

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Parts 511 and 552**

[BOP-1089]

RIN 1120-AA90

Searches of Housing Units, Inmates, and Inmate Work Areas, and Persons Other Than Inmates: Electronic Devices

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on searches of persons other than inmates, searches of inmates, housing units, and inmate work areas with respect to the use of electronic devices. This amendment is intended to provide for the continued efficient and secure operation of the institution and to prevent the introduction of contraband into Bureau institutions.

DATES: Comments due by April 26, 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 searches of persons other than inmates (28 CFR part 511, subpart B) and searches of inmates, housing units, and inmate work areas (28 CFR part 552, subpart B). A final rule on searching, detaining, or arresting persons other than inmates was published in the **Federal Register** on November 1, 1984 (49 FR 44057), and was amended on July 18, 1986 (51 FR 26126), February 1, 1991 (56 FR 4159), February 8, 1994 (59 FR 5924 and 5925), and March 10, 1998 (63 FR 11818). A final rule on searches of housing units, inmates, and inmate work areas was published in the **Federal Register** on November 13, 1980 (45 FR 75134) and was amended on October 21, 1983 (48 FR 48970) and May 6, 1991 (56 FR 21036).

The Bureau's regulations allow for the use of electronic devices as part of its general security measures. While in some instances the regulations refer to electronic devices in general, other references merely refer to metal detectors. At the time the Bureau's regulations were issued, the most

commonly used electronic devices by the Bureau were metal detectors.

Metal detectors serve to reduce the potential for introducing weapons into the institutions. Due to advances in technology, new types of electronic devices are now available which are able to detect other types of contraband, such as narcotics or illegal drugs. The Bureau is therefore revising its regulations to remove possible confusion regarding the use of the various electronic devices.

More specifically, current procedures for searching visitors state that the Warden may require visitors entering the institution to submit to a search by electronic means (28 CFR 511.12(b)(1)). However, in the definition of reasonable suspicion at 28 CFR 511.11(a), we state that a reasonable suspicion may be based on a positive reading of a metal detector. We are revising the definition to state that a reasonable suspicion may be based on a positive reading of an electronic detection device. The reference to electronic means in § 511.12(b)(1) is revised to read electronic devices to maintain consistency.

The regulations on searches of housing units, inmates, and inmate work areas note that staff shall employ the least intrusive method of search practicable, as indicated by the type of contraband and the method of suspected introduction. The procedures governing pat searches of inmates (§ 552.11(a)) further note that a metal detector search may be done under the same circumstances (i.e., on a routine or random basis to control contraband). We are revising these provisions to clarify the role of electronic devices in general. The existing procedures in § 552.11 are being redesignated in order to make room for a new paragraph (a) pertaining to electronic devices. Listing electronic devices first emphasizes the non-intrusive nature of such searches.

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 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.

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, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, 202-514-6655.

List of Subjects 28 CFR Parts 511 and 552

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), parts 511 and 552 in subchapters A and C respectively of chapter V, 28 CFR, are proposed to be 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 § 511.11, paragraph (a) is revised to read as follows:

§ 511.11 Definitions.

(a) *Reasonable suspicion.* As used in this rule, "reasonable suspicion" exists if the facts and circumstances that are known to the Warden warrant rational inferences by a person with correctional experience that a person is engaged, or attempting or about to engage, in criminal or other prohibited behavior. A reasonable suspicion may be based on reliable information, even if that information is confidential; on a positive reading of an electronic device; or when contraband or an indicia of contraband is found during search of a visitor's personal effects.

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3. In § 511.12, paragraph (b)(1) is revised to read as follows:

§ 511.12 Procedures for Searching Visitors.

* * * * *

(b) * * *

(1) By electronic device (for example, metal detector, or ion spectrometry device).

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SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 552—CUSTODY

4. The authority citation for 28 CFR part 552 continues 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; 28 CFR 0.95-0.99.

5. In § 552.11, the section heading is revised, paragraphs (a) through (c) are redesignated as paragraphs (b) through (d), a new paragraph (a) is added, and newly redesignated (b) is revised to read as follows:

§ 552.11 Searches of inmates.

(a) *Electronic devices.* An inspection of an inmate, using electronic devices (for example, metal detector, or ion spectrometry device) that does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct an electronic device search of an inmate on a routine or random basis to control contraband.

(b) *Pat search.* An inspection of an inmate, using the hands, that does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP-1083-P]

RIN 1120-AA78

Inmate Discipline: Prohibited Acts

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to amend its regulations on inmate discipline respecting violations of the telephone and smoking policies. The existing prohibited act concerning unauthorized use of the telephone is broadly stated and does not address an inmate's use of the telephone to further criminal activity. The Bureau therefore is establishing a greatest severity category

prohibited act for use of the telephone to further criminal activity and a high severity category for use of the telephone for abuses other than criminal activity. Other minor telephone infractions remain covered by the existing low severity category prohibited act. The intended effect of these revisions is to address the seriousness of certain types of telephone abuse and deter criminal activity and protect the security and good order of the institution. The existing low category prohibited act for violations of the smoking policy is elevated to a moderate category prohibited act. The intended effect of this revision is to assist the Bureau in achieving its goal of a smoke free environment.

DATES: Comments due by April 26, 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 inmate discipline (28 CFR part 541, subpart B). A final rule on this subject was published in the **Federal Register** on January 5, 1988 (53 FR 197), and was amended on October 17, 1988 (53 FR 40686), September 22, 1989 (54 FR 38987 and 54 FR 39095), July 21, 1993 (58 FR 39095), September 26, 1997 (62 FR 50788). The Bureau of Prisons is also proposing to amend its regulations on smoking. A final rule on this subject was published in the **Federal Register** on July 6, 1994 (59 FR 34742)

The existing low severity prohibited act concerning unauthorized use of the telephone does not adequately address the more serious problem of inmates engaging in or continuing criminal activity through abuse of their telephone privileges. The Bureau's goal is to ensure that inmates, once incarcerated, do not use telephones to continue criminal activity. Therefore, the Bureau is proposing to establish a greatest severity prohibited act for use of the telephone to further criminal activity, and a high severity prohibited act for use of the telephone for abuses other than criminal activity. Examples of what the Bureau considers a violation of a high severity prohibited act are third-party calls, third-party billing; possession of and/or use of another inmate's PIN number, and talking in code. The current low severity prohibited act remains for minor