

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Parts 543 and 553****[BOP 1063-P]****RIN 1120-AA58****Inmate Legal Activities and Inmate Personal Property****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Proposed rule.

SUMMARY: In this document, the Bureau of Prisons ("Bureau") is proposing to amend its regulations in order to set forth situations in which one inmate may be allowed to possess the legal materials of another inmate while assisting that other inmate. This amendment is intended to maintain an appropriate balance between the need for institution security, good order, and discipline and the ability of inmates to assist each other with their legal documents.

DATES: Comments due by December 30, 1996.

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 legal activities (28 CFR 543, subpart B) and on inmate personal property (28 CFR 553, subpart B). A final rule on inmate legal activities was published in the Federal Register on June 29, 1979 (44 FR 38263) and was amended on December 4, 1981 (46 FR 59509) and on July 23, 1990 (55 FR 29992); a final rule on inmate personal property was published in the Federal Register on April 29, 1983 (48 FR 19573).

Existing Bureau regulations allow an inmate at an institution without an active, ongoing legal aid program the assistance of another inmate for purposes of legal research and preparation of legal documents (see 28 CFR 543.11(f)). Bureau regulations on inmate personal property specify that an inmate may possess only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate (see 28 CFR 553.10). With respect to legal

materials, Bureau regulations further specify that an inmate may be allowed to retain those legal materials which are necessary for an inmate's legal actions (see 28 CFR 553.11(d)). The Bureau has always taken this to mean materials which are necessary for an inmate's own legal actions.

To maintain security and good order in the institution, the Bureau believes that an inmate should not possess another inmate's legal materials. Possession of such materials by another inmate may result in extortion attempts, the exchange of contraband, or the dissemination of information which could be used to endanger other inmates, institution staff, or the general public. Practical complications may also arise. For example, when inmates are transferred from one institution to another, their legal materials could be lost or damaged, thereby potentially affecting the inmates' ability to litigate their cases.

On occasion, inmates have been allowed to possess other inmates' legal materials to some degree. To ensure consistency and maintain an appropriate balance between the need for institution security, good order, and discipline and the ability of inmates to assist each other, the Bureau is proposing to liberalize its regulations to allow an inmate to possess another inmate's legal materials within certain limitations.

The proposed regulations specify that except in instances where the Warden imposes limitations for reasons of institution security, good order, or discipline, an inmate may possess another inmate's legal documents while assisting that inmate in the institution's main law library and in other locations if the Warden so designates. The inmate being assisted must bring his or her legal materials to the law library or other location in order to provide access to the assisting inmate. The inmate providing assistance may not remove the legal materials from the library or other designated location. Although the inmate being assisted need not remain present, that inmate is responsible for retrieving his or her legal materials. If, for example, the inmate being assisted chooses to leave the library or other designated location in order to recreate, that inmate must return in order to retrieve the legal materials. Legal materials left unattended in the law library or other designated location may be disposed of by staff as nuisance contraband.

The institution's need for security, good order, or discipline may limit an inmate's assistance to another inmate when an inmate is placed in the

institution's special housing unit. An inmate may be placed in a special housing unit for various reasons including administrative detention during the course of an investigation of allegations that the inmate committed a prohibited act, for protection, pending transfer, or in disciplinary segregation following a determination that the inmate had committed a prohibited act. Security necessarily restricts access to such inmates by inmates in the general population. Inmate assistance therefore may only be available from other inmates already in the special housing unit. Legal assistance from attorneys remains available to an inmate in a special housing unit (see § 543.12).

In addition to the foregoing changes, the Bureau is consolidating the provisions pertinent to legal materials in the regulations on inmate legal activities. The regulations on inmate personal property will contain only a cross-reference. Other changes to the regulations on inmate legal activities include a definition of leisure time in § 543.11(a), a revised definition of legal materials in the introductory text of § 543.11(d), a restatement of the provisions for receipt, purchase, and retention of legal materials in § 543.11(d) (1) and (2), and a clarification to the provisions in § 543.11(h) concerning the preparation of legal documents by a public stenographer.

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 impact on a substantial number of small entities. Because 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, its economic impact is limited to the Bureau's appropriated funds.

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.

List of Subjects in 28 CFR Parts 543 and 553

Prisoners.

Kathleen M. Hawk,
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 543 and 553 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 543—LEGAL MATTERS

1. The authority citation for 28 CFR part 543 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, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

2. In § 543.11, paragraphs (a), (d), and (f) are revised, and paragraph (h) is amended by revising the last sentence to read as follows:

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time (that is, when the inmate is not participating in a scheduled assignment or program), to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

* * * * *

(d) An inmate's legal materials include but are not limited to the

inmate's pleadings and documents (such as a presentence report) that have been filed in court, drafts of pleadings to be submitted to a court (whether prepared by the inmate or by an assisting inmate pursuant to paragraph (f) of this section), documents pertaining to an inmate's administrative case, photocopies of legal reference materials, and legal reference materials which are not available in the institution main law library (or basic law library in a satellite camp).

(1) An inmate may solicit or purchase legal materials from outside the institution. The inmate may receive the legal materials in accordance with the provisions on incoming publications or correspondence (see 28 CFR part 540, subparts B and F) or through an authorized attorney visit from a retained attorney. The legal materials are subject to inspection and may be read or copied unless they are received through an authorized attorney visit from a retained attorney or are properly sent as special mail (for example, mail from a court or from an attorney), in which case they may be inspected for contraband or for the purpose of verifying that the mail qualifies as special mail.

(2) Staff may allow an inmate to possess those legal materials which are necessary for the inmate's own legal actions. Staff may also allow an inmate to possess the legal materials of another inmate subject to the limitations of paragraph (f)(2) of this section. The Warden may limit the amount of legal materials an inmate may accumulate for security or housekeeping reasons.

* * * * *

(f)(1) Except as provided for in paragraph (f)(3) of this section, an inmate may assist another inmate in the same institution during their leisure time (as defined in paragraph (a) of this section) with legal research and the preparation of legal documents for submission to a court or other judicial body.

(2) Except as provided for in paragraph (f)(3) of this section, an inmate may possess another inmate's legal materials while assisting the other inmate in the institution's main law

library and in another location if the Warden so designates. The assisting inmate may not remove such legal materials (including any drafts of legal pleadings prepared for the inmate being assisted) from the law library or other designated location. As defined in paragraph (d), drafts of legal pleadings are owned by the inmate being assisted. Although the inmate being assisted need not remain present in the law library or other designated location while the assistance is being rendered, that inmate is responsible for retrieving his or her legal materials from the library or other designated location. Any legal materials left unattended in the law library or other designated location may be disposed of by staff as nuisance contraband.

(3) The Warden at any institution may impose limitations on an inmate's assistance to another inmate in the interest of institution security, good order, or discipline.

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(h) * * * Staff shall advise the inmate of any delay in the typing of which they have received notice from the stenographer.

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3. The authority citation for 28 CFR part 553 is revised 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), 4126, 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.

4. In § 553.11, paragraph (d) is revised to read as follows:

§ 553.11 Limitations on inmate personal property.

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(d) *Legal Materials.* Staff may allow an inmate to possess legal materials in accordance with the provisions on inmate legal activities (see § 543.11 of this chapter).

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