

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 570**

[BOP Docket No.1144–P]

RIN 1120–AB44

Inmate Furloughs**AGENCY:** Bureau of Prisons, Justice.**ACTION:** Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its Federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs.

DATES: Comments are due by February 5, 2007.

ADDRESSES: Our e-mail address is BOPRULES@BOP.GOV. Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

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

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its Federal regulations on the inmate furlough program primarily to more clearly provide for and define transfer furloughs. In the proposed rules, we also seek to reorganize and clarify the rules, while eliminating language that constitutes agency guidance to staff. Any such guidance language will be retained in the relevant Bureau policy. Below is an analysis of each new proposed section.

Proposed § 570.30 Purpose

This section states that these rules describe the procedures governing the Bureau's furlough program, authorized by 18 U.S.C. 3622. The current rule contains language indicating that the Bureau has a furlough program to help inmates attain correctional goals, and that a furlough is a privilege, but not a right, reward, or means to shorten a sentence. We remove this language because the specific reasons for furlough, eligibility requirements, and

conditions for furlough are described in more detail in the other regulations in this subpart.

Proposed § 570.31 Inmate Eligibility for Furloughs

In this section we state that sentenced inmates housed in Bureau facilities and some pretrial inmates may be eligible for furloughs. Sentenced inmates in Bureau facilities who are classified as central inmate monitoring cases may only participate after complying with other central inmate monitoring rules found in Part 524, Subpart F.

We also state that sentenced inmates in contract facilities are not eligible for furloughs, but may apply for furloughs as specified in that facility's written agreement with the Bureau. Also, inmates who are U.S. Marshals prisoners housed in contract facilities are not eligible to participate, but must direct any furlough requests to the U.S. Marshals.

Proposed § 570.32 Types of Furloughs

This section defines a furlough as a Warden-authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or State or Federal agents. The two types of furloughs described by this rule are transfer furloughs and non-transfer furloughs. Non-transfer furloughs are further classified depending on the purpose of the furlough (emergency or routine), and length (day or overnight). This section more accurately defines furloughs than current 570.31 (Definitions).

Proposed § 570.33 Justification for Furlough

This section describes the reasons that the Warden or designee may authorize a furlough. This section is derived from current 570.32 (Justification for furlough). Provisions in current 570.32 relating solely to staff guidance have been removed.

Proposed § 570.34 Expenses of Furlough

This section states that all expenses of a furlough are the responsibility of the inmate, the inmate's family, or other appropriate source approved by the Warden, except that the government may bear the expense of a furlough if it is for the government's primary benefit. This section derives from current 570.33. Language in current 570.33 relating to transfer to community confinement has been removed from the proposed rule because transfer furloughs will be described in proposed 570.35.

Proposed § 570.35 Transfer Furlough Eligibility Requirements

This section states that inmates transferring to administrative, low, medium, or high security facilities are generally not eligible for participation in the Bureau's transfer furlough program. This section also describes eligibility requirements for a transfer furlough, and derives from current 570.34 (a)–(d) (Eligibility requirements). Language relating solely to staff guidance in current 570.34 is removed from this proposed rule.

This section also more clearly describes specific eligibility requirements for specific types of transfer furloughs. Inmates transferring to minimum security facilities must be transferring from a low or minimum security facility and must be appropriate for placement in a minimum security facility based on the inmate's security designation and custody classification at the time of transfer. Inmates transferring to community confinement must also be appropriate for placement in community confinement based on the security designation and custody classification at the time of transfer.

Proposed § 570.36 Non-Transfer Furlough Eligibility Requirements

This section contains a chart which clarifies the eligibility requirements for non-transfer furloughs. The chart in this section derives from current 570.34 (d)–(e), which describes the types of non-transfer furloughs an inmate may be eligible for, based on the inmate's length of confinement or time remaining on the inmate's sentence.

This section also describes circumstances under which Wardens will ordinarily deny non-transfer furloughs. This section derives from current § 570.35. Language in current § 570.35 relating solely to staff guidance and processing instructions has been removed from the proposed rule.

Proposed § 570.37 Procedures for Applying for a Furlough

This section describes how an inmate may apply for a furlough, how the inmate will be notified of the Warden's decision on the furlough application, and how to appeal the decision. This section derives from current 570.36(a)–(c)(Procedures).

Proposed § 570.38 Conditions of Furlough

This section derives from a form contained in current 570.36(d) and from language in 570.37 (Violation of furlough). The form will be retained in relevant policy documents and will continue to be used by staff and

inmates. This proposed rule lists the conditions of furlough described in the current rule, and states that an inmate must agree to comply with these conditions before a furlough can be approved.

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.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will provide a more accurate description of the inmate furlough program. There will be no new costs associated with this rulemaking.

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, under Executive Order 13132, we determine 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, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it 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, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This 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, 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 570

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

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, Bureau of Prisons in 28 CFR 0.96, we are proposing to amend 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

1. The authority citation for 28 CFR part 570 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise part 570, subpart C, to read as follows:

Subpart C—Furloughs

Sec.

- 570.30 Purpose.
- 570.31 Inmate eligibility for furloughs.
- 570.32 Types of furloughs.
- 570.33 Justification for furlough.
- 570.34 Expenses of furlough.
- 570.35 Transfer furlough eligibility requirements.
- 570.36 Non-transfer furlough eligibility requirements.
- 570.37 Procedures to apply for a furlough.
- 570.38 Conditions of Furlough.

§ 570.30 Purpose.

The purpose of this subpart is to describe the procedures governing the furlough program of the Federal Bureau of Prisons (Bureau), which is authorized by 18 U.S.C. 3622. Under the furlough program, the Bureau allows inmates who meet certain requirements to be temporarily released from custody under carefully prescribed conditions.

§ 570.31 Inmate eligibility for furloughs.

(a) *Eligible inmates.* The following types of inmates may be eligible for furloughs:

- (1) Sentenced inmates housed in Bureau facilities.
- (2) Pretrial inmates housed in Bureau facilities (provided that they comply with the requirements of 28 CFR part 551, Subpart J).
- (3) Sentenced inmates housed in Bureau facilities and classified as central inmate monitoring cases (provided that they comply with the requirements of 28 CFR part 524, Subpart F).

(b) *Ineligible inmates.* The following types of inmates are not eligible for furloughs:

(1) Sentenced inmates housed in contract facilities are not eligible to participate in the Bureau's furlough program under these rules, but may apply for furloughs as specified in that facility's written agreement with the Bureau.

(2) Inmates who are U.S. Marshals prisoners housed in contract facilities are not eligible to participate, but must direct any furlough requests to the U.S. Marshals.

§ 570.32 Types of furloughs.

A furlough is an authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or State or Federal agents. The two types of furloughs are:

(a) *Transfer furlough*—A furlough for the purpose of transferring an inmate from one Bureau facility to another, a non-federal facility, or community confinement (including home confinement) as noted below at § 570.33(a).

(b) *Non-transfer furlough*—A furlough for any purpose other than a transfer furlough, and which may be defined based on its nature, as either emergency or routine, as follows:

(1) *Emergency furlough*—A furlough allowing an inmate to address a family crisis or other urgent situation as noted below at § 570.33(b).

(2) *Routine furlough*—A furlough for any of the reasons noted below at § 570.33(a) and (c)–(j).

(c) *Duration and distance of non-transfer furlough:*

(1) *Day furlough*—A furlough within the geographic limits of the commuting area of the institution, which lasts 16 hours or less and ends before midnight.

(2) *Overnight furlough*—A furlough which falls outside the criteria of a day furlough.

§ 570.33 Justification for furlough.

The Warden or designee may authorize a furlough, for 30 calendar days or less, for an inmate to:

- (a) Transfer directly to another Bureau institution, a non-federal facility, or community confinement;
- (b) Be present during a crisis in the immediate family, or in other urgent situations;
- (c) Participate in the development of release plans;
- (d) Establish or reestablish family and community ties;
- (e) Participate in selected educational, social, civic, and religious activities which will facilitate release transition;
- (f) Appear in court in connection with a civil action;
- (g) Comply with an official request to appear before a grand jury, or to comply with a request from a legislative body, or regulatory or licensing agency;
- (h) Appear in or prepare for a criminal court proceeding, but only when the use of a furlough is requested or recommended by the applicable court or prosecuting attorney;
- (i) Participate in special training courses or in institution work

assignments, including Federal Prison Industries (FPI) work assignments, when daily commuting from the institution is not feasible; or

- (j) Receive necessary medical, surgical, psychiatric, or dental treatment not otherwise available.

§ 570.34 Expenses of furlough.

All expenses of a furlough, including transportation, food, lodging, and incidentals, are the responsibility of the inmate, the inmate's family, or other appropriate source approved by the Warden, except that the government may bear the expense of a furlough if it is for the government's primary benefit.

§ 570.35 Transfer furlough eligibility requirements.

- (a) *Inmates transferring to administrative, low, medium, or high security facilities* are generally not eligible for participation in the Bureau's transfer furlough program.
 - (b) For a transfer furlough, inmates other than those described in (a) must:
 - (1) Be physically and mentally capable of completing the furlough; and

(2) Demonstrate sufficient responsibility to provide reasonable assurance that furlough requirements will be met.

(c) *Inmates transferring to minimum security facilities* must meet the requirements described in (b), and must also be:

- (1) Transferring from a low or minimum security facility; and
- (2) Appropriate for placement in a minimum security facility based on the inmate's security designation and custody classification at the time of transfer.

(d) *Inmates transferring to community confinement* must meet the requirements described in (b), and must also be appropriate for placement in community confinement based on the inmate's security designation and custody classification at the time of transfer.

§ 570.36 Non-transfer furlough eligibility requirements.

- (a) *An inmate may be eligible for a non-transfer furlough if the inmate meets the criteria described in 570.35(b) and the following additional criteria:*

If an inmate has . . .	Then the inmate may only be considered for . . .
Been confined at the initially designated institution for less than 90 days.	An emergency non-transfer furlough.
More than two years remaining until the projected release date	An emergency non-transfer furlough.
2 years or less remaining until the projected release date	A routine day furlough.
18 months or less remaining until the projected release date	A routine overnight furlough within the institution's commuting area.
1 year or less remaining until the projected release date	A routine overnight furlough outside the institution's commuting area.

(b) *Ordinarily, Wardens will not grant a furlough to an inmate if:*

- (1) The inmate is convicted of a serious crime against a person;
- (2) The inmate's presence in the community could attract undue public attention, create unusual concern, or diminish the seriousness of the offense; or
- (3) The inmate has been granted a furlough in the past 90 days.

§ 570.37 Procedures to apply for a furlough.

(a) *Application.* Inmates may submit a furlough application to staff, who will review it for compliance with these regulations and Bureau policy.

(b) *Notification of decision.* An inmate will be notified of the Warden's decision on the furlough application. Where a furlough application is denied, the inmate will be notified of the reasons for the denial.

(c) *Appeal.* An inmate may appeal any aspect of the furlough program through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

§ 570.38 Conditions of furlough.

- (a) An inmate who violates the conditions of a furlough may be considered an escapee under 18 U.S.C. 4082 or 18 U.S.C. 751, and may be subject to criminal prosecution and institution disciplinary action.
 - (b) A furlough will only be approved if an inmate agrees to the following conditions and understands that, while on furlough, he/she:
 - (1) Remains in the legal custody of the U.S. Attorney General, in service of a term of imprisonment;
 - (2) Is subject to prosecution for escape if he/she fails to return to the institution at the designated time;
 - (3) Is subject to institution disciplinary action, arrest, and criminal prosecution for violating any conditions(s) of the furlough;
 - (4) May be thoroughly searched and given a urinalysis, breathalyzer, and other comparable test, during the furlough or upon return to the institution, and must prepay the cost of such test(s) if the inmate or family members are paying the other costs of

the furlough. The inmate must pre-authorize all testing fee(s) to be withdrawn directly from his/her inmate deposit fund account; and

(5) Must contact the institution (or United States Probation Officer) in the event of arrest, or any other serious difficulty or illness.

(c) While on furlough, the inmate must not:

- (1) Violate the laws of any jurisdiction (Federal, State, or local);

(2) Leave the area of his/her furlough without permission, except for traveling to the furlough destination, and returning to the institution;

(3) Purchase, sell, possess, use, consume, or administer any narcotic drugs, marijuana, alcohol, or intoxicants in any form, or frequent any place where such articles are unlawfully sold, dispensed, used, or given away;

(4) Use medication that is not prescribed and given to the inmate by the institution medical department or a licensed physician;

(5) Have any medical/dental/surgical/psychiatric treatment without staff's

written permission, unless there is an emergency. Upon return to the institution, the inmate must notify institution staff if he/she received any prescribed medication or treatment in the community for an emergency;

(6) Possess any firearm or other dangerous weapon;

(7) Get married, sign any legal papers, contracts, loan applications, or conduct any business without staff's written permission;

(8) Associate with persons having a criminal record or with persons who the inmate knows to be engaged in illegal activities without staff's written permission;

(9) Drive a motor vehicle without staff's written permission, which can only be obtained if the inmate has proof of a currently valid drivers license and proof of appropriate insurance;

(10) Return from furlough with anything the inmate did not take out with him/her (for example, clothing, jewelry, or books); or

(11) Comply with any other special instructions given by the institution.

[FR Doc. E6-20612 Filed 12-5-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2006-0545; FRL-8251-6]

Approval and Promulgation of Implementation Plans; Ohio; Volatile Organic Compound Emission Control Measures for Cincinnati and Dayton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 9, 2006, the Ohio Environmental Protection Agency (Ohio EPA) submitted several volatile organic compound (VOC) rules for approval into the State Implementation Plan (SIP). The primary purpose of the rules is to partially replace the VOC reductions from Ohio's vehicle inspection and maintenance (E-Check) program (which ended on December 31, 2005) in the Cincinnati and Dayton areas. These replacement rules include a provision requiring the use of lower emitting solvents in cold cleaner degreasers, the use of more efficient auto refinishing painting application techniques and a rule requiring the use of lower emitting portable fuel containers. These rules are approvable because they contain more stringent requirements than Ohio's existing rules and they are enforceable.

Ohio has correctly calculated their VOC emission reduction impact. EPA is also approving several other rule revisions, all of which meet EPA requirements, including an exemption for its printing rules, a site-specific rule for an aerosol can filling facility, elimination of the fluid catalytic cracking unit limitations for a Marathon Petroleum LLC facility, and an alternative leak detection and repair program for the Premcor Lima Refinery.

DATES: Comments must be received on or before January 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0545, by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.
- E-mail: mooney.john@epa.gov.
- Fax: (312) 886-5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2006-0545. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the

public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Steven Rosenthal at (312) 886-6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Action Is EPA Taking Today?
- III. What Is the Purpose of This Action?
- IV. What Is EPA's Analysis of Ohio's Submitted VOC Rules?
- V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions