

intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this RG in a manner inconsistent with the discussion in the Implementation section of the RG, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: February 1, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024-02407 Filed 2-6-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP-1175-I]

RIN 1120-AB75

Inmate Legal Activities: Visits by Attorneys

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: The Bureau of Prisons (Bureau) amends regulations in 28 CFR part 543, subpart B—Inmate Legal Activities to revise procedures governing attorney visits.

DATES:

Effective date: This rule is effective February 7, 2024.

Comments: Written comments must be postmarked and electronic comments must be submitted on or before April 8, 2024. Commenters should be aware that

the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: If you wish to provide comment regarding this rulemaking, you must submit comments, identified by the agency name and reference Docket No. BOP 1175 or RIN 1120-AB75, by one of the two methods below.

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the website instructions for submitting comments. The electronic Federal Docket Management System at www.regulations.gov will accept electronic comments until 11:59 p.m. Eastern Time on the comment due date.

Mail: Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Rules Administrator, Legislative and Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534. To ensure proper handling, please reference the agency name and Docket No. BOP 1175 or RIN 1120-AB75 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at the address above or at (202) 353-4885.

SUPPLEMENTARY INFORMATION: Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. 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

contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted 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.

II. Background

On July 20, 2023, the Deputy Attorney General issued a memorandum instructing the Bureau to implement the Report and Recommendations (Report) of the Advisory Group on Access to Counsel, which focused on access to counsel at Bureau pretrial facilities.¹ The Report provides an overview of the Department of Justice’s (Department) approach to ensuring access to counsel in Bureau pretrial facilities and recommends specific measures to promote such access.² Among the 30 recommendations included is recommendation 2.1., which provides:

Update BOP’s regulations related to scheduling legal visits to conform with current practice. BOP’s current regulations (28 CFR 543.13) state that all legal visits must be scheduled in advance. Although that provision may be reasonable for BOP facilities that do not have a pretrial mission, it is inconsistent with visitation policies and practices at 9 of BOP’s 10 pretrial facilities and with attorney preferences. BOP, in consultation with ATJ, should revise this regulation to allow for walk-in visits at all pretrial facilities.³

The current regulations governing attorney visits were promulgated on June 27, 1979,⁴ and have not been updated in 44 years. In the portion of the preamble addressing the addition of § 543.13 those many years ago, the Bureau responded to some commenters and noted:

Some objections were raised to the requirement in proposed § 540.46 that attorneys make advance appointments prior to visiting an inmate client, on the basis that attorneys, at least during regular visiting

¹ U.S. Dep’t of Justice, Report and Recommendations Concerning Access to Counsel at the Federal Bureau of Prisons’ Pretrial Facilities (July 20, 2023), available at https://www.justice.gov/d9/2023-07/2023.07.20_atj_bop_access_to_counsel_report.pdf.

² *Id.*, at i.

³ *Id.* at 26.

⁴ 44 FR 38254, 38263–64, available at <https://www.govinfo.gov/content/pkg/FR-1979-06-29/pdf/FR-1979-06-29.pdf> (p. 349 of the .pdf).

hours, should not be subject to any more stringent regulations than other visitors. The provision for attorney visits, however, is necessary given the arrangements which often must be made to provide added privacy for attorney client consultation. This by no means prohibits attorneys from making regular visits without prior appointments under the same conditions as other visitors.⁵

The Bureau welcomes this opportunity to further clarify procedures governing how attorneys can arrange to visit their clients.

III. Discussion

The Bureau agrees that an update to its attorney-visit regulations is needed to clarify current practices and the unique role of Bureau institutions with pretrial missions. Recognizing that the right to counsel safeguarded by the Sixth Amendment is critical for protecting fairness and accuracy in the criminal justice system, the Bureau embraces revisions to its attorney-visit regulations in order to expand access to this fundamental right. This interim final rule will encourage meaningful access to the right to counsel by amending the procedures whereby attorneys can request to visit their clients in pretrial detention within a Bureau institution. Accordingly, to give full effect to the Report's recommendation 2.1, the Bureau revises two paragraphs within § 543.13.

§ 543.13(c)

The current version of § 543.13(c) provides that, to schedule any legal visit at any Bureau institution, an attorney must make an advance appointment for a visit through the warden, who in turn must make "every effort" to arrange for that visit when prior notification is not practical.⁶ Nothing in this paragraph distinguishes between Bureau institutions housing pretrial detainees and unsentenced individuals from Bureau institutions that house individuals who have been convicted. Therefore, the Bureau revises this paragraph to address pretrial detainees' and unsentenced individuals' right of access to counsel.

There are two substantive changes to this paragraph. First, we added introductory language to distinguish Bureau institutions that house convicted individuals from those that house pretrial detainees and unsentenced individuals. With this qualifying language, we affirm the current attorney-visit procedures used by Bureau institutions that house only convicted individuals. Attorneys seeking to visit clients at one of these

Bureau institutions are still required to make an advance appointment to visit their client, and the warden of the institution is still required to make every effort to accommodate a last-minute visit when advance notice is not practicable (*i.e.*, not possible). Second, we revised the last sentence to refer specifically to Bureau institutions that house pretrial detainees and unsentenced individuals, emphasizing that those institutions must allow both scheduled and unscheduled attorney visits during designated attorney visitation hours. Both changes effectively revise the regulation to allow for walk-in attorney visits at all Bureau institutions that house pretrial detainees and unsentenced individuals.

§ 543.13(e)

In keeping with the theme and purpose of the Report, we have also decided to underscore the importance of attorney-client confidentiality during attorney visits by emphasizing that Bureau employees are prohibited from subjecting those visits to auditory supervision. To accomplish this, we deleted the permissive "may" and replaced it with the mandatory "shall" in the first sentence of the paragraph.

IV. Regulatory Certifications

Executive Orders 12866, 13563, and 14094 (Regulatory Review)

The Department has determined that this rulemaking is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this interim final rule has not been submitted to the Office of Management and Budget ("OMB") for review. This interim final rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation; in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation, and in accordance with Executive Order 14094, "Modernizing Regulatory Review".

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs,

harmonizing rules, and promoting flexibility.

Executive Order 13132—Federalism

This interim final rule 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 13132, it is determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform (Plain Language)

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this interim final rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this interim final rule is intended to create any legal or procedural rights enforceable against the United States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

As set forth more fully above in the Supplementary Information portion, this interim final rule will not result in substantial direct increased costs to Indian Tribal governments.

Administrative Procedure Act, 5 U.S.C. 553

This interim final rule is a rule of agency organization, procedure, and practice and is, therefore, exempt from the notice requirement of 5 U.S.C. 553(b), and is made immediately effective upon issuance. Further, to the extent this interim final rule affects entities other than the agency, the changes being made are merely technical in nature and impose no new restrictions. Accordingly, the Bureau of Prisons also finds good cause for exempting this interim final rule from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice of proposed rulemaking, and delay in effective date. Nevertheless, the Bureau of Prisons is accepting post-promulgation public comments.

"Unless a statutory exception applies, the APA requires agencies to publish a notice of proposed rulemaking in the

⁵ *Id.* at 38264.

⁶ 28 CFR 543.13(c).

Federal Register before promulgating a rule that has legal force.” *Little Sisters of the Poor Sts. Peter & Paul Home v. Pennsylvania*, 591 U.S. ---, 140 S. Ct. 2367, 2384 (2020). The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Further, 5 U.S.C. 553(d) provides an exception to the usual requirement of a delayed effective date for a substantive rule that relieves a restriction, or when the agency finds “good cause” that the rule be made immediately effective.

An agency may find that notice and comment is “unnecessary” where the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and public. *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012); *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754–55 (D.C. Cir. 2001). Unlike previous Bureau interim final rules courts have addressed, this interim final rule is by its nature non-substantive, functioning only as updated guidance on attorney visits to Bureau institutions by specifically expanding access to counsel for pre-trial detainees in Bureau custody. *Cf. Paulsen v. Daniels*, 413 F.3d 999 (9th Cir. 2005) (holding the Bureau violated the APA by issuing an interim final rule that had “the effect . . . [of] deny[ing] program eligibility to certain categories of inmates . . .”).

This rulemaking is exempt from normal notice-and-comment procedures because advance notice in this instance is unnecessary. The change to this regulation is non-substantive, minor, routine, insignificant, and made only to clarify procedures for attorney visits at Bureau institutions and to further promote inmates’ right of access to counsel. This interim final rule makes no change to any rights or responsibilities of the agency or any regulated entities and, instead, seeks to promptly clarify procedures primarily for the benefit of current inmates and their attorneys who require access to them while they are housed at Bureau facilities designated for pretrial and presentenced detainees. For the same reasons, the Bureau finds that “good cause” exists to make this interim final rule immediately effective upon publication. Nevertheless, the Bureau of Prisons is accepting post-promulgation public comments.

Unfunded Mandates Reform Act of 1995

This interim final 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 (adjusted for inflation), 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.

Regulatory Flexibility Act

The Director has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Further, a regulatory flexibility analysis is not required when the agency is not required to publish a general notice of proposed rulemaking, as is the case here. 5 U.S.C. 601(2), 604(a).

Congressional Review Act

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 543

Prisoners, Legal activities.

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 of the Bureau of Prisons in 28 CFR 0.96, the Bureau amends 28 CFR part 543 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 543—LEGAL MATTERS

- 1. The authority citation for part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081 (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 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

Subpart B—Inmate Legal Activities

- 2. In § 543.13, revise paragraph (c) and the first sentence of paragraph (e) to read as follows:

§ 543.13 Visits by attorneys.

* * * * *

(c) For Bureau institutions that do not house pretrial detainees and unsentenced individuals, the attorney shall make an advance appointment for the visit through the Warden prior to

each visit. However, the Warden shall make every effort to arrange for a visit when prior notification is not practicable. Bureau institutions that house pretrial detainees and unsentenced individuals will allow scheduled and unscheduled attorney visits during designated attorney visitation hours.

* * * * *

(e) Staff shall not subject visits between an attorney and an inmate to auditory supervision. * * *

* * * * *

Colette S. Peters,

Director, Federal Bureau of Prisons.

[FR Doc. 2024–02470 Filed 2–6–24; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0105]

Safety Zones in Reentry Sites; Jacksonville, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard is activating three safety zones for the AXIOM–3 Commercial Crew mission reentry, vehicle splashdown, and recovery operations. These operations will occur in the U.S. Exclusive Economic Zone (EEZ). Our regulation for safety zones in reentry sites within the Seventh Coast Guard District identifies the regulated areas for this event. No U.S.-flagged vessel may enter the safety zones unless authorized by the Captain of the Port Savannah or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zones.

DATES: The regulations in 33 CFR 165.T07–0806 will be enforced for the safety zones identified in the

SUPPLEMENTARY INFORMATION section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Anthony Harris, Marine Safety Unit Savannah, Waterways Division, U.S. Coast Guard; telephone 912–210–8714, email: Anthony.E.Harris@uscg.mil.

SUPPLEMENTARY INFORMATION: With this document, the Coast Guard Captain of the Port (COTP) Savannah is activating