughs an inmate may be eligible for, based on the inmate's length of confinement or time remaining on the inmate's sentence. The chart has been revised in the final rule for greater clarity and accuracy. This section also describes circumstances under which Wardens will ordinarily deny non-transfer furloughs.

Under this rule, the Bureau is expanding the authority of its Wardens to consider all inmates potentially eligible for non-transfer furloughs, as opposed to the current rule, which limits consideration to inmates with community custody status. Community custody, the lowest custody level assigned to an inmate, affords the lowest level of security and staff supervision. The Bureau believes this change is justified by the potential prisoner re-entry and rehabilitative benefits to be afforded by a non-transfer furlough. Further, any resulting public safety concerns are adequately addressed by the limitations contained within §§ 570.35(b) and 570.36.

Further, § 570.31 describes inmate eligibility for furloughs, and states that sentenced inmates housed in Bureau facilities, pretrial inmates housed in Bureau facilities, and sentenced inmates housed in Bureau facilities and classified as central inmate monitoring cases may be eligible for furloughs.

Inmates who are not eligible for furloughs through the Bureau include sentenced inmates housed in contract facilities and inmates who are U.S. Marshals prisoners housed in contract facilities.

It should be noted that revised § 570.35(a) states that inmates transferring to administrative, low, medium, or high security facilities are generally not eligible for participation in the Bureau's transfer furlough program. Inmates transferring to facilities with these security designations are considered to pose a potential risk to the community if granted a transfer furlough. An inmate's security level is based on relevant factual information, such as the inmate's current offense, sentence, criminal history, and institutional behavior that requires additional security measures. Because of the potential risk to public safety, inmates transferring to administrative, low, medium, or high security facilities are not appropriate for participation in the Bureau's transfer furlough program.

#### Guidance to Staff Is Needed

The third commenter recommended that "further guidance be given to the Warden or person making the decision so that there will be more consistency in the granting of furloughs."

Further guidance will be given to all staff regarding furloughs in the corresponding Bureau policy on furloughs, which is a guidance document for staff. The Bureau intends for the corresponding policy guidance to promote consistency in the granting of furloughs.

For the aforementioned reasons, the Bureau finalizes, with minor changes, the proposed rule published on December 6, 2006 (71 FR 70696).

#### 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.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will provide a more accurate description of the inmate furlough program. There will be no new costs associated with this rulemaking.

#### Executive Order 13132

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, under Executive Order 13132, we determine 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, 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 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 section 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.

#### List of Subjects in 28 CFR Part 570

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Accordingly, 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 part 570 as set forth below.

## SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

### PART 570—COMMUNITY PROGRAMS

■ 1. The authority citation for 28 CFR part 570 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise subpart C to read as follows:

#### Subpart C—Furloughs

Sec.

- 570.30 Purpose.
- 570.31 Inmate eligibility for furloughs.
- 570.32 Types of furloughs.
- 570.33 Justification for furlough.
- 570.34 Expenses of furlough.
- 570.35 Transfer furlough eligibility requirements.
- 570.36 Non-transfer furlough eligibility requirements.
- 570.37 Procedures to apply for a furlough.
- 570.38 Conditions of Furlough.

#### § 570.30 Purpose.

The purpose of this subpart is to describe the procedures governing the furlough program of the Federal Bureau of Prisons (Bureau), which is authorized by 18 U.S.C. 3622. Under the furlough program, the Bureau allows inmates who meet certain requirements to be temporarily released from custody under carefully prescribed conditions.

#### § 570.31 Inmate eligibility for furloughs.

(a) *Eligible inmates.* The following types of inmates may be eligible for furloughs:

- (1) Sentenced inmates housed in Bureau facilities.
- (2) Pretrial inmates housed in Bureau facilities (provided that they comply with the requirements of 28 CFR part 551, Subpart J).
- (3) Sentenced inmates housed in Bureau facilities and classified as central inmate monitoring cases (provided that they comply with the requirements of 28 CFR part 524, Subpart F).

(b) *Ineligible inmates.* The following types of inmates are not eligible for furloughs:

- (1) Sentenced inmates housed in contract facilities are not eligible to participate in the Bureau's furlough program under these rules, but may apply for furloughs as specified in that facility's written agreement with the Bureau.
- (2) Inmates who are U.S. Marshals prisoners housed in contract facilities are not eligible to participate, but must

direct any furlough requests to the U.S. Marshals.

**§ 570.32 Types of furloughs.**

A furlough is an authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or state or federal agents. The two types of furloughs are:

(a) *Transfer furlough*—A furlough for the purpose of transferring an inmate from one Bureau facility to another, a non-federal facility, or community confinement (including home confinement) as noted below at § 570.33(a).

(b) *Non-transfer furlough*—A furlough for any purpose other than a transfer furlough, and which may be defined based on its nature, as either emergency or routine, as follows:

(1) *Emergency furlough*—A furlough allowing an inmate to address a family crisis or other urgent situation as noted below at § 570.33(b).

(2) *Routine furlough*—A furlough for any of the reasons noted below at § 570.33 (a) and (c) through (j).

(c) *Duration and distance of non-transfer furlough*—

(1) *Day furlough*—A furlough within the geographic limits of the commuting area of the institution, which lasts 16 hours or less and ends before midnight.

(2) *Overnight furlough*—A furlough which falls outside the criteria of a day furlough.

**§ 570.33 Justification for furlough.**

The Warden or designee may authorize a furlough, for 30 calendar days or less, for an inmate to:

(a) Transfer directly to another Bureau institution, a non-federal facility, or community confinement;

(b) Be present during a crisis in the immediate family, or in other urgent situations;

(c) Participate in the development of release plans;

(d) Establish or reestablish family and community ties;

(e) Participate in selected educational, social, civic, and religious activities which will facilitate release transition;

(f) Appear in court in connection with a civil action;

(g) Comply with an official request to appear before a grand jury, or to comply with a request from a legislative body, or regulatory or licensing agency;

(h) Appear in or prepare for a criminal court proceeding, but only when the use of a furlough is requested or recommended by the applicable court or prosecuting attorney;

(i) Participate in special training courses or in institution work assignments, including Federal Prison Industries (FPI) work assignments, when daily commuting from the institution is not feasible; or

(j) Receive necessary medical, surgical, psychiatric, or dental treatment not otherwise available.

**§ 570.34 Expenses of furlough.**

All expenses of a furlough, including transportation, food, lodging, and incidentals, are the responsibility of the inmate, the inmate's family, or other appropriate source approved by the Warden, except that the government may bear the expense of a furlough if it is for the government's primary benefit.

**§ 570.35 Transfer furlough eligibility requirements.**

(a) Inmates transferring to administrative, low, medium, or high security facilities are generally not eligible for participation in the Bureau's transfer furlough program.

(b) For a transfer furlough, inmates other than those described in paragraph (a) of this section must:

(1) Be physically and mentally capable of completing the furlough; and

(2) Demonstrate sufficient responsibility to provide reasonable assurance that furlough requirements will be met.

(c) Inmates transferring to minimum security facilities must meet the requirements described in paragraph (b) of this section, and must also be:

(1) Transferring from a low or minimum security facility; and

(2) Appropriate for placement in a minimum security facility based on the inmate's security designation and custody classification at the time of transfer.

(d) Inmates transferring to community confinement must meet the requirements described in paragraph (b) of this section, and must also be appropriate for placement in community confinement based on the inmate's security designation and custody classification at the time of transfer.

**§ 570.36 Non-transfer furlough eligibility requirements.**

(a) An inmate may be eligible for a non-transfer furlough if the inmate meets the criteria described in 570.35(b) and the following additional criteria:

If an inmate has . . .	Then the inmate may only be considered for . . .
been confined at the initially designated institution for less than 90 days	an emergency furlough.
more than two years remaining until the projected release date .....	an emergency furlough.
2 years or less remaining until the projected release date .....	an emergency furlough or a routine day furlough.
18 months or less remaining until the projected release date .....	an emergency furlough, a routine day furlough, or a routine overnight furlough within the institution's commuting area.
1 year or less remaining until the projected release date .....	an emergency furlough, a routine day furlough, or a routine overnight furlough either within or outside the institution's commuting area.

(b) Ordinarily, Wardens will not grant a furlough to an inmate if:

(1) The inmate is convicted of a serious crime against a person;

(2) The inmate's presence in the community could attract undue public attention, create unusual concern, or diminish the seriousness of the offense; or

(3) The inmate has been granted a furlough in the past 90 days.

**§ 570.37 Procedures to apply for a furlough.**

(a) *Application.* Inmates may submit a furlough application to staff, who will review it for compliance with these regulations and Bureau policy.

(b) *Notification of decision.* An inmate will be notified of the Warden's decision on the furlough application. Where a furlough application is denied, the inmate will be notified of the reasons for the denial.

(c) *Appeal.* An inmate may appeal any aspect of the furlough program through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

**§ 570.38 Conditions of Furlough.**

(a) An inmate who violates the conditions of a furlough may be considered an escapee under 18 U.S.C. 4082 or 18 U.S.C. 751, and may be subject to criminal prosecution and institution disciplinary action.

(b) A furlough will only be approved if an inmate agrees to the following conditions and understands that, while on furlough, he/she:

(1) Remains in the legal custody of the U.S. Attorney General, in service of a term of imprisonment;

(2) Is subject to prosecution for escape if he/she fails to return to the institution at the designated time;

(3) Is subject to institution disciplinary action, arrest, and criminal prosecution for violating any condition(s) of the furlough;

(4) May be thoroughly searched and given a urinalysis, breathalyzer, and other comparable test, during the furlough or upon return to the institution, and must pre-authorize the cost of such test(s) if the inmate or family members are paying the other costs of the furlough. The inmate must pre-authorize all testing fee(s) to be withdrawn directly from his/her inmate deposit fund account;

(5) Must contact the institution (or United States Probation Officer) in the event of arrest, or any other serious difficulty or illness; and

(6) Must comply with any other special instructions given by the institution.

(c) While on furlough, the inmate must not:

(1) Violate the laws of any jurisdiction (federal, state, or local);

(2) Leave the area of his/her furlough without permission, except for traveling to the furlough destination, and returning to the institution;

(3) Purchase, sell, possess, use, consume, or administer any narcotic drugs, marijuana, alcohol, or intoxicants in any form, or frequent any place where such articles are unlawfully sold, dispensed, used, or given away;

(4) Use medication that is not prescribed and given to the inmate by the institution medical department or a licensed physician;

(5) Have any medical/dental/surgical/psychiatric treatment without staff's written permission, unless there is an emergency. Upon return to the institution, the inmate must notify institution staff if he/she received any prescribed medication or treatment in the community for an emergency;

(6) Possess any firearm or other dangerous weapon;

(7) Get married, sign any legal papers, contracts, loan applications, or conduct any business without staff's written permission;

(8) Associate with persons having a criminal record or with persons who the inmate knows to be engaged in illegal activities without staff's written permission;

(9) Drive a motor vehicle without staff's written permission, which can only be obtained if the inmate has proof of a currently valid driver's license and proof of appropriate insurance; or

(10) Return from furlough with anything the inmate did not take out with him/her (for example, clothing, jewelry, or books).

[FR Doc. 2011-281 Filed 1-10-11; 8:45 am]

BILLING CODE 4410-05-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0316]

RIN 1625-AA87

#### Security Zones; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing moving security zones for certain vessels for which the Captain of the Port, Port Arthur deems enhanced security measures necessary. In addition, it is establishing security zones encompassing the mooring basins of LNG carriers while they are moored at the Golden Pass LNG facility in Sabine, TX and/or the Sabine Pass LNG facility located in Cameron Parish, LA.

**DATES:** This rule is effective February 10, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0316 are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0316 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX; telephone 409-719-5086, e-mail [scott.k.whelen@uscg.mil](mailto:scott.k.whelen@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 27, 2010, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX in the **Federal Register** (75 FR 29695). We received one comment on the proposed rule. On October 22, 2010, we then published an interim rule discussing and incorporating the recommendation from that one comment and requesting further comments (75 FR 65232).

No public meeting was requested and none was held. Additionally, no comments concerning the interim rule were received.

##### Basis and Purpose

The Coast Guard is establishing moving security zones for certain vessels, for which the Captain of the Port deems enhanced security measures are necessary. The purpose of these security zones is to protect certain vessels designated as requiring such enhanced security measures. Mariners will be notified of the activation of a moving security zone around designated vessels by Broadcast Notice to Mariners. Vessels with active moving security zones will also be identified by the presence of escort vessels displaying flashing blue law enforcement lights.

The moving security zones would be activated for certain vessels within the U.S. territorial waters through Sabine Bank Channel, Sabine Pass Channel and the Sabine-Neches Waterway, extending from the surface to the bottom. These moving security zones would extend channel edge to channel edge on the Sabine Bank and Sabine Pass Channel and shoreline to shoreline on the Sabine-Neches Waterway, 2 miles ahead and 1 mile astern of the designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port.

In addition, the Coast Guard is establishing security zones for the mooring basins at the Golden Pass LNG facility in Sabine, TX and the Sabine Pass LNG facility located in Cameron Parish, LA while LNG carriers are moored at these facilities.

These security zones are part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels not exempted under paragraph (b) of § 165.819 would be