



DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 345 and 545

[Docket No. BOP-1181-P]

RIN 1120-AB81

Reservation of Funds for Reentry under the First Step Act

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (BOP) proposes to add a regulation implementing a provision of the First Step Act (FSA) that requires Federal Prison Industries (FPI) and the BOP to reserve a portion of the compensation inmates would otherwise receive for working to assist these inmates with costs associated with release from prison upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 pm Eastern Time on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please submit electronic comments through the regulations.gov website, or mail written comments to the Legislative & Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons, (202) 353-4885.

SUPPLEMENTARY INFORMATION:

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. If you want to submit personal

identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT section.

I. DISCUSSION OF THE PROPOSED RULE

In this document, the BOP proposes to modify regulations on compensation for FPI inmate workers in 28 CFR part 345 and on inmate work and performance pay in part 545 to conform with recent legislative changes enacted in the First Step Act of 2018 (FSA), Public Law 115-391, December 21, 2018, 132 Stat 5194. Section 605(c) of the FSA amends 18 U.S.C. 4126(c)(4) to indicate that inmates compensated under this section shall have at least 15 percent of their compensation reserved and made available to assist them with costs associated with release from prison.

The section amended by the FSA, 18 U.S.C. 4126, is entitled “Prison Industries Fund; use and settlement of accounts,” and the amended subparagraph (c) refers to “Federal Prison

Industries” (FPI) as the “corporation” and the “Prison Industries Fund” as “the fund.” See 18 U.S.C. 4126(a). Subparagraph (c)(4) was amended to indicate that FPI “is authorized to employ the fund . . .” to pay “compensation to inmates employed in any industry, or performing outstanding services in institutional operations, not less than 15 percent of such compensation for any inmate shall be reserved in the fund or a separate account and made available to assist the inmate with costs associated with release from prison” See 18 U.S.C. 4126(c)(4).

The FSA therefore authorizes FPI to pay inmates who are “employed in any industry.” As provided in 28 CFR 345.10, the BOP strives to provide work to all inmates confined in BOP facilities to the extent practicable in order to allow inmates to gain knowledge, skills, and work habits to assist them upon release. Although there is no statutory requirement that inmates be paid for work in an industrial assignment, 18 U.S.C. 4126 provides for discretionary compensation to inmates employed by FPI. Section 345.50 further indicates that, in accordance with 18 U.S.C. 4126, FPI provides compensation to FPI inmate workers.

The FSA also amended 18 U.S.C. 4126(c)(4) by directing that “not less than 15 percent” of compensation paid to inmates “performing outstanding services in institutional operations” should also be “reserved in the fund or a separate account and made available to assist the inmate with costs associated with release from prison.”

The new provision added by the FSA in 18 U.S.C. 4126(c)(4) requires the reservation of 15 percent of “such compensation” to be made available for an inmate’s costs associated with prison release. Therefore, the FSA mandates that FPI must reserve 15 percent of the compensation that is paid to inmates employed by FPI, under 28 CFR part 345, to be made available to those inmates for costs associated with their release from prison. The FSA further mandates that the BOP must reserve 15 percent of performance pay, bonus pay, and special bonus pay, under 28 CFR part 545, to be made available to those inmates for costs associated with their release from prison.

The BOP now proposes to amend 28 CFR 345.51 regarding FPI pay, and 545.26(e) through (g) regarding inmate performance pay, bonus pay, and special bonus pay, to add provisions indicating that 15 percent of an inmate's pay, or other amount as set by statute, will be reserved (i.e., encumbered) to assist the inmate with costs associated with release from prison. Specifically, the reserved funds will be made available to the inmate upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release. Holding the funds until the inmate leaves BOP secure custody via one of the previously mentioned ways will ensure the availability of those funds on the inmate's first day of reentry, giving full effect to Congress's directive that these funds be reserved to help inmates with costs they will incur once they release from prison.

II. REGULATORY ANALYSES

Executive Orders 12866 and 13563 (Regulatory Review).

This proposed rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to an existing BOP program that applies to sentenced inmates in the custody of the Federal Bureau of Prisons, and does not apply to inmates in study/observation; pretrial detainees; or inmates in holdover status pending designation.

This rulemaking is necessary to implement section 605(c) of the FSA, codified at 18 U.S.C. 4126(c)(4). The reserved funds will remain in the existing Inmate Deposit Fund until an inmate completes their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

One of the expected benefits of this regulation is that inmates will be more financially prepared for reentry. The amount each inmate saves for reentry will vary widely based on the amount of time the inmate works in FPI, or works an institution job and receives performance,

bonus, or special bonus pay. As a result of inmates' having additional reentry funds, the public may save on indirect societal costs related to inmate releases into the community. However, at this time the BOP cannot, with any degree of accuracy, estimate the monetary value of the costs and savings of this rulemaking. However, the BOP would expect any anticipated costs and savings generated by this rulemaking to have minimal effect on the economy.

This proposed rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to an existing BOP program that applies to sentenced inmates in the custody of the Federal Bureau of Prisons, and does not apply to inmates in study/observation; pretrial detainees; or inmates in holdover status pending designation.

Executive Order 13132 (Federalism)

This regulation will not have substantial direct effect 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 regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 (Plain Language)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988."

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 regulation pertains to Federal inmates who work in FPI, or who work institution jobs and receive

performance, bonus, or special bonus pay, and its economic impact is limited to moneys under the control of FPI or BOP.

Unfunded Mandates Reform Act of 1995

This regulation 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 (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Parts 345 and 545

Prisoners.

Colette S. Peters,

Director, Federal Bureau of Prisons.

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, Federal Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR parts 345 and 545 as follows:

PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS

1. The authority citation for part 345 continues to read as follows:

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. Amend § 345.51 by redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively, and adding a new paragraph (b)(3) to read as follows:

§ 345.51 Inmate pay.

* * * * *

(b) * * *

(3) Fifteen percent of each inmate’s pay under this part, or other amount as set by statute, will be reserved to assist the inmate with costs associated with release from prison. The reserved funds will be made available to the inmate upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

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PART 545—WORK AND COMPENSATION

3. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 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.

4. Amend § 545.26, by adding paragraph (e)(4), and revising paragraphs (f) and (g) to read as follows:

§ 545.26 Performance pay provisions.

* * * * *

(e) * * *

(4) Fifteen percent of an inmate’s pay under this paragraph, or other amount as set by statute, shall be reserved to assist the inmate with costs associated with release from prison. The reserved funds will be made available to the inmate upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

(f) *Bonus pay.* (1) An inmate worker or program participant may receive special bonus pay based on the inmate’s exceptional accomplishments or appreciable contributions to the work assignment. For example, an inmate who works in excess of the scheduled work day may qualify for bonus pay.

(2) When the supervisor of an inmate worker or program participant believes the inmate has performed exceptionally well, the supervisor may forward a written recommendation that the inmate received a special bonus, along with justification for the special bonus recommendation, to the Department Head for approval.

(3) Fifteen percent of an inmate's pay under this paragraph, or other amount as set by statute, shall be reserved to assist the inmate with costs associated with release from prison.

The reserved funds will be made available to the inmate upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

(g) *Special bonus pay.* (1) An inmate may receive special bonus pay based on the inmate's exceptional work in a temporary job assignment that has been previously identified by the Warden, and approved by the Regional Director, as critical to the institution.

(2) When the supervisor of an inmate worker believes the inmate has performed exceptionally well, the supervisor may forward a written recommendation that the inmate received a special bonus, along with justification for the special bonus recommendation, to the Department Head for approval.

(3) Fifteen percent of an inmate's pay under this paragraph, or other amount as set by statute, shall be reserved to assist the inmate with costs associated with release from prison.

The reserved funds will be made available to the inmate upon completion of their sentence through release from custody, placement in pre-release custody (e.g., home confinement or Residential Reentry Center), or conditional release.

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