

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its visiting regulations to require that regular visiting privileges at all institutions ordinarily will be extended to friends and associates only when the relationship had been established prior to confinement. This requirement currently applies to visiting at Medium Security Level, High Security Level, and Administrative institutions, but not at Low and Minimum Security Level institutions. The purpose of this revision is to provide for uniformity of visiting procedures for all security levels and to maintain the security and good order of the institution while continuing to afford inmates with reasonable and equitable access to visiting. Because the prior relationship requirement is to apply to regular visitors, we also clarify the distinction between regular and special visitors.

EFFECTIVE DATE: April 7, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

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

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on visiting (28 CFR part 540, subpart D). We published a proposed rule on this subject on May 18, 1999 (64 FR 27166).

Why Is the Bureau Revising the Visiting Regulations?

As part of a general review of security measures at Bureau institutions, this revision is to provide for uniformity of visiting procedures for all security levels and to maintain the security and good order of the institution while continuing to afford inmates with reasonable and equitable access to visiting. The heightened security measures were deemed necessary to better ensure that inmates do not abuse visiting privileges or use them to further criminal activity.

Who Is Affected by the Changes Made to the Visiting Regulations?

Inmates currently confined at low or minimum security level facilities and any visitor for such inmate who did not have a relationship with the inmate prior to the inmate's incarceration are affected by this change. As of January 31, 2000, nearly 58,700 federal inmates (49% of the total inmate population) are housed in low or minimum security level facilities.

Summary of Comments Received and Agency Response

The Bureau received comments from six respondents. Three commenters expressed concerns about the impact on family visits (for example, children born after the inmate was incarcerated and new extended family members). In response, the Bureau notes that the prior relationship requirement pertains to friends and associates (28 CFR 540.44(c)). The prior relationship requirement does not apply to immediate family members (28 CFR 540.44(a)) and other relatives (28 CFR 540.44(b)).

One commenter believed that the policy could be easily circumvented if the proposed visitors were willing to lie about the prior relationship. The Bureau believes that visitors would be ill-advised to make false statements as certain federal penalties apply.

One commenter believes the proposed rule is biased and discourages the inmate from making new friends or associates while in prison. This commenter believes that if a visitor has no criminal record and poses no security threat to the institution that they should not be prohibited from visiting.

The purpose of the amendment is to maintain the security and good order of Bureau institutions. In accordance with our security review the Bureau believes it is necessary to standardize the prior relationship requirement at all security levels. Existing provisions still provide for exceptions to the prior relationship rule. The inmate retains access to new friends and associates through correspondence and the telephone.

Another commenter believes there is no problem with current visiting regulations and that the proposed rule lacks specificity, does not provide guidance to staff for administering the regulation, and will lead to a lack of uniformity among institutions. As noted above, the Bureau believes that for security reasons it is necessary to extend the prior relationship provision to all Bureau institutions. The Bureau must rely upon the Warden's correctional judgment in making determinations for exceptions to the prior relationship requirement.

The final commenter believes the current background information provided by visitors or an NCIC check is sufficient to protect the Bureau's interests and that the prior relationship requirement be removed for medium security and above institutions. This commenter states that the Bureau already has in place a procedure to restrict an inmate's visiting privileges

and/or a visitor's ability to visit based on penological concerns and that further restrictions are not necessary. The Bureau assumes that the commenter is referring to the Bureau's discipline procedure (see 28 CFR part 541) when he states that the Bureau already has in place a procedure to restrict an inmate's visiting privileges. The Bureau believes that taking action after the fact does not sufficiently address the threat to the orderly operation of the visiting room. The Bureau believes, furthermore, that the prior relationship requirement serves a legitimate penological purpose at all security levels, and that it is necessary to extend the prior relationship requirement to minimum and low security level facilities. In extending the restrictions, the Bureau has chosen to retain the Warden's discretion to make exceptions to the prior relationship requirement.

After due consideration of the comments received, the Bureau is adopting the proposed rule as final without change. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

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 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, in accordance with Executive Order 13132, 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,