Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of Appendix C to Part 5, which was proposed to be added at 70 FR 14428, March 22, 2005, add the following new paragraph ''4'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

4. The General Counsel Electronic Management System (GEMS) consists of records and information created or collected by attorneys for the Bureau of Immigration and Customs Enforcement, which will be used in the preparation and presentation of cases before a court or other adjudicative body. ICE attorneys work closely with their investigators throughout the process of adjudicating immigration cases. GEMS allows ICE attorneys to store all the materials pertaining to immigration adjudications, including documents related to investigations, case notes and other hearing related information, and briefs and memoranda of law related to cases. Having this information in one system should not only facilitate the work of the ICE attorneys involved in the particular case, but also will provide a legal resource for other attorneys who are adjudicating similar cases. The system will also provide management capabilities for tracking time and effort expended in the preparation and presentation of cases.

Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, which in some cases may be classified, and reveal investigative interest on the part of DHS or ICE. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation pertaining to an immigration matter, which in some cases may be classified, and prematurely reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal immigration law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and for the protection of national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject of the nature or existence of an investigation, which could cause interference with the investigation, a related inquiry or other law enforcement activities, some of which may be classified.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with ICE's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: March 23, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–4693 Filed 3–31–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP Docket No. 1135–P]

RIN 1120-AB35

Limited Communication for Terrorist Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes a new regulation that allows for limiting the communication opportunities of inmates charged with, convicted of, or detained in relation to, an offense under Title 18 U.S.C. chapters 113B or 115; or are charged with having engaged in, have engaged in, are detained in relation to, or who have an identifiable link to terrorist-related activity. The Warden may only impose communication restrictions under this regulation, when the Federal Bureau of Investigation (FBI), or other Federal law enforcement agency, makes a request to the Bureau to have an individual inmate's communications limited, unless Bureau of Prisons information indicates a similar need to impose the communication restriction. Once this request by the FBI or other Federal law enforcement agency is made, the Warden of the facility where the inmate is housed will consider whether such a limitation is necessary to ensure the

safety and security of the institution; protection of the public; or national security. If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

DATES: Comments are due by June 2, 2006.

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 regulation 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: In this document, the Bureau issues a new regulation that allows for limiting the communication opportunities of inmates charged with, convicted of, or detained in relation to an offense under Title 18 U.S.C. Chapters 113B or 115; or are charged with having engaged in, have engaged in, are detained in relation to, or who have an identifiable link to terrorist-related activity.

Under this regulation, when the Federal Bureau of Investigation (FBI), or other Federal law enforcement agency, makes a request to the Bureau to have an individual inmate's communications limited, the Warden of the facility where the inmate is housed will consider whether such a limitation is necessary to ensure the safety and security of the institution; protection of the public; or national security. The Warden may also initiate the process if Bureau of Prisons information indicates a similar need to impose communication restrictions. If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

While this regulation may allow for limiting the communication of inmates to whom it is applied, it will not extinguish their monitored communication abilities absent abuse or violations committed by the inmate. With this regulation, the Bureau seeks, when warranted, on a case-by-case basis, to minimize communication while still accommodating the rights guaranteed by the First Amendment to petition for redress of grievances. By limiting the communications of these inmates, the Bureau seeks to balance First Amendment rights with its obligations to ensure the safety and security of the institution; protection of the public; and/or national security.

The proposed regulation would give the Bureau authority for imposing limits and restrictions on the communications of inmates in the Bureau's custody based on criteria or evidence, either from outside sources (such as other federal agencies) or from internal sources (such as intelligence gained through observation of inmates in Bureau custody). Communications would be limited if such evidence indicates, inter alia, a high degree of potential risk to national security. However, this regulation will be applied differently from regulations in 28 CFR part 501, which authorize the Attorney General to impose special administrative measures (SAMs).

Under 28 CFR part 501, SAMs are imposed after approval by the Attorney General and are generally based on information from the FBI and the U.S. Attorney's Office (USAO), but are typically not based solely on information from internal Bureau of Prisons sources. Unlike 28 CFR part 501, the proposed regulations allow the Bureau to impose communication limits upon request from FBI or other Federal law enforcement agency, or if Bureau of Prisons information indicates a similar need to impose communication restrictions, evidence which does not rise to the same degree of potential risk to national security or risk of acts of violence or terrorism which would warrant the Attorney General's intervention by issuance of a SAM.

Furthermore, while SAMs have the potential to restrict communication entirely, this regulation delineates a floor of limited communication, beneath which the Bureau cannot restrict unless precipitated by the inmate's violation of imposed limitations, and then only as a disciplinary sanction following due process procedures in 28 CFR part 541.

Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if communicated to groups willing to become martyrs, or to provide equipment or logistics to carry out terrorist-related activities. The potential ramifications of this activity outweigh the inmate's interest in unlimited communication with persons in the community other than immediate family members, U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney.

Communication related to terrorist-related activity can occur in codes which are difficult to detect and extremely time-consuming to interpret. Inmates involved in such communication, and other persons involved or linked to terrorist-related activities, take on an exalted status with other like-minded individuals. Their communications acquire a special level of inspirational significance for those who are already predisposed to these views, causing a substantial risk that such recipients of their communications will be incited to unlawful terrorist-related activity.

The danger of coded messages from prisoners has been recognized by the courts. *See Turner* v. *Safley*, 482 U.S. 78, 93 (1987) (''In any event, prisoners could easily write in jargon or codes to prevent detection of their real messages.''); *United States* v. *Salameh,* 152 F.3d 88, 108 (2nd Cir. 1998) (''Because Ajaj was in jail and his telephone calls were monitored, Ajaj and Yousef spoke in code when discussing the bomb plot.''); *United States* v. *Johnson,* 223 F.3d 665, 673 (7th Cir. 2000) (''And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code.''); *United States* v. *Hammoud,* 381 F.3d 316, 334 (4th Cir. 2004) (''A conversation that seems innocuous on one day may later turn out to be of great significance, particularly if the individuals are talking in code.''); *United States* v. *Moncivais,* 401 F.3d 751, 757 (6th Cir. 2005) (noting police testimony that seemingly nonsensical conversations could be in code and interpreted as indicative of drug dealing activity). Also, an Al Qaeda training manual contains the following advice regarding communications from prison: ''Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison. The importance of mastering the art of hiding messages is self evident here.''

There have been cases of imprisoned terrorists communicating with their followers regarding future terrorist activity. For example, after El Sayyid Nosair assassinated Rabbi Kahane, he was placed in Rikers Island, where ''he began to receive a steady stream of

visitors, most regularly his cousin El-Gabrowny, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody * * *'' *United States* v. *Rahman,* 189 F.3d 88, 105–06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States* v. *Sattar*, 314 F.Supp.2d 279, 288–89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication being sent to or from inmates in Bureau custody, this regulation allows the Bureau, upon request from FBI or other Federal law enforcement agency or if Bureau of Prisons information indicates a similar need to impose communication restrictions, to limit the communication of inmates, individually identified under this regulation, to immediate family members, U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and to protect inmates' access to courts and other government officials in order to raise issues related to their incarceration or their conditions of confinement, while minimizing the threat to the safety and security of the institution and protecting the public and national security.

The proposed regulation provides that the initial decision regarding whether an inmate's communication will be limited will be made when FBI or another Federal law enforcement agency makes a request to the Bureau to have an inmate's communication limited, or if Bureau of Prisons information indicates a similar need to impose communication restrictions.

Upon receiving such a request from the FBI or other Federal law enforcement agency, the Warden of the facility where the inmate is housed will consider whether such limitations are necessary to ensure the safety and security of the institution; protection of the public; or national security.

If the Warden deems such limitations necessary, that inmate's communications will be so limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

The Warden is in the unique position of having access to a wide variety of information regarding an inmate's past and present activity and propensities, and can analyze the totality of an inmate's circumstances to determine whether to limit communications. The Warden will also be aware of national security concerns, and can assess the propensity of inmates to act in a way that presents a national security risk, such as attempting to recruit others, based on available information.

Currently, there are several Bureau regulations which underscore the Warden's authority and unique ability to make determinations and take action to ensure protection of the public. For instance, in the Bureau's Federal regulations in volume 28 of the Code of Federal Regulations:

- Sections 524.70–524.76, regarding the Central Inmate Monitoring (CIM) System, allows the Warden to evaluate and determine whether certain inmates present special needs for management and therefore require a higher level of review for transfers, temporary releases, or community activities, not to preclude such inmates from such activities where otherwise eligible, but to provide necessary protection to all concerned. Section 540.14(d) states that the Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity.
- Section 540.15 allows the Warden to place an inmate on restricted general correspondence for several reasons, including if the inmate is a security risk, threatens a government official, or otherwise attempts to commit illegal activities.
- Section 540.100(a) states that inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. More specifically, § 540.101(a)(3) allows the Associate Warden to deny placement of a telephone number on an inmate's telephone list if she/he determines that there is a threat to the public. § 540.102 allows for monitoring of inmate telephone calls, also to protect the public.
- Section 545.23(d) provides that, when making inmate work assignments, Wardens must consider the institution's security and operational needs, and [the assignment] should be consistent with the safekeeping of the inmate and protection of the public.
- Section 570.35(a) requires the Warden to make a determination regarding whether granting an inmate a furlough if the presence of that inmate in the community could attract undue public attention or create unusual concern.

When applied to individual inmates under this regulation, the Bureau will actively monitor the frequency, volume, and content of their limited communications, except those to/from the inmate's attorney or a verified consular officer. To effectively and efficiently allow monitoring and review of these inmates' communications with immediate family members, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to three pieces of paper, double-sided, once per week to and from a single recipient;
- Telephone communication may be limited to a single completed call per calendar month for up to 15 minutes; and
- Visiting may be limited to one hour each calendar month.

Absent abuse or violations by the inmate, this regulation does not limit the frequency or volume of written communication with U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney.

By limiting the frequency and volume of the communication to/from inmates identified under this regulation, we will reduce the amount of communication requiring monitoring and review. Reducing the volume of communications will help ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, and thereby reducing the terrorism threat to the public and national security.

Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subsection, but additional limitations will occur only to the extent possible under this regulation and according to the procedures in this subsection. Unmonitored communications with verified attorneys and consular officers may be further limited in the form of monitoring only as provided in part 501 and 28 CFR part 543. Inmates may also be subject to disciplinary action or criminal prosecution for abusing or violating limits imposed under this subsection.

Executive Order 12866

This regulation falls 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 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.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 540 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. Chapters 113b and 115, 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part 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, 530C(b)(6).

2. Add a new subpart J, to read as follows:

Subpart J—Limited Communication of Terrorist Inmates

Sec.
540.200 Purpose and Scope.
540.201 Definitions.
540.202 Limited Written Correspondence.
540.203 Limited Telephone Communication.
540.204 Limited Visiting.
540.205 Procedures.

Subpart J—Limited Communication of Terrorist Inmates

§ 540.200 Purpose and Scope.

(a) This subpart authorizes and defines the Federal Bureau of Prisons' (Bureau) authority to limit the communication of inmates (as defined in 28 CFR 500.1(c)) who have an identifiable link to terrorist-related activity as provided in paragraph (b) of this section.

(b) This subpart may be applied to inmates in Bureau custody who are not under special administrative measures as described in 28 CFR part 501, who meet the criteria in § 540.205(b), and who:

(1) Are charged with, convicted of, or detained in relation to, an offense under Title 18 U.S.C. Chapters 113B or 115, or

(2) Are charged with having engaged in, have engaged in, are detained in relation to, or have an identifiable link to terrorist-related activity.

(c) The regulations in this subpart supercede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in 28 CFR part 540, or any other regulations in this chapter, except 28 CFR part 501.

§ 540.201 Definitions.

As used in this subpart:

(a) *Terrorist-related activity* means any activity that—

(1) Involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

(2) Appears to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping.

(b) *Engaging in terrorist-related activity* means, in an individual capacity or as a member of an organization:

(1) To commit, or to incite to commit activity described in paragraph (a) of this regulation;

(2) To prepare or plan activity described in paragraph (a) of this regulation;

(3) To gather information on potential targets for activity described in paragraph (a) of this regulation;

(4) To contribute, donate or solicit funds or other things of value for:

(i) Activity described in paragraph (a) of this regulation; or

(ii) A terrorist-related organization;

(5) To solicit any individual:

(i) To engage in conduct otherwise described in this subpart; or

(ii) For membership in a terrorist-related organization; or

(6) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training:

(i) For the commission of activity described in paragraph (a) of this regulation;

(ii) To any individual who the actor knows, or reasonably should know, has committed or plans to commit activity described in paragraph (a) of this regulation; or

(iii) To a terrorist-related organization.

(c) *Terrorist-related organization* means an organization:

(1) Designated under section 1189 of Title 8;

(2) Otherwise designated, via publication in the **Federal Register**, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in terrorist-related activities; or

(3) That is a group of two or more individuals, whether organized or not, which engages in terrorist-related activities.

(d) *Immediate family members* means spouse, mother, father, siblings, and children.

§ 540.202 Limited Written Correspondence.

The ability of inmates covered by this subpart to engage in written correspondence may be limited as follows:

(a) *General correspondence.* All general correspondence, as defined by part 540, may be limited to immediate family members. Correspondence to and/or from U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, and other Federal law enforcement entities will be considered general correspondence, for the purposes of this regulation, as described below.

(1) *Correspondence with immediate family members.* Volume and frequency of outgoing and incoming general correspondence with immediate family members only, may be limited to three pieces of paper (not larger than 8½ x 11 inches), double-sided writing permitted, once per calendar week to and from a single recipient.

(2) *Correspondence with U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, and other Federal law enforcement entities.* There is no frequency or volume limitation on this type of correspondence, unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations. This correspondence is subject to staff inspection for contraband and for content.

(b) *Special mail,* as defined in part 540, is limited to privileged communication with the inmate's attorney and, if the inmate is a national of a foreign country, a verified consular officer of that country. There is no frequency or volume limitation on this type correspondence, unless necessary as a result of the inmate's abuse or violation of these regulations. All special mail is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as special mail.

§ 540.203 Limited Telephone Communication.

The ability of inmates covered by this subpart to engage in telephone communication may be limited as follows:

(a) *Monitored telephone communication* may be limited to immediate family members only. The frequency and duration of this communication may be limited to a single connected call per calendar month lasting no longer than 15 minutes. Communication must be in English or simultaneously translated by an approved interpreter.

(b) *Unmonitored telephone communication* is limited to privileged communication with the inmate's attorney and, if the inmate is a national of a foreign country, to telephone conversations with verified consular representatives of that country. Unmonitored privileged telephone communication with the inmate's attorney is permitted:

(1) For pretrial inmates (as defined in 28 CFR part 551), upon request of the inmate, as available resources permit; and

(2) For convicted inmates (as defined in 28 CFR part 551), as necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

§ 540.204 Limited Visiting.

The ability of inmates covered by this subpart to visit with persons from the community may be limited as follows:

(a) *Regular visiting* may be limited to immediate family members.

(1) The frequency and duration of regular visiting may be limited to one hour each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits may occur through contact or non-contact visiting facilities, at the discretion of the Warden.

(2) Regular visits may be simultaneously monitored and/or recorded, both visually and auditorily, either in person or electronically.

(3) Communication during such visits must occur either in English, or be simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in part 540. Attorney visiting is permitted for the inmate's verified attorney only, unless the inmate is in the process of obtaining an attorney. These visits may be visually, but not auditorily, monitored.

(1) For pretrial inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 551 are applicable.

(2) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

(c) *Consular visiting* is limited to the inmate's verified consular officer, for inmates who are nationals of a foreign country, as provided in 28 CFR part 540. Consular officer visits may be visually, but not auditorily, monitored.

§ 540.205 Procedures.

When warranted, limited communication under this subpart will be implemented according to the following procedures:

(a) *Initiation.* The process of limiting communications under this subpart may begin either when:

(1) The Federal Bureau of Investigation, or other Federal law enforcement agency, makes an initial request to the Bureau of Prisons to have an inmate's communications limited under this subpart; or

(2) The Bureau deems it necessary to limit an inmate's communications under this subpart based on consideration of factors described in (b).

(b) *Consideration of factors.* In addition to the criteria provided in § 540.200(b) and any request made by a Federal law enforcement agency under (a), the Warden must also make a determination that limiting the inmate's communication is necessary to ensure the safety and security of the institution; protection of the public; or national security. This determination will be made after considering factors including, but not limited to, the following:

(1) Information that leads the Warden, while using sound correctional judgment, to reasonably believe that the inmate may attempt to, or has a propensity to, communicate messages harmful to the safety and security of the institution, the protection of the public, or national security;

(2) Actual charges, convictions and/or reasons for detention;

(3) Past or present conduct either before or during incarceration, including, but not limited to, terrorist alliances or possession of terrorist-related material;

(4) Confirmed membership or leadership role in a terrorist-related organization;

(5) Admission by inmate of terrorist-related conduct;

(6) Information provided by a law enforcement and/or intelligence entity,

or determined by the Bureau in any other manner, including, but not limited to, threat assessments prepared by the Federal Bureau of Investigation, court documents, pre-sentence reports, and similar official documents;

(7) Information relating to past practice or attempted past practice of the inmate to communicate messages to others that, if not intercepted, could cause harm to the safety, security, or good order of the institution, the protection of the public, or national security; or

(8) The significance of the operational role the inmate had (such as planning, directing, executing, or assisting in actual terrorist acts) or material support role (such as training, arming, transporting, recruiting, communicating for, or providing safe harbor for terrorist operators) in terrorist or terrorist-related activities.

(c) *Decision authority.* If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division, or any of their respective designees.

(d) *Written notice.* Inmates designated for limited communication under this subpart will receive written notice from the Warden, or designee, which will:

(1) Explain the specific limitations imposed and communication privileges allowed, which should be tailored to the particular circumstances of the inmate;

(2) Explain the reasons for the limitations, unless providing such information would jeopardize the safety or security of the institution; protection of the public; or national security; and

(3) Indicate the inmate's ability to challenge the decision through the Bureau's administrative remedy program.

(e) *Annual review.* Individual inmate limitations will be reviewed annually from the date of imposition under the same criteria required for the initial determination in paragraphs (b) and (c) of this section. A determination to renew, modify, or remove the limitations must be communicated to the inmate through written notice, as described in paragraph (d) of this section. Failure to provide such notice to the inmate of renewal or modification of the limitations at least annually from the date of imposition will result in expiration of those limitations.

(f) *Further Limitations Possible.* Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subpart. Further limitations for these purposes may only occur as part of a temporary disciplinary sanction pursuant to procedures in 28 CFR part 541 or according to the procedures in this section for initially imposing the limitations. Unmonitored communications with verified attorneys and consular officers may be further restricted only as provided in part 501 and 28 CFR part 543. Inmates may also be subject to disciplinary action or criminal prosecution.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–024]

RIN 1625–AA08

Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary special local regulation for ''2006 Rappahannock River Boaters Association Spring and Fall Radar Shootout'', power boat races to be held on the waters of the Rappahannock River near Layton, VA. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Rappahannock River during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 2, 2006.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Coast Guard Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Marine Events Coordinator, Fifth Coast Guard District, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On June 3 and 4, 2006; and October 7 and 8, 2006, the Rappahannock River Boaters Association (RRBA) will sponsor the ''2006 RRBA Spring and Fall Radar Shootout'', on the waters of the Rappahannock River near Layton, Virginia. The event will consist of approximately 35 powerboats participating in high-speed competitive races, traveling along a 3-mile strait line race course. Participating boats will race individually within the designated course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Rappahannock River. The temporary special local regulations will be enforced from 11:30 a.m. to 4:30 p.m. on June 3 and 4, 2006; and October 7 and 8, 2006, and will