

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 551****[BOP-1045-F]****RIN 1120-AA42****Inmate Organizations****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Final rule.

SUMMARY: The Bureau of Prisons is revising its regulations on Inmate Organizations to prohibit fund-raising activities by inmates and to phase out provisions governing inmate accountability for funds. This amendment is intended to provide for the continued efficient and orderly operation of the institution and the Bureau.

EFFECTIVE DATE: This rule is effective April 18, 1996, except § 551.37 is effective from April 18, 1996 through June 30, 1996.

ADDRESSES: 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 revising its regulations on Inmate Organizations (28 CFR part 551, subpart D). A proposed rule on this subject was published in the Federal Register on October 20, 1995 (60 FR 54289). The Bureau received comment from three respondents. A summary of this public comment and Bureau response follows.

One commenter, writing for a specific inmate organization, objected to the proposed ban on fund-raising activities on the grounds that the activities benefitted both inmate and local community populations. The commenter noted that his organization operated in a fiscally responsible manner and had not been the cause of any financial problem. The commenter stated that fund-raising activities were important to the successful continuation of the club and its camp efforts, and urged that the proposed rule be withdrawn or modified in order to allow for exemption of specific organizations.

While not all inmate organizations have posed financial concerns, the potential for problems and the dedication of staff resources to help ensure that such problems do not arise under the current provisions is sufficient to warrant the Bureau's

proposed action. As stated in the proposed rule, the amendment is not intended to eliminate inmate activities, but rather to fund such approved inmate activities from designated sources, including, for example, the Trust Fund.

Another commenter raised a variety of objections to the proposed rule. This commenter objected to the determinations that the proposed rule was not a significant regulatory action nor had a significant impact on small entities, and was not reviewed by the Office of Management and Budget. The Bureau notes that the proposed rulemaking was promulgated in accordance with the procedures of E.O. 12866, including those provisions pertinent to the oversight of the Office of Management and Budget. This rulemaking does not meet the definition of significant regulatory action contained in E.O. 12866 and accordingly is not required to be submitted to the Office of Management and Budget. The commenter speculated that several small businesses will be negatively impacted by the rulemaking. The Bureau notes that this speculation does not approach the defined threshold of significant impact (see 5 U.S.C. 605(b)).

In general, this commenter felt that the proposed rule was regressive and not supportive of rehabilitation. More specifically, the commenter objected on the grounds that the proposed rule would reduce the number of inmate activities and consequently increase inmate idleness and unrest. The commenter noted that inmate organizations provided inmates with access to national organizations and consequently served a positive goal of maintaining contact with the public. The commenter stated that allowing the organizations to maintain themselves through dues prevented significant impact on the Bureau's appropriations. The Bureau notes that the revised regulations do not limit access to national organizations and therefore do not adversely affect the maintenance of community contacts. With respect to a possible reduction of inmate activities and the possible growth of inmate idleness and unrest, the Bureau believes this concern is overstated. A variety of activities are available to inmates, as indicated in 28 CFR 551.34. The Bureau is committed to funding approved activities. The elimination of fund-raising activities (particularly when the purpose of the fund-raising activity is to fund other activities) should not significantly reduce the number of approved activities for inmates. With respect to the comment on financial impact, the Bureau points out that while

some inmate organizations have not posed financial problems, as noted above, this is not true for all inmate organizations. Remedying these financial problems does have an impact on Bureau appropriations. The Bureau prefers to allocate its resources (whether monetary or staffing) to activities which do not entail the potential problems of fund-raising.

The commenter also objected alleging that inmates were not advised of the proposed regulation until December 1, 1995, and consequently were impeded in their ability to respond to the proposal or to inform their families for added comment. Publication in the Federal Register provides sufficient and proper notice of agency rulemaking to the general public. The Bureau, in order to help ensure notice to the inmate population, posts its rulemaking documents in Bureau institutions. The Bureau notes that copies of the proposed rule were distributed to institutions for posting on November 3, 1995. Access to these postings at certain institutions may have been delayed due to security conditions necessitated by inmate disturbances. As evidenced by the fact that the commenter's comment has been considered in this rulemaking, the Bureau believes the December 19, 1995, deadline afforded sufficient opportunity for comment.

A third commenter, whose submitted comments were dated December 11, 1995, objected to late posting of the proposed rule at a particular institution. This commenter also objected to the statement that the proposed rule was intended to provide for the continued efficient and orderly running of the institution, stating that the security concerns were an exaggeration. The commenter suggested that the Bureau's motivation was to increase commissary sales.

As noted above, delays in posting may have resulted in certain institutions due to security concerns necessitated by inmate disturbances. The timing of the posting at the institution cited did not appear to impede the timely filing by the commenter. With respect to motivation for the proposed rule, the Bureau believes that budgetary constraints do play a role in the efficient and orderly operation of the institution, and that the proposed changes were a reasonable means of achieving legitimate penological goals.

This commenter also questioned the certification under the Regulatory Flexibility Act that the rulemaking did not have a significant impact on a substantial number of small entities. The commenter also claimed that the Bureau was in violation of the law for

refusing to present rule changes to the Office of Management and Budget and Congress. The Bureau notes, as above, that the rulemaking was promulgated in accordance with the procedures of E.O. 12866, including those provisions pertinent to Office of Management and Budget oversight.

In adopting the proposed rule as final, the Bureau has made the following organizational or editorial changes to the regulations. In § 551.31, paragraph (a) was reworded to clarify that activation of the organization is dependent upon the Warden's approval. The provisions in proposed paragraph (c) have been restated in a new § 551.35. In § 551.33, the phrase "national organization" has been used instead of the phrase "National Chapter." That same paragraph is further amended to clarify that the Warden is authorized to approve the rate and method of institution collection of dues. The Warden was not intended to exercise authority over non-institution collection of dues by a national organization. Section 551.34 was amended to remove reference to purchase of items. This provision is covered in a new § 551.36 (proposed as § 551.35). Section 551.34 was further amended to remove the parenthetical phrase "(if appropriate)". Proposed §§ 551.35 and 551.36 were redesignated as §§ 551.36 and 551.37 in order to accommodate the new section on withdrawal of approval, as noted above. Finally, for reasons of orderly codification, newly designated § 551.37 is not included in the revised subpart, but is added to the subpart separately in order to facilitate a "sunset" provision. Because these further changes are either organizational or editorial in nature and have no adverse impact upon inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment. Members of the public may submit comments concerning these changes or other provisions of the rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a

substantial number of small entities within the definition of the Act.

List of Subjects in 28 CFR Part 551

Prisoners.

John L. Clark,

Acting 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 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (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; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's August 6, 1991 Guidelines for Victim and Witness Assistance.

2. Subpart D, consisting of §§ 551.30 through 551.36, is revised to read as follows.

Subpart D—Inmate Organizations

Sec.

- 551.30 Purpose and scope.
- 551.31 Approval of an organization.
- 551.32 Staff supervision.
- 551.33 Dues.
- 551.34 Organization activities.
- 551.35 Withdrawal of approval of an organization.
- 551.36 Funding.

Subpart D—Inmate Organizations

§ 551.30 Purpose and scope.

The Bureau of Prisons permits inmates and persons in the community to participate in approved inmate organizations for recreational, social, civic, and benevolent purposes.

§ 551.31 Approval of an organization.

(a) An inmate must submit a request for recognition of a proposed inmate organization to the Warden. The organization may not become active without the Warden's approval.

(b) The Warden may approve an inmate organization upon determining that:

(1) The organization has a constitution and bylaws duly approved by its members; the constitution and bylaws must include the organization's purpose and objectives, the duties and

responsibilities of its officer(s), and the requirements for activities reporting and operational review; and

(2) The organization does not operate in opposition to the security, good order, or discipline of the institution.

§ 551.32 Staff supervision.

(a) The Warden shall appoint a staff member as the institution's Inmate Organization Manager (IOM). The IOM shall be responsible for monitoring the activities of the institution's inmate organizations and staff sponsors.

(b) The Warden or designee shall assign to a staff sponsor responsibility for supervising the activities of an individual inmate organization. The staff sponsor's duties are performed while in official duty status.

§ 551.33 Dues.

Dues may be collected if they are required by the national organization, are collected by that same national organization, and the rate and method of institution collection have been approved by the Warden. No portion of the dues may be kept by the inmate organization for use at the institution. The organization may not make payment of dues a requirement of membership for an inmate who lacks funds.

§ 551.34 Organization activities.

(a) An officer of the inmate organization must submit a written request for approval of an activity to the Warden or designee. Activities include, but are not limited to, meetings, guest speakers, sports competitions, banquets, or community programs. Activities may not include fund-raising projects. The request must specifically include:

- (1) Name of the organization;
- (2) Nature or purpose of the activity;
- (3) Date, time, and estimated duration of the activity;
- (4) Estimated cost;
- (5) Information concerning guest participation; and
- (6) Other pertinent information requested by the Warden.

(b) The Warden may approve the request if the activity:

- (1) Does not conflict with scheduled inmate work or program activities;
- (2) Has confirmation of staff supervision;
- (3) Can be appropriately funded when applicable (see § 551.36); and
- (4) Does not conflict with the security, good order, or discipline of the institution.

(c) When an activity requires the expenditure of government funds, the Warden ordinarily shall require reimbursement from non-inmate participants (guests or members).

(d) Each inmate organization shall be responsible for maintaining accurate records of its activities.

(e) The activities of an inmate organization may be suspended temporarily due to noncompliance with Bureau policy. The IOM is responsible for recommending the specific suspension sanction for the Warden's approval. The inmate organization is to receive written notice of the proposed suspension sanction and shall have the opportunity to respond to the Warden. Continued noncompliance with Bureau policy shall result in an increase in the severity of the suspension sanction, and

may include withdrawal of approval of the organization.

§ 551.35 Withdrawal of approval of an organization.

The Warden may withdraw approval of an inmate organization for reasons of the security, good order, and discipline of the institution, or in accordance with § 551.34(e).

§ 551.36 Funding.

The Bureau of Prisons may fund approved activities of inmate organizations or organization requests for purchase of equipment or services for all inmates subject to the availability of designated funds.

3. Effective from April 18, 1996 through June 30, 1996, § 551.37 is added to Subpart D to read as follows:

§ 551.37 Accountability for accumulated funds.

Effective April 18, 1996 through June 30, 1996, all inmate organizations must, in accordance with Bureau policy and generally accepted accounting principles, close-out financial records and dispose of all assets previously accumulated by them.

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