radius of Boyne City Municipal Airport, and within 2 miles each side of the 080 degree bearing from the airport extending from the 9.9-mile radius to 11.9 miles east of the airport.

Issued in Fort Worth, Texas, on March 26, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–7932 Filed 4–2–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1149–F]

RIN 1120–AB49

Inmate Communication With News Media: Removal of Byline Regulations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes an interim rule published April 23, 2010, regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition.

DATES: This rule is effective on May 3, 2012.

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) finalizes an interim rule regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition. The interim rule was published on April 23, 2010 (75 FR 21163), and a technical correction (correcting the effective date of the interim rule to May 7, 2010) was published on May 7, 2010 (75 FR 25110). We received one comment on the interim rule, which we address below.

The commenter first objected to the Bureau's interim rule as having been promulgated incorrectly under the Administrative Procedure Act (APA) (5 U.S.C. 553, *et seq.*). The commenter stated that the Bureau did not articulate ''good cause'' under the APA to forego normal notice-and-comment rulemaking procedures.

In response, the Bureau explained its ''good cause'' in the interim rule. The Bureau stated that the APA (5 U.S.C. § 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Bureau indicated it would be impracticable to invite public comment on the result of a court order invalidating a regulatory provision because prompt implementation of the court order was necessary to afford inmates the benefit of the court's decision and to protect the Bureau from liability arising from potential application of an invalidated regulation.

The commenter states that it was not enough for the Bureau to recognize that the court in *Jordan* v. *Pugh,* 504 F.Supp.2d 1109 (D. Colo. 2007), issued a decision invalidating the byline language of § 540.20(b). In the interim rule, the Bureau stated that the court found that not all inmate publishing under a byline jeopardizes security, and overruled the byline portion of the provision as facially overbroad for prohibiting all such activity. The commenter posits that the Bureau should have mentioned the ultimate holding in that case. We therefore do so below. The *Jordan* court held as follows:

> Court concludes that the Byline Regulation violates the First Amendment rights of Mr. Jordan, other inmates in federal institutions, and the press * * *
>
> *It is therefore ordered* that judgment shall enter in favor of the Plaintiff, Mark Jordan, and against the Defendants, Michael V. Pugh, J. York, R.E. Derr, B. Sellers, and Stanley Rowlett, in their official capacities:
>
> (1) *Declaring* that the language of 28 CFR 540.20(b), ''The inmate may not * * * publish under a byline'', violates the First Amendment to the United States Constitution; and
>
> (2) *Enjoining* the Federal Bureau of Prisons from punishing any inmate for violation of 28 CFR 540.20(b)'s provision that: ''The inmate may not * * * publish under a byline.''

Id. at 1126.

In so holding, the court invalidated 28 CFR 540.20(b)'s ''byline'' language, a fact that the Bureau indicated in the preamble to the interim rule. The commenter states that ''rulemaking prompted by a significant court ruling that holds that a regulation 'violates the First Amendment rights' of the press deserves the full notice-and-comment process specified by law, so that the public may review the Court's ruling, evaluate the Bureau's response, and comment.'' The commenter cites to no authority for this statement, and does not take into consideration that the public was able to review the decision when it was published in 2007. The Bureau's response is simple—remove the invalidated regulations. The public was given the opportunity to comment on the Bureau's action during the comment period for the interim rule.

The commenter also rejects the Bureau's statement that the interim rule was necessary to protect the Bureau from liability arising from potential application of an invalidated regulation because the interim rule was published in 2010 whereas the decision was published in 2007. The commenter states that the Bureau should have issued a notice to Bureau staff in 2007 to not enforce the invalidated regulations. The Bureau did, in fact, issue mandatory guidance to its staff on November 27, 2007, which stated that the Bureau

> is revising these regulations to remove the byline provision invalidated by the court. Until that occurs, however, an inmate's publishing under a byline, by itself, can no longer support disciplinary action * * * [W]hile the court expressly limited its holding only to the byline language of § 540.20(b), neither should Bureau staff discipline inmates for publishing under a byline under the identical provision in § 540.62(d).

The commenter then argues that the provision in the rule stating that inmates may not act as reporters violates the First Amendment of the U.S. Constitution. We note that this provision was unchanged by the interim rule. However, the commenter indicates that ''[b]y repealing the 'byline language' and leaving the prohibition on acting as a reporter, the Bureau has not correctly responded to the holding of the *Jordan* case.''

We note that the holding in *Jordan* was limited to invalidation of the ''byline'' language, not the ''reporter'' language. In *Jordan,* the court referred to a memorandum issued by the Bureau's Office of General Counsel on October 20, 2006, in which the Bureau clarified to staff that ''acting as a reporter'' means doing so ''on a regular or repeated basis,'' as opposed to a one-time publication under a byline. This is an important distinction because regular, repeated, compensated activity as a reporter signifies that the inmate is conducting a business, which is prohibited by the Bureau's inmate discipline regulations. Prevention of conducting a business was recognized by the *Jordan* court as a ''legitimate penological objective.'' *Id.* at 1123.

Also, the court noted that the plaintiff, a federal inmate, had ''never acted, requested to act or has been requested to act as a reporter,'' and therefore chose to restrict its decision to the ''byline'' language without addressing the ''reporter'' language. In footnote 25, the court stated that the reporter ''portion of the regulation is not before the Court.'' Further, when the Bureau attempted to justify the ''byline'' language by indicating that publishing under a byline amounts to unauthorized conducting of a business, the court stated as follows:

> [T]his argument would carry more weight if the Court were addressing the portion of the Byline Regulation prohibiting inmates from acting as reporters. The role of a reporter envisions a relationship between the news media and the inmate, for which the inmate is compensated. But the scope of this lawsuit does not include the reporter portion of the regulation, and the danger of an inmate conducting a business simply because the inmate publishes a writing under a byline in the news media is much more remote.

Id. at 1123.

The court's recognition of the distinction between ''publishing under a byline'' and ''acting as a reporter'' is clear from the language of the *Jordan* opinion. Likewise, the court's recognition of this distinction is clear in its holding invalidating *only* the ''byline'' portion of the regulation but not the ''reporter'' portion. We therefore decline to remove the provision in the regulation prohibiting acting as a reporter.

For the aforementioned reasons, the interim rule published on April 23, 2010 (75 FR 21163), is hereby finalized without change.

Executive Order 12866

This regulation does not fall within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation.

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 regulation 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 regulation pertains to the correctional management of offenders and immigration detainees 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 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, 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 regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation 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 540

Prisoners.

For the aforementioned reasons, the interim rule published on April 23, 2010 (75 FR 21163), is hereby finalized without change.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

[FR Doc. 2012–7971 Filed 4–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Bloodborne Pathogens Standard; Corrections and Technical Amendment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections and technical amendment.

SUMMARY: OSHA is making a technical amendment to its Bloodborne Pathogens Standard by moving the rule's paragraph on sharps injury log requirements from paragraph (i), entitled ''Dates,'' to paragraph (h), entitled ''Recordkeeping.''

DATES: The effective date for the corrections and technical amendment to the standard is April 3, 2012.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

General and technical information: Andrew Levinson, Director, OSHA Office of Biological Hazards, OSHA, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2001, OSHA revised the Bloodborne Pathogens Standard (29 CFR 1910.1030) to include requirements of the Needlestick Safety and Prevention Act, November 6, 2000 (Pub. L. 106–430). These revisions included adding a fifth subparagraph, entitled ''Sharps injury log,'' to paragraph (h) of § 1910.1030 (66 FR 5325). However, in the July 1, 2001, publication of the CFR, subparagraph (5) was under paragraph (i) (''Dates''). These corrections and technical amendment relocate subparagraph (5) under paragraph (h) (''Recordkeeping'').

List of Subjects in 29 CFR Part 1910

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

III. Authority and Signature

David Michaels, MPH, Ph.D., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210,