

Executive Order 13175

This proposed rule will not have Tribal implications and will not impose substantial direct compliance costs on Indian Tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.15 is amended by redesignating paragraphs (e)(1) and (2) as paragraphs (e)(2) and (3), and adding a new paragraph (e)(1) to read as follows:

§ 1308.15 Schedule V.

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Dated: October 14, 2011.

Michele M. Leonhart, Administrator.

[FR Doc. 2011-27253 Filed 10-20-11; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP-1155-P]

RIN 1120-AB55

Classification and Program Review

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its regulations on classification and program review to ensure that classification and program review procedures adequately address inmate needs. This proposed rule also adds a

new type of review, the “progress review.” A progress review will be an abbreviated program review meant to focus on an inmate’s programming activities. This shortened version of the more thorough program review will facilitate more efficiently-used staff and inmate time, in that it will primarily focus on any new or changed aspects of an inmate’s initial classification and participation in recommended programs. Inmates who have 36 months or more until their projected release date will receive alternating program and progress reviews at least once every 180 calendar days, a practice that will allow the Bureau to more efficiently utilize staff time and resources. The process will also allow staff to devote more time and resources to the reviews of inmates who are closer to their release dates, enabling the Bureau to better fulfill its mission to prepare inmates for eventual release into communities within the United States.

DATES: Comments due by December 20, 2011.

ADDRESSES: Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the http://www.regulations.gov comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are made available for public inspection online at http://www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on http://www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the “For Further Information Contact” paragraph.

Proposed Rule

In this document, we propose to revise the regulations which set forth the classification and program review rules and to add a new level of review: progress reviews.

Section 524.10 Purpose

In this proposed section, we explain that the purpose of this subpart is to explain the Bureau’s process for classifying newly committed inmates, conducting program reviews, and conducting progress reviews. We have only revised the introductory paragraph of this section, to add the concept of progress reviews (which will be explained below). The three types of reviews listed here will be conducted for all inmates except: (1) Pretrial inmates, who are covered in 28 CFR part 551; and (2) inmates committed for study and observation.

Pretrial inmate reviews are not described in this subpart because they are specifically covered in 28 CFR 551.107. According to that regulation, pretrial inmates are scheduled for an initial review by the unit team within 21 calendar days of the inmate’s arrival at the institution, and later reviews are conducted at least once every 90 days.

Inmates committed for study and observation do not receive the reviews described because they do not receive program or work assignments while in this status. Such inmates are typically committed to the Bureau to determine competency to stand trial or for other mental health or medical assessments, and are inappropriate for assignment to work or other Bureau programs.

Section 524.11 Types of Reviews

We propose adding this new section to provide descriptions of each type of review that is covered in this subpart.

This section explains that the purpose of an initial classification is to develop a program plan for the inmate during his/her incarceration. The plan will ordinarily include work and programming activities to help the inmate develop skills to transition into prison life and to ultimately make a successful transition back into the community.

A program review consists of a thorough review of the inmate's initial classification and of the inmate's participation in recommended programs, and it facilitates recommendation of new programs based on skills the inmate has gained during incarceration.

A progress review, which will be the new type of review added by this rule revision, is an abbreviated program review to focus on an inmate's programming activities. This shortened version of the more thorough program review will facilitate more efficiently-used staff and inmate time, in that it will primarily focus on any new or changed aspects of an inmate's initial classification and participation in recommended programs.

Section 524.12 Process for Reviews

This proposed section describes the process for all three types of reviews. An inmate will be notified at least 48 hours before his/her scheduled appearance before the unit team for initial classification, program reviews, or progress reviews. An inmate may submit a written waiver of the 48-hour notice requirement to the unit team. These concepts have not been significantly changed from the current regulations.

This section also reiterates the current regulation provisions in § 524.11 to the effect that if the inmate refuses to appear at a review, the inmate may be subject to disciplinary action. However, the proposed rule also adds a new requirement for staff that is a protection of the inmate's interests: Staff must document on the appropriate review report the inmate's refusal and, if known, the reasons for refusal, and give a copy of this report to the inmate. Receiving such a written report of the staff's understanding of the inmate's refusal will preserve that information for any subsequent disciplinary action that may occur.

This section also contains a chart which describes when each type of review will be conducted. The

requirement for an initial classification to be conducted, ordinarily within 28 days for inmates who are newly committed, has not changed. Also unchanged is the requirement for a program review to be conducted at least once every 90 calendar days when an inmate is within twelve months of the projected release date.

The chart also explains that inmates who have 36 months or more until their projected release date will receive alternating program and progress reviews at least once every 180 calendar days. This replaces the previous requirement that only program reviews be conducted every 180 calendar days, although inmates who have less than 36 months and more than twelve months left until their projected release date will continue to receive program reviews every 180 calendar days.

The proposed rule will thus create a new process whereby inmates who are far from their projected release date (36 months or more) will receive progress reviews instead of program reviews approximately once a year.

As of January 29, 2011, the Bureau had 177,780 sentenced inmates in custody. Of these, 83,039 had 36 months or more left before their projected release dates. Therefore, approximately 46.7% of all sentenced inmates in Bureau custody require program reviews twice a year under the current rule but would only require an annual program review and an annual progress review under the proposed new rule. The Bureau estimates that progress reviews will take half the amount of time that is required for full program reviews, meaning that each switch from a program review to a progress review will save approximately 15 minutes. Given the approximate number of inmates who would receive progress reviews instead of program reviews under the proposed rule, the Bureau would save approximately 20,760 hours of staff time over the course of a year.

The inmates affected by the rule change will still continue to receive program reviews, but instead of receiving a full program review twice a year, they will receive the full program review once a year, as well as a progress review six months later. This practice will reduce the burden on staff time and increase the efficiency and efficacy of the inmate review process. The process will also allow staff to devote more time and resources to the reviews of inmates who are closer to their release dates, enabling the Bureau to better fulfill its mission to prepare inmates for eventual release into communities within the United States.

The rule also states that inmates subject to an order of removal/deportation/exclusion will receive less frequent program reviews. The small class of inmates that are under such an order tend to require less directed guidance and evaluation of their participation in BOP programs. However, if such inmates require guidance, they may request it from institution staff or Unit Team.

Current § 524.11(c) describes Program Review Reports. We delete this language, as the process for program and progress reviews is covered in revised §§ 524.11 and 524.12.

Finally, this section makes no substantive change to the language of the current regulation indicating that each sentenced inmate who is physically and mentally able to maintain a work/program assignment is assigned to a program at the time of initial classification. This section states that the inmate may choose not to participate, unless the program is a work assignment or is required by Bureau policy, by court order, or by statute, but that refusal to participate may result in disciplinary action.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1(b), "Principles of Regulation." The Director, Bureau of Prisons, has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed 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 EO 13132, we determine that this proposed 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 proposed 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 § 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 524

Classification of inmates.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301 and 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons, in 28 CFR

0.96, we propose to amend 28 CFR part 524 as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. Revise the authority citation for 28 CFR Part 524 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 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.

2. Revise subpart B to read as follows:

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose.

524.11 Types of reviews.

524.12 Process for reviews.

Subpart B—Classification and Program Review

§ 524.10 Purpose.

The purpose of this subpart is to explain the Bureau of Prisons' (Bureau) process for classifying newly committed inmates, conducting program reviews, and conducting progress reviews. This process applies to all inmates except:

(a) Pretrial inmates, covered in 28 CFR Part 551; and

(b) Inmates committed for study and observation.

§ 524.11 Types of reviews.

(a) *Initial classification.* The purpose of an initial classification is to develop a program plan for the inmate during his/her incarceration. The plan will

ordinarily include work and programming activities to help the inmate develop skills to transition into prison life and to ultimately make a successful transition back into the community.

(b) *Program reviews.* A program review consists of a thorough review of the inmate's initial classification and of his/her participation in recommended programs, and it facilitates recommendation of new programs based on skills or interests the inmate has gained during incarceration.

(c) *Progress reviews.* A progress review is an abbreviated program review that focuses on an inmate's progress with his/her programming activities.

§ 524.12 Process for reviews.

(a) *Inmate appearance before unit team:*

(1) *Notification before review.* An inmate will be notified at least 48 hours before his/her scheduled appearance before the unit team for initial classification, program reviews, or progress reviews.

(2) *Waiver of notification.* An inmate may submit a written waiver of the 48-hour notice requirement to the unit team.

(3) *Refusal to appear.* If the inmate refuses to appear at an initial classification, a program review, or a progress review, staff must document the inmate's refusal and, if known, the reasons for refusal, on the appropriate review report and must give a copy of this report to the inmate. Failure to attend initial classification and program reviews may result in disciplinary action.

(b) *When reviews are conducted:*

Inmates who . . .	Will receive . . .	Timeframe
Are newly committed, following a sentencing or violation of supervision.	an initial classification	ordinarily within 28 calendar days of arrival at the institution designated for service of sentence.
Have 36 months or more left until their projected release date.	an alternating program review and progress review.	at least once every 180 calendar days.
Have less than 36 but more than 12 months left until their projected release date.	a program review	at least once every 180 calendar days.
Are within 12 months of their projected release date and subject to an order of removal/deportation/exclusion.	a program review	at least once every 180 calendar days until their release.
Are within 12 months of their projected release date.	a program review	at least once every 90 calendar days.

(c) *Program participation:* Each sentenced inmate who is physically and mentally able to maintain a work/program assignment will be given a work/program assignment at initial classification. The inmate may choose

not to participate in the program, unless it is a work assignment or is required by Bureau policy, by court order, or by statute. If the program is a work assignment or is required by Bureau policy, by court order, or by statute,

then an inmate's refusal to participate may result in disciplinary action.

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