

Grand Lodge, Fraternal Order of Police

Comments and Recommendations on Proposed Rule

**“Possession or Introduction of Personal Firearms Prohibited on the Grounds of Bureau of
Prison Facilities”
(28 CFR Part 511)
Docket No. BOP-1137
*RIN No. 1120-AB37***

**As Published in the *Federal Register*
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On 7 July 2006, the Office of the Director of the Bureau of Prisons at the U.S. Department of Justice, published in the *Federal Register* a notice of proposed rulemaking to prohibit, with certain exceptions, the possession or introduction of personal firearms on the grounds of Bureau of Prisons (BOP) facilities. According to the notice, the purpose of this proposed rule is to “help ensure the safe operation of Federal Prisons.”¹ The rule identifies three (3) exceptions to the proposed prohibition:

- (1) As required in the performance of official law enforcement duties;
- (2) on Bureau firing ranges by law enforcement personnel, as authorized by the Warden; and
- (3) in Warden-designated secure locations by Bureau employees who reside on Bureau grounds.²

Although the Bureau has a similar policy in place, the issue has been raised by the bargaining unit as a point of negotiation. A guidance memo issued by Director Harley G. Lapin, Director, BOP, indicates that “Management and the Union could not come to a resolution on the matter of personal weapon storage for staff on BOP property.”³ This issue was raised following the enactment of the Law Enforcement Officers Safety Act (LEOSA) which exempts qualified active and retired law enforcement officers from State and local prohibitions on the carriage of concealed firearms. With the passage of the law, BOP employees are able to lawfully carry their

¹ Proposed Rule, Office of the Director of the Bureau of Prisons, U.S. Department of Justice, *Federal Register*, Vol. 71, No. 130, 7 July 2006, Page 38543

² *Ibid.*

³ *Footnote 1*, MEMORANDUM FOR ALL STAFF, Guidance Regarding the Law Enforcement Officers Safety Act (LEOS) from Harley G. Lapin, Director, 27 February 2006.

firearms while off-duty and for this reason engaged the BOP in dialogue to develop a policy whereby personal weapons could be stored safely in Bureau facilities during duty hours. Having failed to resolve the issue at the bargaining table, the BOP is now attempting to codify the proposed rule and remove it from discussion, despite the importance of this issue to the officers and employees of the BOP.

The Fraternal Order of Police is the largest law enforcement labor organization in the nation, with more than 324,000 members in 43 State lodges and approximately 2,100 local lodges. The membership is composed of any regularly appointed or elected and full-time employed law enforcement officer of the United States, any State or political subdivision thereof, or any agency which may be eligible for membership. While we do not represent any BOP employees in a bargaining capacity, we are proud to have many BOP officers as our members and we are providing written public comments and recommendations on the entirety of the proposed rule.

Introduction/Background of LEOSA

On 22 July 2004, President George W. Bush signed H.R. 218, the Law Enforcement Officers' Safety Act" into law. The legislation, which passed both the House and the Senate by voice vote, exempts qualified active and retired law enforcement officers from State and local prohibitions on the carriage of concealed firearms.

A "qualified active law enforcement officer" is defined as an employee of a government agency who:

- is authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- has statutory powers of arrest;
- is authorized by the agency to carry a firearm;
- is not the subject of any disciplinary action by the agency;
- meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance, and
- is not prohibited by Federal law from possessing a firearm.

Qualified active law enforcement officers must carry the photographic identification issued by the agency for which they are employed.

A "qualified retired law enforcement officer" is defined as an individual who:

- has retired in good standing from service with a government agency as a law enforcement officer for an aggregate of fifteen (15) years or more for reasons other than mental instability, or retired from such an agency due to a service-connected disability after completing any applicable probationary period of such service;

- was authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- had statutory powers of arrest;
- has a nonforfeitable right to benefits under the retirement plan of the agency for which he was employed;
- meets, at his own expense, the same standards for qualification with a firearm as an active officer within the State in which he resides;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- is not prohibited by Federal law from possessing a firearm.

Qualified retired law enforcement officers must carry the photographic identification issued by the agency for which they were employed *and* documentation which certifies that they have met, within the most recent twelve month period, the active duty law enforcement standards for qualification for a firearm of the same type as the one they intend to carry. This document must be issued by the retired officer's former agency *or* from the State in which he lives.

The term of "firearm" specifically excludes machine guns, silencers, explosives or other destructive devices as these terms are defined in Federal law.

The need for the legislation was clearly identified in the report issued by the Senate Committee on the Judiciary on 23 March 2003:

The Law Enforcement Officers Safety Act of 2003, S. 253, is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers, whether on-duty, off-duty or retired, to carry concealed firearms in situations where they can respond immediately to a crime across state and other jurisdictional lines

Clearly, the intent of Congress in enacting LEOSA was to ensure that qualified active and retired law enforcement officers would have the option of carrying a firearm even traveling through other jurisdictions, if they believed it to be necessary for their own safety or that of their family.

Reports from individual F.O.P. members received through the autumn of 2004 indicated that certain Wardens had issued verbal orders prohibiting BOP officers and employees from carrying their firearms when off-duty. Further, the F.O.P. was advised of the existence of an official notice on an intranet site exclusive to the Bureau of Prisons which indicated that the BOP took the position that its officers and employees did not meet the definition of qualified active or retired law enforcement officer despite the clarity of 18 USC 926B(c)(1).

This issue was resolved in a memorandum issued on 31 January 2005 by the U.S. Attorney General, which specifically identified the Bureau of Prisons as a component of the Justice Department whose employees were considered to qualify as law enforcement officers for the purposes of LEOSA.

As a result, the intranet posting was removed and BOP employees were told to expect a guidance memorandum, which was ultimately issued by Director Lapin on 14 March 2005. This memorandum proposed to “implement” LEOSA by issuing officers and employees who self-identified as wanting to carry firearms off-duty under the provisions of the law a “LEOSA ID”. The identification was not intended to be a replacement for any employee’s regular work identification, but would be issued on a limited basis by those deemed qualified by the agency and who indicated a desire to receive it.

It should be noted that the memorandum of 14 March also explicitly stated that:

Staff must continue to abide by BOP policies and/or procedures regarding personal weapons which (1) prohibit staff from carrying or using a personal firearm while on duty, (2) prohibit personal firearms from being brought into the institutions or on the grounds of any federal correctional institution, (3) prohibit storing personal firearms in BOP facilities or in vehicles parked on government property, and (4) require personal firearms that are kept in reservation housing to be stored in a specified secure area other than residences.⁴

This “implementation” plan soon proved to be an overly bureaucratic and expensive approach, as many BOP officers and employees indicated a desire to be issued the LEOSA ID and the demand for these identifications far exceeded the number produced by the Bureau. According to F.O.P. members employed by the BOP, the issuance of the LEOSA IDs ended after only a few months. In autumn of 2005, the bargaining unit representing BOP employees initiated talks on the impact that LEOSA would have on its employees and specifically sought changes in the BOP’s policy regarding the storage of personal firearms at BOP facilities for officers and employees who were going on and off-duty.

The BOP Director’s memorandum of 27 February 2006 rescinded the guidance provided by the memorandum issued on 14 March 2005 and, as referenced above, acknowledged that the negotiations between the bargaining unit and the BOP did resolve the matter of storing personal firearms on BOP property. In addition, this most recent memorandum reiterated the BOP’s policy with respect to personal firearms.

Yet, despite this policy, it is the understanding of the F.O.P. that one BOP facility--the Metropolitan Detention Center (MDC) Guaynabo in San Juan, Puerto Rico--has a secure area specifically provided to BOP officers and employees to store personal weapons. We have been advised that this storage facility was constructed and made available after several BOP officers working at MDC Guaynabo were assaulted off-duty. Though the F.O.P. has inquired about this matter, we have received no information from BOP as to why this facility is an exception to the current policy.

⁴ MEMORANDUM FOR ALL STAFF, Information on Implementation of the Law Enforcement Officers Safety Act, from Harley G. Lapin, Director, 14 March 2005.

Statement of Position

It is the position of the F.O.P. that BOP officers and employees may be targets for vindictive criminals—former inmates—with whom they may have had close contact over a long period of time. These officers and employees are particularly vulnerable when traveling to and from work if they cannot bring their personal firearm with them to the workplace and safely store it there. This is genuine officer safety concern—one which the F.O.P. has raised numerous times, both formally and informally to the BOP and to the U.S. Department of Justice. We regard the rule proposed by the BOP on this issue as an attempt to remove the matter from the bargaining process and to resist efforts by the F.O.P. and other organizations interested in the safety of officers and employees of the BOP from affecting a reasonable policy change. For this reason, the F.O.P. opposes the rule as proposed and offer the following comments in support of our position.

While the stated purpose of the rule is to “ensure the safe operation of Federal Prisons,”⁵ the rule does not taken into account the negative impact that it and the current policy on which it is based, has on the safety of BOP officers and employees who are traveling to and from work. This is a danger which the BOP has quietly recognized at the Metropolitan Detention Center (MDC) Guaynabo in San Juan, Puerto Rico, where we understand a storage facility has been constructed and is maintained by BOP so that officers and employees may secure personal firearms while on-duty and retrieve them when they leave the prison. This is a current exception to current BOP policy and would be in violation of the proposed rule.

The primary purpose for the policy changes sought by the union representing BOP employees as well as the F.O.P., and, in fact the primary purpose of the LEOSA, is to ensure that officers, regardless of their duty status, can lawfully defend themselves and their families from vindictive criminals. In short, officers are concerned about their safety. Yet, disturbingly, when the BOP outlines its four reasons, it does not consider the impact of the proposed rule on officer safety. In fact, the BOP seems to regard the LEOSA, not as an officer safety issue, but a “greater risk” to the inmates, the institution, its staff and visitors.⁶ The F.O.P. vehemently rejects this characterization.

Senator Patrick J. Leahy (D-VT), the Senate sponsor of the LEOSA, remarked on the floor the day the bill was adopted by the Senate: “Convicted criminals often have long and exacting memories. A law enforcement officer is a target in uniform and out, active or retired, on duty or off duty.” Senator Leahy is exactly right, and the F.O.P. is of the strong opinion that the BOP’s policy—which the proposed rule seeks to codify--of prohibiting the storage of personal firearms by staff who are lawfully able to carry those firearms when off-duty is rendering these officer vulnerable when in they are transit to and from work. This vulnerability was clearly demonstrated in March 2006 when six (6) correctional officers were attacked by a large group in a parking lot after leaving their duty at the Metropolitan Correctional Center (MCC) in Chicago. Two of these

⁵ Proposed Rule, Office of the Director of the Bureau of Prisons, U.S. Department of Justice, *Federal Register*, Vol. 71, No. 130, 7 July 2006, Page 38544

⁶ *Ibid.*

officers were injured seriously enough that they required medical attention, and all of the officers were fortunate that the incident did not result in more serious injuries or even death. This is a stark example of the detriment the current BOP policy—which the proposed rule seeks to codify—has on the safety of BOP staff when they are arriving and departing from work.

All BOP facilities have secure armories to accommodate the firearms used by staff while on-duty and for law enforcement officers conducting official business within the facility or its grounds. Indeed, the latter is a specific exception to the proposed rule. The F.O.P. has yet to hear any compelling reason why these storage facilities might not be used to store personal weapons or, as is the case at MDC Guaynabo, a separate storage facility for the personal weapons of staff cannot be provided.

The first reason of the four given by the BOP in support of its proposed rule cites a justified concern that personal weapons stored in vehicles parked at the facility accessible to “inmates working on institution grounds, inmates being released, and members of the public.”⁷ The F.O.P. agrees with this reasoning—a firearm locked in a vehicle is not secure and the Bureau is correct to prohibit it. That said, however, this practice would be unnecessary if officers and staff had a secure area in which to store their personal weapons while on duty.

The second point expresses a concern that personal firearms might somehow be obtained by inmates or members of the public and then used to injury others or assist in the escape of an inmate. This strikes the F.O.P. as a completely specious argument. The BOP has weapons in storage at its facilities which it issues to its employees when appropriate and, as previously mentioned, has storage areas for armed law enforcement officers visiting the facility to conduct official business. If these weapons can be safely stored, then the personal weapons of staff can be as well.

Further, the proposed rule makes a specific exception to the prohibition of possessing personal firearms on the institution’s grounds if the BOP officer or staff member is going to use the facility’s firing range. Another exception is that storage of personal firearms is available to BOP officers and staff who reside on Bureau grounds. As previously mentioned, there is a secure storage facility available to officers and staff employed at MDC Guaynabo. If, in all these cases, firearms can be made secure from inmates and member of the public, we maintain that they can also be made secure on a daily basis by providing secure storage for the personal firearms of BOP officers and employees.

The last two reasons cited by the BOP in support of the proposed rule endorse the concept of a “buffer zone”⁸ between the community and the Federal prison. This “buffer zone” will “increase attention of Bureau staff and others to this prohibition” and “will reduce inadvertent introductions

⁷ *Ibid.*

⁸ *Ibid.*

of personal firearms onto institution grounds.”⁹

The F.O.P. submits that a secure stage area would also prevent any “inadvertent introductions” and serve as a “buffer zone” between the community and the inmates at the institution. More importantly, it will mean that the “buffer zone” will not also be a “vulnerability zone” for BOP officers and employees who are leaving work while unarmed--the very time that these officers are most vulnerable to attack.

Conclusion

The F.O.P. vehemently objects to the rule as proposed. It is a matter of fact that one BOP institution has a separate firearms storage facility specifically for use by its officers and employees and that this facility was specifically built to ensure that BOP officers and employees would be able to arm themselves for their own protection once they left the prison. In light of this fact, the F.O.P. rejects the Bureau’s rationale that the proposed rule is to “help ensure the safe operation of Federal Prisons,” as there is no indication that the operation of MDC Guaynabo is less safe or secure because of the presence of a firearms storage area.

We strongly believe that this is a critical officer concern and, for this reason, believe that the officers and BOP employees who are risk ought to be afforded an ongoing opportunity to engage in a dialogue with the BOP to develop a policy consistent with their safety concerns. By enacting the proposed rule, it will be very difficult for the officers, employees and the Bureau itself to adapt if circumstances should change and the events like the attack on the officers at MCC Chicago are repeated.

The F.O.P. believes that the proposed rule should provide an exception for its officers and employees who wish, as a matter of personal safety, to bring their firearms to work and retrieve them after their shift. In its communications with the Union, with the F.O.P., and in the statement accompanying the proposed rule, the Bureau has not provided any reason that such a policy would be impracticable. Without such an exception, the proposed rule compromises officer safety and, for this reason, should be rejected.

The Fraternal Order of Police stands ready to work with the Bureau of Prisons and the U.S. Department of Justice on this issue.

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⁹ *Ibid.*