



[4410-05P]

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 527**

[BOP-1165-F]

RIN 1120-AB65

**Transfer of Offenders to Foreign Countries**

**AGENCY:** Bureau of Prisons, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) streamlines regulations on transferring offenders to foreign countries by eliminating language that constitutes agency guidance to staff. Guidance language will be retained in the relevant Bureau policy.

**DATES:** This rule is effective on [Insert date 30 days after publication in Federal Register].

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

**SUPPLEMENTARY INFORMATION:**

In this document, the Bureau of Prisons (Bureau) streamlines regulations on transferring offenders to or from foreign countries by eliminating language that constitutes agency guidance to staff. Guidance language will be retained in the relevant Bureau policy. We published a proposed rule on this subject on January 2, 2014 (79 FR 78). We received 6 comments on the proposed rule. Five of those comments were generally in support of the rule. One comment raised issues which we respond to below.

First, the commenter suggested that "the Bureau of Prisons undertake a more substantial revision of the section that addresses notification of inmates, along with rewriting the agency guidance to staff on this issue as it appears in Program Statement 5140.40." The commenter refers to § 527.43, Notification of inmates, which indicates that inmates will be notified regarding information on international offender transfers through the institution's admission and orientation program and by the case manager of an inmate who is a citizen or national of a treaty nation. This section indicates that the inmate must be given individual notice of the availability of the transfer program, provided with an opportunity to inquire about transfer to the country of which the inmate is a citizen or national, and informed of the procedures set forth in this

part. This section was rewritten for clarity. No substantive language or requirements were changed in this section. We note, however, that per the commenter's request, agency guidance to staff in the corresponding Program Statement on Transfer of Offenders To or From Foreign Countries is concurrently being rewritten to accommodate the revised regulations and to reflect changes in agency guidance to staff.

The commenter also questioned whether translations of the notifications and/or Transfer Inquiry Forms described in § 527.43 (Notification of inmates) and § 527.44 (Request for transfer to country of citizenship or nationality) can be obtained in languages other than English, Spanish, and French. The Transfer Inquiry form has, in fact, been translated into the languages of all of the countries with which the United States have Treaty agreements. The Bureau is in the process of posting these forms to our public web site. Unit staff currently provides the translated forms to inmates who have expressed an interest in Treaty Transfer.

The commenter was concerned that the "process of notifying inmates about the transfer program and forwarding their applications to the Department of Justice is unnecessarily lengthy and has many problems. A few case managers still neglect to offer the information and an opportunity to apply for

transfer to inmates at the admission and orientation program. Many miss the 60-day deadline within which transfer applications are supposed to be mailed to Washington. Most seriously, some case managers actively obstruct the program in the way they handle the forms after the inmate expresses an interest in transfer, and they seem to act with total impunity." The Bureau agrees that timeliness issues have occurred in the past. Effective December 2013, the Bureau began monitoring the Treaty Transfer Case Management Activity (CMA) Assignments to ensure they are entered within 28 calendar days from initial commitment. The Bureau will now ensure that a Treaty Transfer application packet is received in Central Office within 60 days of the CMA assignment indicating an inmate has expressed an interest in Treaty Transfer.

For the aforementioned reasons, the Bureau now finalizes the proposed rule published on January 2, 2014, without change.

### **Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1(b), "Principles of Regulation." The Director, Bureau of Prisons, has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f),

and accordingly this rule has not been reviewed by the Office of Management and Budget.

### **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 EO 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 section 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 527

District of Columbia, Foreign relations, Intergovernmental relations, Prisoners, Women.

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Charles E. Samuels, Jr.  
Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301 and 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96, we amend 28 CFR part 527 as set forth below.

**SUBCHAPTER B - INMATE ADMISSION, CLASSIFICATION, AND TRANSFER**  
**PART 527 - TRANSFERS**

1. The authority citation for 28 CFR part 527 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100-4115, 4161-4166, (Repealed in part as to offenses committed on or after November 1, 1987), 4201-4218, 5003, 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.

2. Revise subpart E to read as follows:

**Subpart E - Transfer of Offenders to Foreign Countries**

Sec.

- 527.40 Purpose and scope.
- 527.41 Definitions.
- 527.42 Limitations on transfer of offenders to foreign countries.
- 527.43 Notification of inmates.
- 527.44 Request for transfer to country of citizenship or nationality.
- 527.45 Bureau determination on request for transfer.
- 527.46 Transfer procedures.
- 527.47 Transfer of state prisoners to other countries.
- 527.48 Transfer of American national prisoners from foreign countries.

**Subpart E - Transfer of Offenders to Foreign Countries**

**§ 527.40 Purpose and scope.**

This subpart describes the Bureau of Prisons (Bureau) procedures regarding its role in the transfer of offenders to foreign countries and the transfer of American offenders back to the United States pursuant to 18 U.S.C. 4100, et seq., and applicable transfer treaties and conventions.

**§ 527.41 Definitions.**

For the purpose of this subpart, the following definitions apply.

(a) Treaty nation. A country with which the United States has a transfer treaty relationship either through a bilateral treaty or a multilateral transfer convention.

(b) State prisoner. An inmate serving a sentence imposed in a court in one of the states of the United States, or in a territory or commonwealth of the United States.

(c) Departure institution. The Bureau of Prisons institution to which an eligible inmate is finally transferred for return to the country of which the inmate is a citizen or national.

(d) Admission institution. The Bureau of Prisons institution where a United States citizen or national-inmate is first received from a treaty nation.

**§ 527.42 Limitations on transfer of offenders to foreign countries.**

The transfer treaties and conventions, as well as 18 U.S.C. 4100-4115, impose specific requirements that an inmate must satisfy in order to be returned to his or her country of

citizenship or nationality.

**§ 527.43 Notification of inmates.**

Foreign national inmates will be notified about the International Prisoner Transfer Program and the procedures to follow to apply for transfer as follows:

(a) Through information provided in the institution's admission and orientation program; and

(b) Through individual notice given to an inmate who is a citizen or national of a treaty nation. The notice must:

(1) Reiterate the availability of the transfer program;

(2) Provide the inmate with an opportunity to inquire about transfer to the country of which the inmate is a citizen or national; and

(3) Inform the inmates of the procedures set forth in this part.

**§ 527.44 Request for transfer to country of which inmate is a citizen or national.**

An inmate who is eligible for and desires to transfer to the country of which the inmate is a citizen or national for service of a sentence imposed in a United States Court must indicate the inmate's interest by completing and signing the

appropriate form and giving it to Bureau staff for further processing.

**§ 527.45 Bureau determination on request for transfer.**

The following is the process by which determinations are made on an inmate's request to be transferred to the country of which the inmate is a citizen or national to serve a sentence imposed in a United States Court.

(a) Warden's determination. Upon verifying that the inmate is eligible for transfer, the Warden forwards all relevant information, including a complete application package, to the Assistant Director, Correctional Programs Division, Central Office.

(b) Central Office and Department of Justice determination.

(1) The Assistant Director, Correctional Programs Division reviews the submitted material and forwards the application package to the Department of Justice for review.

(2) The Department of Justice notifies the inmate of the determinations made.

**§ 527.46 Transfer procedures.**

(a) Treaty nation determination. If the Department of Justice approves the transfer request, the treaty nation will be

asked if it consents to the transfer of its citizen or national. The inmate will be informed of the determination made by the treaty nation.

(b) Transfer to departure institution. The Bureau and the Department of Justice will arrange for the inmate to be transferred to an appropriate departure institution.

(c) Consent verification hearing. If the treaty nation consents to the transfer, the United States will arrange a consent verification hearing for the prisoner as required by 18 U.S.C. 4107, 4108. This hearing is held before a U.S. Magistrate Judge or other judicial officer as specified in sections 4107 and 4108. The Bureau must ensure that the prisoner is available and present at the consent verification hearing.

(d) Transfer to departure institution and foreign retrieval of inmate. If the foreign national prisoner gives consent to transfer at the consent verification hearing, the Department of Justice will notify the treaty transfer nation.

**§ 527.47 Transfer of state prisoners to other countries.**

The Bureau of Prisons may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating the transfer to the treaty

nation. Once the state prisoner has consented to the transfer at the consent verification hearing, the Bureau assumes custody of the prisoner. The state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. 5003).

**§ 527.48 Transfer of American national prisoners from foreign countries.**

The Bureau of Prisons is responsible for:

(a) Sending escorts to foreign countries to retrieve American national prisoners who have been approved for transfer to the United States and who have had their consent verified at the consent verification hearing specified in 18 U.S.C. 4108; and

(b) Making logistical arrangements for the transfer and coordinating with the United States Parole Commission for proceedings to determine how the sentence will be administered.

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