

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Part 551

[BOP-1084-P]

RIN 1120-AA79

## Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

**SUMMARY:** In this document the Bureau of Prisons is proposing to revise its regulations on smoking in order to limit smoking in Bureau of Prisons facilities to visibly designated outdoor locations, unless an indoor area has been designated as a smoking area to be used exclusively for authorized religious activities. Previously, smoking areas at medical referral centers and minimum security institutions were ordinarily located outside of all buildings, and Wardens at other institutions could, but were not required to, identify certain indoor areas as designated smoking areas where the needs of effective operations so required (for example, for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time). This amendment is intended to promote a clean air environment and to protect the health and safety of staff and inmates.

**DATES:** Comments due by January 25, 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 Smoking/No Smoking Areas (28 CFR part 551, subpart N). A final rule on this subject was published in the **Federal Register** on July 6, 1994 (59 FR 34742).

The hazards of tobacco smoke (including the health risks associated with passive inhalation of second-hand smoke by nonsmokers) are well established by medical and public health authorities. The national health promotion disease prevention objectives of the Public Health Service study Healthy People 2000 have identified health status, risk reduction, and services and protection objectives in relation to tobacco. One of the objectives calls for stricter policies in the workplace that prohibit or severely restrict smoking. Cigarette smoking is

responsible for an estimated 21 percent of all coronary heart disease deaths, 30 percent of all cancer deaths, and 87 percent of lung cancer deaths. The known health risks associated with smoking and the increasing societal concern about passive tobacco smoke, provide ample evidence and support for the Bureau to enact stricter smoking/no smoking rules to protect the health and safety of both staff and inmates.

In the previous revision of its regulations on smoking/no smoking areas (59 FR 34742), the Bureau limited smoking at medical referral centers and minimum security institutions ordinarily to outside locations. Under the revised regulations, Wardens at low, medium, high, and administrative institutions could identify certain indoor areas as designated smoking areas for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time. The regulations, however, did not require the Wardens at these institutions to designate indoor smoking areas.

The Bureau has an obligation to its employees and to the inmates in its custody to provide the safest and healthiest environment possible. Therefore, the Bureau is now proposing that the restriction on designated indoor smoking areas be extended to all Bureau of Prisons institutions. Smoking will only be permitted outdoors in visibly designated locations with the exception that an indoor smoking area may be designated to be used exclusively for authorized religious activities. Individuals who do not observe the smoking restrictions are subject to appropriate disciplinary action.

Programs to assist those persons wishing assistance in quitting smoking are available through normal health care programs offered to inmates.

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. After review of the law and regulations, the Director, Bureau of Prisons certifies 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 meaning of the Act. 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 Part 551**

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), part 551 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

**Subchapter C—Institutional Management****PART 551—MISCELLANEOUS**

1. The authority citation for 28 CFR part 551 is revised 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 May 1, 1995 Guidelines for Victim and Witness Assistance.

2. Subpart N is revised to read as follows:

**Subpart N—Smoking/No Smoking Areas**

Sec.

- 551.160 Purpose and scope.
- 551.161 Definitions.
- 551.162 Designated smoking areas.
- 551.163 Disciplinary action.

**Subpart N—Smoking/No Smoking Areas****§ 551.160 Purpose and scope.**

To promote a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons restricts areas and circumstances where smoking is permitted within its institutions and offices.

**§ 551.161 Definitions.**

For purpose of this subpart, *smoking* is defined as carrying or inhaling a lighted cigar, cigarette, pipe, or other lighted tobacco products.

**§ 551.162 Designated smoking areas.**

The Warden is responsible for designating smoking areas. Smoking is

permitted only in these visibly designated areas. Designated areas are to be outdoors, with the exception that an indoor area may be designated if the indoor designated smoking area is to be used exclusively for authorized religious activities.

**§ 551.163 Disciplinary action.**

Appropriate disciplinary action may be taken for failure to observe smoking restrictions.

[FR Doc. 98-31556 Filed 11-24-98; 8:45 am]

BILLING CODE 4410-05-P