seeking reconsideration of the following numbered proceedings on or before May 7, 1979. Pursuant to Section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

MC-FC-77963 filed December 15, 1978. Transferee: Pitt-Ohio Express, Inc., 1014 Osage Road, Pittsburgh, PA 15243. Transferor: Vincent White, d.b.a. White Motor Express Company, 2525 Railroad St., Pittsburgh, PA 15222. By decision entered March 29, 1979, the Motor Carrier Board approved the purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC 30136, issued September 27, 1955. The rights authorize the transportation of *general commodities*, with exceptions, over irregular routes, between Pittsburgh, PA, on the one hand, and, on the other, points in defined portions of Pennsylvania, West Virginia, and Ohio. Transferee presently holds no authority from the Commission. Application has not been filed for temporary authority under Section 210a(b). This notice is being given so that interested parties may file a petition for reconsideration of the Board's decision.

H.G. Homme, Jr.,
Secretary.

[Notice No. 5]
[FR Doc. 79-12042 Filed 4-17-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Transfer Proceedings

April 18, 1979.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 78034. By application filed February 13, 1979, THE OHIO RIVER TRUCKING COMPANY, 1020 Second National Bank Bldg., Ashland, KY 41101, seeks temporary authority to transfer the operating rights of LAWRENCE McKENZIE, AN INDIVIDUAL, dba. McKENZIE TRUCKING COMPANY, Winchester, KY 40391, under section 210a(b). The transfer to THE OHIO RIVER TRUCKING COMPANY of the operating rights of LAWRENCE McKENZIE, an individual, dba. McKENZIE TRUCKING COMPANY, is presently pending.

MC-FC 78077. By application filed April 9, 1979, TOLEDO-DETROIT EXPRESS, INC., 6180 Benora Road, Toledo, OH 43612, seeks temporary authority to transfer a portion of the operating rights of THE SERVICE TRANSPORT CO., 114½ East Main Street, Ravenna, OH 44266, under section 210a(b). The transfer to TOLEDO-DETROIT EXPRESS, INC., of a portion of the operating rights of THE SERVICE TRANSPORT CO., is presently pending.

MC-FC 78082. By application filed March 21, 1979, JOSEPH T. LANGLAND, JR., AN INDIVIDUAL, of Lansing, IA 52151, seeks temporary authority to transfer the operating rights of BULMAN TRUCKING SERVICE, INC., of Waukon, IA 52172, under section 210a(b). The transfer to JOSEPH T. LANGLAND, JR., of the operating rights of BULMAN TRUCKING SERVICE, INC., is presently pending.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[Notice No. 6]
[FR Doc. 79-12043 Filed 4-17-79; 8:45 am]
BILLING CODE 7035-01-M

Finance Applications

The following application seeks approval to acquire control through ownership of stock of motor carriers pursuant to sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protest against the granting of the requested authority must be filed with the Commission on or before May 18, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-F13985F. Authority sought for acquisition of control by LAIDLAW TRANSPORTATION LIMITED, 65 Guise Street, Hamilton, Ontario, CD L8L 7X7, and Michael G. DeGroote, 65 Guise Street, Hamilton, Ontario, CD L8L 7X7, of the stock of TRAVELWAYS LTD., 30 Heritage Road, Markham, Ontario, CD L3T 1M4, and the operating rights of its subsidiary TRAVELWAYS TOURS LTD. Representative: David A. Sutherlund, Suite 400, 1150 Conneciticut Avenue NW, Washington, DC 20036. The operating rights to be controlled authorize transportation of passengers and their baggage in the same vehicle with passengers as a common carrier over irregular routes (a) in round trip charter operations (i) from ports of entry on the International Boundary between the United States and Canada in MI and NY to points in MI, NY, PA, and OH and return, and (ii) from ports of entry on the International Boundary between the United States and Canada to points in the remaining lower 44 States and the District of Columbia, and return, and (b) in special operations in round trip sightseeing and pleasure tours, beginning and ending at ports of entry on the International Boundary between the United States and Canada and extending to points in the United States (except AL and HI). LAIDLAW TRANSPORTATION LIMITED Is a noncarrier holding company, however it is affiliated with LAIDLAW TRANSPORT LIMITED (MC 113784) and GREY GOOSE BUS LINES LTD. (MC 108219). LAIDLAW TRANSPORT LIMITED, is authorized to operate as a common carrier between various points in the eastern half of the US and points on the United States-Canada Boundary. GREY GOOSE BUS LINES LTD. is a Canadian corporation regulated by the ICC as a motor common carrier, which is authorized to operate in MN and between the United States and Canada and points in the United States. Approval of this application may result in some duplication of authority from ports of entry on the International Boundary. Common control may be involved. Application for temporary authority under section 210a(b) has not been filed. Hearing site: Washington, D.C.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-12201 Filed 4-17-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 76
Wednesday, April 18, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act". (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

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CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., April 19, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Comments on H.R. 2—The Sunset Act of 1979, H.R. 544—The Government Economy and Spending Reform Act, H.R. 688—The Regulatory Agency Abolition Act, H.R. 1059—The Sunset Program Evaluation and Reauthorization Act, and H.R. 1312—The Regulatory Reform Act (memo 8685, OGC).

3. Docket 33348, Disclosure of Oversales Rules by Foreign Air Carriers. (OGC, BPDA).

4. Docket 19923, Liability and Claims Rules and Practices Investigation. Petition for reconsideration of Order 78-7-100, which refused to vacate the investigation's findings or to free the carriers from complying with them in non-interstate cargo air transportation (memo 7755-B, OGC).

5. Draft Order to Show Cause why Rule 380(H), CAB No. 142 should not be cancelled. This provision limits carrier liability for any schedule change or schedule irregularity (BCP, BPDA, OGC, OEA).

6. Docket 32466, Expedited Procedures for Licensing and Rates Cases (OGC).

7. Docket 33418, Application of the Airline Tariff Publishing Company (ATPCO) to engage in carrier discussions on joint fares (memo 8680, BPDA, OGC).

8. Docket 30226, Final Future Subsidy Mail Rate for Kodiak-Western Alaska Airlines, Inc. (BPDA, OCCR, OC, OGC).

9. Petition of I.L.T.A., Inc. requesting review and reversal of staff action permitting United Air Lines, Inc. to implement changes in charter payment rules on short notice (memo 8684, BPDA).

10. Dockets 33133, 33972, 33973, 33974, 33977, 34028, and 34031; Trans Continental Airlines, Conner Air Lines, Rosenbalm Aviation, Emery Air Freight, Pacific Alaska Airlines, Air Express International Airlines, and Fleming International Airways—Certification as section 418 all-cargo air carriers (BPDA, OGC, BLJ).

11. Docket 34650, Procedures and Policy for Determining Essential Air Transportation (OGC, BPDA).

12. Dockets 33690, 33530, 33591, 33677, 34011, 34080, 34093, 34897, 34947, 34948, 34949, 34012, 34950, 34954, 34964, 34994, and 35025; Applications for Dallas/Fort Worth-Denver/Seattle/Portland authority (memo 8463-B, BPDA).

13. Dockets 33516, 33623, 33645, 33737, and 34001; Braniff's Motion for hearing on its certificate application for Dallas/Fort Worth-Boston nonstop authority Northwest's, Allegheny's, Continental's, and Ozark's applications requesting similar authority and motions to consolidate; Continental also requests the Houston-Boston market be heard in the same proceeding (memo 8686, BPDA, OGC, BLJ).

14. Dockets 33542, 33653, 33675, 34090, 34202, and 34219; applications of TXI, Braniff, Northwest, Allegheny, Continental and Ozark for authority between New Orleans and Baltimore, Washington (National) and Washington (Dulles) (memo 8696, BPDA, OGC, BLJ).

15. Dockets 31259, 33176, 33197, 33638, and 33853; Delta's motion for expedited hearing on its application for a certificate amendment authorizing nonstop service in the Atlanta-Raleigh and Atlanta-Greensboro markets; Northwest's and Braniff's applications requesting similar authority, and motions to consolidate; Piedmont's application for a certificate amendment to eliminate a one-stop restriction between Atlanta and Raleigh (and motion to consolidate); Delta'a motion, filed February 1, 1979, to withdraw its application; and Piedmont's motion, filed March 23, 1979, to withdraw its application (memo 8697, BPDA, OGC, BLJ).

16. Docket 34781, Frontier's request for a two year exemption commencing no later than April 10, 1979 to provide nonstop service between Fargo, North Dakota and Denver, Colorado (BPDA, OGC, BLJ).

17. Dockets 33115, 33298, 33202, 33315, 33524, 33543, 33607, 34673, 33674, 33671, 33996, 34067, 34746, 33724, 34689, 34722, and 34012; Braniff, Airwest, American, Western, TWA, Continental, Northwest, Allegheny, Ozark, Delta, Eastern, Frontier, Southern, and TXI; Applications requesting authority between Salt Lake City and various points (memo 8412-E, BPDA).

18. Dockets 31213, 31529, 33222, 34678, 34699, 34701, 34702, and 34703; Fort Myers-Atlanta/Tampa authority portion (memo 8233-B, BPDA, BLJ, OGC).

19. Dockets 33115, 33298, 33315, 33524, 33562, 33581, 33671, 33674, 33876, 34019, 34570, and 34067, 34776; Applications for various Salt Lake City markets (memo 8412-D, BPDA).

20. Docket 34894, United's notice to suspend service in 12 city pair markets (memo 8683, BPDA, OCCR).

21. Docket 34853, petition filed by Islip, New York for an order to show cause proposing to amend the certificates of Allegheny and American to redesignate Islip as Long Island MacArthur (memo 8695, BPDA).

22. Docket 34926, National's application for an exemption to provide one daily long-haul restricted flight between Los Angeles and San Francisco (memo 8689, BPDA).

23. Docket 34110, Allegheny/Ransome replacement service agreement (BPDA, OGC, BCP).

24. Docket 34832, Airwest's notice of intent to suspend service at Crescent City, California (memo 8688, BPDA, OCCR).

25. Docket 35057 and 35085; Piedmont Aviation's notice of intent to suspend service in 23 markets under section 401(j)(2) and application for an exemption to terminate service on less than 60 days notice (memo 8694, BPDA, OCCR).

26. Docket 34876, Eastern's 401(j)(2) Notice of Intent to Terminate Service in fifteen markets in 60 days (memo 8693, BPDA, OCCR).

27. Docket 34829, Piedmont's 401(j)(2) notice of intent to terminate service in 28 markets in 60 days (memo 8692, BPDA, OCCR).

28. Docket 29789, *Houston/New Orleans-Yucatan Route Proceeding* (OGC).

29. Docket 32153, application of Atlantida Linea Aerea Sudamericana, S.A. (A.L.A.S.) for issuance of a foreign air carrier permit to provide nonscheduled transportation of property between a point or points in Uruguay; intermediate points in Paraguay, Bolivia, Peru, Brazil, Venezuela, Colombia, and Panama; and the coterminal points Miami, Florida; New York, New York; and Houston, Texas (BIA, OGC, BLJ).

30. Docket 34893, Application of Aerolineas Territoriales de Colombia Ltda. (Aerotal) for a 402/403 exemption (memo 8699, BIA, OGC, BLJ).

31. Docket 34204, Application of Jetsave Ltd. (United Kingdom), a foreign indirect air carrier, for an exemption and waiver to permit it to subcontract air transportation to other independent tour operators (memo 8700, BIA, OGC, BPDA, BLJ).

32. Docket 34644, Application of Southeast Airlines for exemption to conduct with B-707 aircraft a year-long charter program between Miami and Havana, transporting recently released Cuban political prisoners and their families (memo 8686, BIA, OGC, BPDA, BCP, BLJ).

33. Docket 33949, Statement of Objections by World Airways, Inc. to show cause Order 79-2-56 proposing issuance of a foreign air carrier permit to Ontario Worldair Limited (Canada) (BIA, OGC, BLJ).

34. Deregulation of Foreign Air Freight Forwarders (memo 8698, BIA, OGC, BPDA, BLJ, BCP).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[M-213; April 12, 1979]
[S-745-79 Filed 4-16-79; 8:51 am]
BILLING CODE 6320-01-M

2

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Friday, April 13, 1979.

PLACE: Chairman's Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

9:30 a.m. Discussion of incident at Three Mile Island (approximately ½ hour) (exempt session—meeting lacked Quorum).

11 a.m. Continuation of Discussion of Commission Investigation of TMI Incident (approximately 2 hours) (closed—exemptions 5, 6 & 9).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Walter Magee,
Office of the Secretary.
April 13, 1979.

[S-746-079 Filed 4-16-79; 9:24 am]
BILLING CODE 7590-01-M

federal register

Wednesday
April 18, 1979

Part II

Department of Health, Education, and Welfare

Public Health Service

Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 51a

Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits; Final Rule

AGENCY: Public Health Service, HEW.

ACTION: Final rule.

SUMMARY: This document establishes regulations governing State plan requirements for the referral for and provision of services for blind and disabled children receiving benefits under the Supplemental Security Income (SSI) Program of the Social Security Act.

EFFECTIVE DATE: April 18, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Vince L. Hutchins, Associate Bureau Director, Office of Maternal and Child Health, Bureau of Community Health Services, Health Services Administration, Room 7-39, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2170.

SUPPLEMENTARY INFORMATION: These regulations govern the program established by Section 1615(b) of the Social Security Act ("the Act") (42 U.S.C. 1382d). Essentially this program provides for the referral by the Social Security Administration (SSA) of blind or disabled Supplemental Security Income (SSI) recipients who are under age 16 to a designated State agency, which is either the State Crippled Children's Agency funded under Title V of the Act, or another State agency which administers programs for disabled children. This designated State agency is responsible for the administration of a State plan which provides for counseling, establishment and monitoring of individual service plans, and service referrals for disabled children under 16 years of age. The State plan must also provide for the provision of medical, social, developmental, and rehabilitative services for disabled children under 7 years of age and those who have never attended public school.

Interim regulations governing this program appeared in the Federal Register on December 16, 1977 (42 FR 63568). Public comment was invited at that time. (See below for discussion of public comments.) The major changes included in the final regulations are as follows:

a. *Public participation.* If a State plan is disapproved, a State may request that the Secretary reconsider this determination, and may request a hearing on the matter. Under the final regulations, the State must now notify the public of the Secretary's action and the State's petitions, and hearings on this issue must be open to the public.

b. *Grievance procedures.* Under the interim regulations, a disabled child receiving services under the plan and, as appropriate his parent, guardian, or other representative, who is dissatisfied with any action with regard to furnishing these services, may file a request for an administrative review and redetermination by the supervisory staff of the State agency. A requirement has been added that a grievance procedure must be provided, should there be dissatisfaction with the review and redetermination.

c. *Parental involvement.* Recognizing the importance of parental involvement in carrying out an individual service plan, a requirement was added to provide for parental involvement, whenever a significant change in the child's individual service plan is considered.

Summaries of the substantive comments received on the interim regulations and the Department's responses to these comments follow.

1. Four comments dealt with the rule which specifically limits the provision of treatment services to disabled children under 7 years of age or those who have never attended public school (see Sec. 1615(b)(1)(D) of the Social Security Act).

One person stated that this rule would eliminate from receiving needed services those children who had once been enrolled in a public school program as "normal children" but who had become disabled or blind between age 7 and 16. Because of the limitation on services imposed by the statute, the regulations cannot be changed on this point. Children such as those described in this comment will, however, have an individual service plan established for them and will be referred promptly to appropriate medical, educational, and social services (see § 51a.306(c)).

Another comment stated that this limitation creates an ambiguity about the availability of services for children who attend private schools. As noted above, the statute explicitly limits the provision of services to disabled children under age 7 and to children "who have never attended public school." Consequently, there can be no change in the regulations.

Another person suggested that accredited private institutions be considered equivalent to public schools. Inasmuch as the term "public school" used in the statute is generally recognized not to include such institutions, this recommendation was not accepted.

In addition, questions were asked as to whether educational programs conducted in State or other public residential institutions are considered to be "public schools." To clarify this point, a definition of "public school" has been added (see § 51a.302). The definition is consistent with that used by the Social Security Administration in administering Section 1615 of the Social Security Act. Although the total institutional program would not be considered as a public school, an educational program that meets the conditions of this definition would be so considered.

2. Two comments recommended the expansion and strengthening of § 51a.303(a) to facilitate greater public participation in the development of State plans, and recommended that public hearings be held to afford interested parties an opportunity to testify about a proposed plan. The interim regulations required that the State plan be made available to the public with an opportunity for comments, and provided for the submission to the Secretary of such comments with the plan. The Department believes that this requirement offers sufficient opportunity for public participation since comments received will be considered by the Secretary in reviewing the State plan. For this reason, the recommendation that an opportunity for a public hearing be added was not accepted (see § 51a.303(a)).

3. One respondent was of the opinion that, in order for public participation to be effective whenever significant Federal action is taken regarding a State's plan, the public should be informed, especially when a State plan is disapproved, and an administrative review is requested by the State agency (see § 51a.303(e)). It was recommended that if a State files a petition asking for reconsideration of whether the plan or an amendment meets the requirements for approval, it should be required, within 5 days to notify the public of the Secretary's action and the State's petition for review, and make copies of both available to interested parties. Hearings on the issue should be open to the public, with interested persons having the right to submit written testimony for the hearing officer. Within 5 days of the fixing of the time and place of the hearing, the State should publish a notice of the hearing and the public's rights at the hearing. In keeping with the

Department's interest in increased public participation, this recommendation was accepted and, accordingly, § 51a.303(e) has been revised.

4. § 51a.305(b)(3) provides generally for an administrative review by the State agency supervisory staff when a disabled child, his parent, guardian, or other representative is dissatisfied with the services which the child is receiving under the State plan. One respondent contended that such a provision does not ensure a formal, fair hearing proceeding, nor does it ensure that the child and his parent, guardian, or other representative will receive basic due process protections. At a minimum, the respondent stated, the recipients of services under this program should have the right to the wide range of administrative procedures, similar to those set forth in 45 CFR 205.10, and the child, his parent, guardian, or other representative should be entitled to a hearing to appeal denial, reduction, or termination of service, or failure to act upon a request for service with reasonable promptness.

Eligibility of a blind or disabled child for services under Section 1615 of the Act is determined by the SSA, and that agency, in determining eligibility, decides questions regarding denial, or termination of services. With respect to these decisions, the provisions and procedures set forth in 45 CFR 205.10 apply. However, in considering the recommendation, the Department has reexamined the provisions of § 51a.305(b)(3). This section is designed to provide some redress with regard to the services actually performed, analogous to grievance procedures in other health care delivery systems. Specifically, a disabled child, his parent, guardian, or designated representative who is dissatisfied with any actions regarding the furnishing of services may have a member or members of the supervisory staff of the State agency review those actions. However, review by supervisory staff could be inadequate with respect to furnishing of services. The regulation has therefore been amended, by the addition of § 51a.305(b)(4), to require that each State plan set forth a grievance procedure for service complaints.

5. One respondent recommended adding the word "rehabilitation" to § 51a.306(a)(3) in order to require that individuals employed as counselors under the plan have knowledge of rehabilitation resources in addition to the medical, educational, and social services resources available to assist disabled children. It was also recommended that in § 51a.306(c), the word "rehabilitation" be added to the list of the kinds of services to which children should be referred. Since Section 1615(b)(1)(D) of the Social Security Act requires that State plans provide services for eligible children who require preparation to take advantage of various services, including rehabilitative services, the recommendations were accepted, and these two sections have been amended.

6. A respondent expressed concern that omission of the adjective "psychological" in § 51a.306(b)(1)(ii), (b)(2)(i), and (b)(2)(iii) in describing the needs of the child, allows for less than professional attention to a child's psychological needs. Section 1615(b)(1)(D) of the Social Security Act authorizes the provision of, or referral for, medical, educational, social, developmental, and rehabilitative services. These categories of services and the identical categories of needs are broad, and the Department views psychological needs as an essential component of these categories. Consequently, the Department believes that it is not necessary to add the adjective "psychological" to this list.

7. The same respondent recommended adding provision for the preventive, diagnostic, and treatment services of a licensed or certified psychologist to § 51a.307(d), which states that the services in the program for disabled children "may include, *but need not be limited to* * * * (1) Preventive, diagnostic, and treatment services of a physician and, as appropriate, physician extenders" (emphasis supplied). This list of services is illustrative rather than inclusive, and permits inclusion of the services of many health professionals that are not explicitly mentioned. Thus, this section need not be revised in order to include services of psychologists.

8. One commenter proposed that § 51a.306(b)(1)(iii) be revised to provide that the professionals responsible for the medical, educational, social, developmental, and rehabilitative assessment of the child be involved in the individual service plan development process. The process required by this section for the State agency's development of the service plan includes these professionals; thus, there is no need for this explicit requirement in the regulations.

9. A further revision of § 51a.306(b)(1) was recommended which would add a requirement that the State agency take steps to ensure that one or both parents of the disabled child, and/or a representative designated by a parent, be present and afforded the right to participate in each meeting affecting the disabled child's individual service plan. The Department agrees with the respondent regarding the importance of parental participation in the revision of individual service plans as well as in their initial development and, therefore, has amended this section to require provision for involvement of the disabled child or his parent, guardian, or designated representative in any significant revision of the plan (see § 51a.306(b)(1)(iv)).

10. One commenter advocated a revision of § 51a.306(d)(2) to provide for participation by the parent, guardian, or other representative in the periodic review of service plans, as he thought it as important for parents to be involved in the periodic review of their child's program as in the initial development of the service plan. It was pointed out that parents would have a great deal of information to offer about their child's program and about new problems that may have developed.

The periodic review of service plans by professionals not involved in the preparation or implementation of the plans is intended to be an objective assessment of the quality of the program. Sampling techniques may be used, rather than the review of each individual service plan. However, it is anticipated that in conducting this review, the views of the parent, guardian, or designated representative, as well as the views of various professionals, would be considered. Although the recommendation for parental participation in the periodic review was not accepted, § 51a.306(b)(1) has been revised to require the involvement of parent, guardian, or designated representative in any significant revisions of the service plans. (See item 9, above.)

11. One respondent pointed out that § 51a.306(b)(2) lacks an accountability provision in the list of minimum information to be included in every individual service plan. The respondent thought a plan should list not only the necessary services a beneficiary is entitled to receive, but also designate the agencies responsible for providing those services, and thereby facilitate an effective monitoring and review process. It was proposed that this section be revised to require designation of specific agency responsibilities for provision of services with respect to each individual service plan. No change has been made in the regulation, because the designation of agency responsibility has been provided for adequately in § 51a.306(b)(2)(iv), which requires that the individual service plan include a

"description of the major activities to be undertaken to reach the objectives and the agency or agencies responsible for each of these activities."

12. One person pointed out that Head Start programs are the primary providers of child development and related services to preschoolers (3 to 5 years of age) with handicaps, and should therefore be added to the list of Federal programs in § 51a.306(b)(3). Although this list was intended to be illustrative rather than exclusive, the recommendation has been accepted, and the Head Start program has been added (see § 51a.306(b)(3)(iv)).

13. One person proposed that § 51a.306 include a requirement that individual service plans developed under §§ 51a.306 and 51a.307 be made binding on the designated State agency, which would thereby be required to provide or arrange for the provision of all the services listed. The commenter said that the State plan should describe in detail the timetable and the enforcement procedures which would be instituted against any agency found to be out of compliance with an individual service plan requirement or with any other provision of the Act.

The ability of the State agency and the other agencies to carry out the individual service plan is subject to the various limitations of these agencies, which include financial and staff resources. To require enforcement of individual service plans regardless of agency resources is not realistic; nor would the State agency have authority to do so. It is anticipated that cooperative arrangements developed between agencies usually will be sufficient to implement the service plan. For these reasons, no change has been made in the regulation.

14. One person advocated the elimination of references in § 51a.307(a)(2), and elsewhere, to long-range prognosis for self-sufficiency or self-support as an adult, since there was no valid scientific criteria for making such a determination and there is great danger that the children most in need of expensive long-term services will be deprived of them. Section 1615(b)(1)(D) of the Social Security Act specifically limits the provision of services to those services which "reasonably promise to enhance the child's * * * opportunities for self-sufficiency or self-support as an adult;" thus, there has been no change in the regulation. It is expected, however, that in consideration of the interest of the child, the law and the regulations will be as liberally administered as professional judgment and financial resources will allow.

15. Two respondents suggested that § 51a.307(c)(2), which requires that the services provided "be reasonably expected to ameliorate the condition which forms the basis for the child's disability under the SSI program," be revised to require that the services be specifically designed to address the condition. For example, it was pointed out that, in the case of a child whose blindness cannot be helped by medical or surgical intervention, the condition of blindness itself can be addressed in the form of orientation and mobility training, and other compensatory techniques. Such a restrictive reading of § 51a.307(c)(2) was not intended, but, to avoid any confusion on this point, this paragraph has been deleted.

16. Two comments recommended modification of § 51a.307(d), which lists the services that *may* be included in the program, but does not limit the agency to providing only these services. One person recommended that the State agency be required to make all of the listed services available to eligible children who need them, and also recommended that day care be added to the list. The other person suggested that residential care be added to the list. Due to limited resources, it would be inappropriate to require that all of the listed services be available. Since other services necessary to facilitate the implementation of the individual plan are generally authorized under this section, additional services need not be specifically listed.

17. One respondent recommended that § 51a.309, dealing with coordination with other agencies, be revised to include departments or divisions of mental retardation in addition to departments of mental health, since this responsibility is divided in some States, and mentally retarded children have been deprived of crippled children's services if they lack physical disabilities. Another person suggested that the Head Start agencies be added to the illustrative list of Federal, State, and local agencies in § 51a.309, so that the State agency, when developing individual service plans, will be made more aware of this additional resource. These suggestions have been accepted, and this section has been amended.

18. It was recommended that the word "great" be deleted from § 51a.311(a)(2), which authorizes the continuation of service for a certain period after receipt of a notice from SSA that a disabled child's eligibility for SSI benefits has terminated, if termination of service would cause "great" hardship to the child. The Department accepts this recommendation. It would be contrary to good medical practice to require a disabled child to suffer "great" hardship before services are continued. Therefore, the word "great" has been deleted from § 51a.311(a)(2).

19. One person recommended that instead of requiring "reasonable" efforts to refer for needed services children whose eligibility for SSI benefits has terminated, as stated in § 51a.311(c), it should be mandatory for the State agency to make such referral and to follow it up. Under the interim regulations, State agencies are required to make all reasonable efforts to refer children who need additional services to other agencies which can provide those services and to require more would be unrealistic. (See item 13, above.) Consequently, this recommendation has not been accepted.

20. Several questions were raised concerning eligibility and termination. The basic issue is whether a blind or disabled child is and continues to be eligible to receive services under section 1615(b) once referred by the SSA, regardless of the child's eligibility for SSI payments. One view of this section is that the program provides a mechanism for referral of blind and disabled children who, once referred, should continue to receive services regardless of continued SSI financial eligibility, and, even if referred under the erroneous belief of SSI eligibility, should continue to receive services after the error is detected.

Although there is no legislative history on this point, the statute clearly provides referral only for those receiving SSI payments or for those on whose behalf SSI payments are made (see section 1615(a) of the Social Security Act). It seems clear from the linkage of section 1615(b) to the SSI program that a general program to benefit blind and disabled children without regard to income was not intended. Therefore, the Department concludes that continued eligibility to receive SSI benefits is required in order to continue to receive services under section 1615(b); thus, the regulations have not been revised.

One comment raised a question about the validity of the limitation of treatment to 4 months following termination of SSI benefits. Elimination of this arbitrary period was recommended where termination would cause hardship to the child. The precedent for a 4-month phase-out period was established under the vocational rehabilitation regulations. This length of time, however, which might be appropriate in the context of vocational rehabilitation, may not be appropriate with respect to provision of medical services; therefore § 51a.311(b), which contains the 4-month time limit, has been deleted.

Another question was raised as to whether treatment services must be terminated precisely at age 7. The Department concludes that the same principles as apply to termination, described above, should apply with respect to the age limitation. Treatment services may be continued to be provided by the State agency if abrupt termination of treatment would cause hardship, e.g., would be contrary to good medical practice. A new § 51a.311(b) has been added to clarify this point.

21. A respondent from one State agency objected to the restriction to 10 percent of the Federal money available for counseling, referral, and establishing and monitoring individual service plans (§ 51a.312(a)) on the basis that this limits the States to an extremely small amount for start-up costs, and thus makes it difficult for smaller States to implement the program. This question has also been raised by a number of State agency representatives in discussions held since issuance of the interim regulations.

The statute states that no more than 10 percent of the Federal money available to the program can be used for the provision of counseling and referral services, and for establishing and monitoring individual service plans. The remaining 90 percent is intended for implementation of all other aspects of the program, including necessary administrative costs, and, since the present regulations permit such expenditures, no change is necessary.

In this regard, we note that if diagnostic costs are described as part of the development costs of the service plan, such costs, even for those children under age 7, must be included in the 10 percent portion. Therefore, the Department concluded that diagnostic costs associated with the care plan should be considered as part of treatment services, so that the 90 percent portion of Federal funds could be used to support diagnoses for children under 7 and for children who have never attended public school. However, it should be noted that, as a consequence, diagnostic workup costs would also be considered as a part of treatment for children over 7 who have attended public school, and treatment services for this group cannot be supported by these funds. Accordingly, diagnostic services will not be supported under this program for children over 7 who have attended public school. The Department is considering proposing a legislative change to correct this problem.

22. Two respondents complained that the allocation of funds among the States, described in § 51a.312(e), is based on the total child population under age 7, rather than on the number of children actually receiving benefits from SSI. The statute requires this method of allocation; therefore, the regulation was not revised.

23. One person recommended that § 51a.315 be strengthened to base payment on the actual cost of service in order to encourage the delivery of adequate services to eligible children. It is the Department's policy that payment for services provided under the State plan be reasonable and sufficient to maintain high standards relating to personnel and facilities. This policy does not preclude payment of actual costs when they are reasonable and necessary. Rates for payment of costs for inpatient services should not differ from payments made by the State crippled children's agency for similar services. Thus, the regulation was not revised.

24. One respondent recommended that § 51a.317 be extended to allow physician and medical services covered in the State plan to be provided by health professionals other than licensed physicians, if such services may be provided under applicable State law by such other health professionals. A person covered by the State plan could then select either a physician or another duly licensed health professional to deliver the services. No such limitation is contained in that section. Moreover, many of the services listed in § 51a.307, and others not specifically listed in that section, may be provided by persons other than physicians or by nonmedical personnel. It is implicit that, to the extent feasible, patients, or their parents or guardians may exercise freedom of choice in selection of a provider. Therefore, no revision in the regulation is necessary.

25. One person recommended that the qualifying word "reasonably" be deleted from § 51a.317(b), which requires that the standards for personnel and facilities assure a reasonably high standard of care. The person also suggested that § 51a.317(d) be modified to require that these standards be in accord with national standards as accepted or prescribed by the Secretary. The two recommendations were accepted and the regulation has been so revised, since there is no question that standards should aim at a high quality of care and, at a minimum, meet national standards.

26. In addition to the above revisions, made in response to comments, minor technical changes have been made, several to simplify the text in accordance with Executive Order 12044, regarding the improvement of government regulations.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby revises Subpart C of 42 CFR Part 51a, as set forth below.

Dated: December 8, 1978.

Julius B. Richmond,
Assistant Secretary for Health.

Approved: April 9, 1979.

Joseph A. Califano, Jr.,
Secretary.

Subpart C—Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits

Authority: Sec. 1615, Social Security Act, 90 Stat. 2683 (42 U.S.C. 1382d); sec. 1102, Social Security Act, 49 Stat. 647 (42 U.S.C. 1302).

Subpart C—Referral and Services for Blind and Disabled Children Receiving Supplemental Security Income Benefits

§ 51a.301 What is the purpose and scope of this program?

(a) This program, under the authority of Section 1615 of the Social Security Act (the Act), provides for the referral by the Social Security Administration of blind or disabled Supplemental Security Income recipients who are under age 16 to a designated State agency which is either the State crippled children's agency funded under Title V of the Act or another appropriate State agency which administers programs for disabled children.

(b) This designated agency is responsible for the administration of a State plan which provides for counseling, development of individual service plans, and referrals for disabled children under 16 years of age, and provides medical, social, developmental, and rehabilitative services for disabled children under 7 years of age and those who have never attended public school. Federal financial assistance is available to pay the State agency for the costs of carrying out the State plan. The regulations of this subpart contain the State plan requirements and other conditions which must be met by the State in order to receive funding under Section 1615(e) of the Act.

§ 51a.302 Definitions.

As used in this subpart:

"Act" means the Social Security Act as amended (42 U.S.C. Chap. 7);

"Department" means the Department of Health, Education, and Welfare;

"Disabled child" means an individual under age 16 who is blind or disabled and who is receiving benefits under the Supplemental Security Income Program;

"Family" means any relative by blood or marriage of a disabled child and other individuals living in the same household with whom the disabled child has a close interpersonal relationship;

"Public school" means any educational program operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly with the use of governmental funds or property received from a governmental source.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated;

"SSA" means the Social Security Administration;

"SSI" means the Supplemental Security Income Program established under Title XVI of the Social Security Act (42 U.S.C. 1381);

"SSI Disabled Children's Program" means the program for referral and services for blind and disabled children receiving supplemental security income benefits under Section 1615(e) of the Act and the regulations of this subpart;

"State" means a State of the United States or the District of Columbia; and

"State agency" means the agency which has been designated to administer the SSI Disabled Children's Program, as provided for in § 51a.310.

§ 51a.303 How are State plans to be submitted and approved?

(a) *Public participation.* The State plan shall be made available to the public, and interested pesons given an opportunity to comment on any State plan developed under this subpart; any comments received shall be submitted with the State plan.

(b) *Submission of plans.* In order to receive funds under this subpart for the first year of operation of the SSI Disabled Children's Program, a State shall submit to and have approved by the Secretary a State plan which is a comprehensive-statement of the nature and scope of the program and contains all necessary information and assurances of compliance to meet the requirements specified in Section 1615 of the Act and the regulations of this subpart. In order to receive funds under this subpart in subsequent years, a State shall submit to and have approved by the Secretary a State plan which contains or incorporates by reference the information and meets the requirements specified in Section 1615 of the Act and the regulations of this subpart. Documents incorporated by reference become a part of the State plan as though fully contained in it. These documents must be (1) clearly identified as to subject, date, and location, (2) officially adopted and distributed in accordance with applicable procedures, and (3) made available to the Secretary and to the public for inspection.

(c) *Prompt approval of State plans.* Under Section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and these regulations shall be made promptly and not later than the 90th day following the date on which the plan submitted is received by the Department, unless the Secretary has received from the State agency a written agreement to extend that period.

(d) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that the amendment be considered as a new State plan, the decision as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which the State's request is received by the Department, unless the Secretary has received from the State agency a written agreement to extend that period.

(e) *Administrative review.* Under Section 1116 of the Act, any State dissatisfied with a determination of the Secretary under paragraph (c) or (d) of this section with respect to any plan or amendment may within 60 days after the date of receipt of the determination, file a petition with the Secretary asking for reconsideration of the issue of whether the plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 5 days of filing the petition, the State agency shall notify the public of the Secretary's action and the State's petition for review, and make copies available to interested persons. Within 30 days after receipt of the petition, the Secretary will notify the State of the time and place at which the hearing for the purpose of reconsidering the issue will be held. This hearing shall be held not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing on another time. the hearing shall be open to the public and interested persons shall have the right to submit written testimony for the hearing record. Oral testimony may be taken at the discretion of the hearing officer. Within 5 days of the fixing of the time and place of the hearing, the State agency shall give reasonable public notice of the hearing and of the public's rights at the hearing.

A determination upholding, modifying, or reversing the Secretary's original decision will be made within 60 days of the conclusion of the hearing, and shall within 5 days be made available to the public. The denial of Federal funds resulting from an initial determination by the Secretary that a plan or amendment is not approvable shall not be delayed until the reconsideration has been completed, but in the event that the Secretary subsequently determines that his original decision was incorrect he shall arrange to pay immediately in a lump sum any funds incorrectly withheld or otherwise denied.

(f) *Judicial review.* Section 1116(a)(3) of the Act provides that any State dissatisfied with a final determination by the Secretary under paragraph (d) of this section may, within 60 days after it has been notified of this dertermination, file with the U.S. Court of Appeals for the circuit in which the State is located a petition for review of this determination. The procedural and standard-of-review requirements in § 1116(a)(3)–(5) apply.

§ 51a.304 What requirements must a State plan meet?

In order to receive approval by the Secretary, a State plan must meet the requirements of §§ 51a.305 through 51a.321.

§ 51a.305 What is the relationship between the State agency and SSA?

(a) The SSA will be responsible for determining the eligibility of disabled children for SSI benefits. The SSA will refer eligible children to the State agency designated under § 51a.310. That agency shall determine:

(1) Which services will be provided to each eligible child, and

(2) The child's need for and use of the services made available under the plan.

(b) The State plan shall:

(1) Describe the method by which disabled children will be referred from SSA to the State agency;

(2) Provide for the exchange between the State agency and SSA of all relevant information concerning the children referred, including the need for and use of the services provided under the individual service plans required by § 51a.306(b);

(3) Provide that a disabled child receiving services under the State plan, or, as appropriate, his parent, guardian or designated representative who is dissatisfied with any action with regard to the furnishing of services, may file a request for an administrative review and redetermination of that action, to be made by a member or members of the supervisory staff of the State agency; and

(4) Provide for and describe a grievance procedure which will be available to a disabled child, his parent, guardian or designated representative, who is dissatisfied with the review and redetermination required in paragraph (3).

§ 51a.306 What are the program requirements for disabled children under 16 years of age?

The State plan shall describe the methods to be used to provide the following services for disabled children under 16 years of age who are referred by SSA to the State agency:

(a) *Counseling.* (1) A counseling program shall be provided for disabled children and their families in order to:

(i) Explain the rehabilitation process, the services available to the child, and the rights and responsibilities of the child and his family under the SSI Disabled Children's Program, and

(ii) Assist the child's family in its efforts to cope with the child's disability and in its efforts to enable the child to lead as normal a life as possible.

(2) Counseling shall be provided at any time when a change is made in the individual service plan required by § 51a.306(b) which could affect the individual's SSI eligibility or the rights and responsibilities of the child or his family.

(3) Individuals employed as counselors under the plan shall, as a minimum, be skilled in techniques of human relations counseling and have knowledge of the relevant policies and procedures of SSI and the State agency as well as the medical, educational, rehabilitative, and social service resources available to assist disabled children.

(b) *Establishment of individual service plans for each disabled child.* (1) An individual service plan shall be established for each disabled child referred by the SSA to the State agency. The service plan shall be:

(i) In writing;

(ii) Developed on the basis of a multidisciplinary evaluation of the medical, educational, social, developmental, and rehabilitative needs of the child;

(iii) Developed by the State agency with the participation of representatives of other agencies (responsible for carrying out the service plan) and the disabled child or, as appropriate, his parent, guardian, or designated representative; and

(iv) Revised as necessary by the State agency, with participation of representatives of other agencies (responsible for carrying out the service plan) when the other agency is affected by the revision, and with the involvement of the disabled child or his parent, guardian, or designated representative, when any significant revision is made to the service plan.

(2) Each individual service plan must contain, at a minimum, the following information:

(i) A statement of the medical, educational, developmental, social, and rehabilitative needs of the child including the diagnosis which formed the basis for the initial referral and the final diagnosis established as a result of the multidisciplinary evaluation made under subparagraph (1)(ii) of this paragraph;

(ii) Evidence that a case history has been compiled and used in the development of the plan, if a complete record is not included with the individual service plan;

(iii) A statement of specific short-term and long-term objectives for meeting the medical, educational, social, developmental, and rehabilitative needs of the child and a description of the methods to be used to measure the child's progress in reaching the objectives;

(iv) A description of the major activities to be undertaken to reach the objectives and the agency or agencies responsible for each of these activities;

(v) The date on which the activities will begin and, to the extent possible, an estimate of the duration and frequency of each activity;

(vi) A statement of the anticipated outcomes for each activity;

(vii) A description of the mechanisms to be used to assure that the services which are provided are of a high quality, including a description of the personnel needed to carry out the activities and their qualifications;

(viii) A schedule for reviewing elements of the service plan to determine their effectiveness in meeting the established objectives; and

(ix) The estimated cost of carrying out the service plan.

(3) To the extent appropriate, as determined by the State agency, service plans which have been developed for the child in connection with other Federal programs shall be included in the service plan developed under this paragraph. These other Federal programs include:

(i) Services developed for crippled children under Title V of the Act (42 U.S.C. 701–707, regulations at 42 CFR Part 51a, Subpart A);

(ii) Individualized education programs developed for the handicapped child under Part B of the Education of the Handicapped Act (20 U.S.C. 1412(4); 1414(a)(5), regulations at 45 CFR 121a.220–121a.226);

(iii) Habilitation plans for developmentally disabled children developed under the Developmental Disabilities Services and Facilities Construction Act (42 U.S.C. 611(b), regulations at 45 CFR 1386.1(b)(x), 1386.47);

(iv) Individual written rehabilitation program developed for handicapped individuals under the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(9); 42 U.S.C. 722, regulations at 45 CFR 1361.39);

(v) Other individual service plans developed under the Medicaid program, Title XIX of the Act (42 U.S.C. 1396 *et seq.*, regulations at 42 CFR Part 435), Title XX of the Act (42 U.S.C. 1397 *et seq.*, regulations at 45 CFR Part 228) and the Community Mental Health Centers Program (42 U.S.C. 2689, regulations at 42 CFR Part 54); and

(vi) Services being provided to handicapped pre-schoolers in Head Start programs under Pub. L. 93–644, the Head Start, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2701).

(4) Requirements for cooperative agreements among agencies providing referrals and services under individual service plans are described in § 51a.309.

(c) *Referrals.* The State plan shall provide for the prompt referral of the disabled children for medical, educational, rehabilitative, and social services based on the requirements of each child's service plan and the cooperative agreements described in § 51a.309.

(d) *Monitoring.* The State plan shall describe the methods to be used to monitor the carrying out of the service plans by the agencies providing services and by the disabled children and their families. The purpose of the monitoring shall be to determine the extent to which services are used, the appropriateness and quality of the services, the extent to which coordination with other agencies has been achieved, and the reasonableness of the expenditures for services provided under § 51a.307. In addition, the State plan shall provide for the:

(1) Designation of a program coordinator responsible for ensuring the carrying out of the service plan and for evaluating its impact on the disabled child; and

(2) Periodic review, at least annually, of service plans by appropriate professionals not involved in the preparation or carrying out of the plans. The results of the periodic review shall be submitted in writing to the State agency.

§ 51a.307 What are the program requirements for disabled children under 7 years of age and those who have never attended public school?

(a) The State plan shall provide for the delivery of a full range of medical, social, developmental, and rehabilitative services to disabled children:

(1) Who are under 7 years of age or have never attended public school and require preparation to take advantage of public educational services; and

(2) For whom these services reasonably promise to improve the child's ability to benefit from subsequent education or training, or otherwise improve his opportunities for self-sufficiency or self-support as an adult.

(b) The services included in the State plan may be provided by the State agency directly, by contract with other agencies, or under a cooperative agreement as described in § 51a.309.

(c) The services must be provided under an individual service plan as described in § 51a.306(b).

(d) Services may include, but need not be limited to, the following:

(1) Preventive, diagnostic, and treatment services of a physician and, as appropriate, physician extenders;

(2) Inpatient and outpatient hospital services;

(3) Dental services;

(4) Nursing services;

(5) Home health services;

(6) Social services;

(7) Rehabilitative services including long-term and short-term physical and occupational therapy;

(8) Speech and hearing services;

(9) Vision services;

(10) Child development services;

(11) Mental health services;

(12) Counseling services, including rehabilitative, developmental, social, occupational, and educational counseling;

(13) Allied health services;

(14) Pharmaceutical services including the provision of drugs;

(15) Medical device and related services;

(16) Transportation services needed to carry out the individual service plan;

(17) Emergency medical services;

(18) Nutrition services as needed to assist in carrying out the individual service plan;

(19) Reading and interpreter services for the deaf and blind; and

(20) Other services necessary to assist in carrying out the individual service plan.

(e) No funds may be used to pay for the costs of construction of a facility.

(f) The plan shall define the criteria to be used to determine which disabled children will receive priority for services, taking into consideration items 1 through 3 below. When resources are available, however, a State may not use the criteria to limit the delivery of services to eligible children.

(1) The relationship between the geographic location of the disabled child and the location of resources needed to provide services to the child;

(2) The availability of other Federal and non-Federal resources; and

(3) The degree to which the services will improve the child's ability to benefit from subsequent education or training, or improve his opportunities for self-sufficiency or self-support as an adult.

§ 51a.308 How must the State plan describe program objectives?

The State plan shall contain statements of measurable objectives for activities undertaken during the program year in accordance with §§ 51a.305 through 51a.309.

§ 51a.309 What programs must be coordinated?

The State plan shall assure that cooperative agreements are made with each Federal, State, or local public agency which provides services to disabled children including, but not limited to, the State programs for: Developmental Disabilities; Vocational Rehabilitation; medical assistance (Title XIX, Social Security Act) including the Early and Periodic Screening, Diagnosis and Treatment Program; social services (Title XX, Social Security Act); Education of the Handicapped; Head Start; Maternal and Child Health and Crippled Children's Services; mental health; mental retardation; and services for the blind. The purpose of the cooperative agreements is to assure that services under the plan are coordinated with all principal public and private State and local agencies providing services to disabled children and that all reasonable efforts are made to use existing services and to obtain financial support from these agencies. The agreements must in writing and include as a minimum the following:

(a) A statement of the mutual objectives and respective responsibilities of each agency including a description of the services the agency is to provide at the State and local level;

(b) A system for referrals between agencies;

(c) A mechanism for financing services provided;

(d) A system to ensure the exchange of reports on services provided;

(e) The joint evaluation of services as well as policies and activities that affect the cooperative work of the parties;

(f) Periodic reviews of the agreement; and

(g) A mechanism for ensuring continuing and close cooperation, including the designation of staff members responsible for activities involving other agencies, at both the State and local levels.

§ 51a.310 What State agency must be designated to administer the State plan?

(a) The State plan shall designate a State agency to administer the plan that is either the agency which administers the State Crippled Children's Program under Title V of the Act or an alternate agency designated by the Governor. The alternate agency must administer programs providing services to disabled children and be one which the Governor has determined is capable of administering the State plan in a more efficient and effective manner than the State Crippled Children's Program. If an alternate agency is designated, the plan shall set forth the reasons for the Governor's determination that the alternate agency will administer the plan more efficiently and effectively than the State Crippled Children's Program.

(b) The State plan shall:

(1) Provide for the establishment within the State agency of an identifiable unit responsible for carrying out the plan; and

(2) Provide for a full-time or part-time administrator to direct the organizational unit as well as other staff necessary to carry out the plan.

§ 51a.311 When must services under the State plan be terminated?

(a) No funds under this subpart may be used for services after receipt by the State agency of notice from SSA that a disabled child's eligibility for SSI benefits has terminated, except:

(1) When services have been started and the individual service plan indicates that the commitment of funds was made for the service prior to the receipt of the notice of the termination, i.e., written contracts, purchase orders, or equivalent authorization have been issued, or lump sum payments were made (such as those required to be made in advance, as in the case of training expenses); or

(2) When abrupt termination of the services being provided under the individual service plan would be contrary to good medical practice.

(b) No funds under this subpart may be used for services for a disabled child 7 years of age or over, except:

(1) For those who have never attended public school; or

(2) When abrupt termination of the services being provided under the individual service plan would be contrary to good medical practice.

(c) All reasonable efforts shall be made to refer children whose eligibility is terminated and who require additional services to other agencies which can provide such services.

§ 51a.312 What requirements must be met before payments to States may be made?

Payments to States for the costs of carrying out the State plan must meet the requirements set forth below:

(a) Not more than 10 percent of the funds available under this subpart shall be used for counseling, referral, and establishing and monitoring of individual service plans as described in § 51a.306.

(b) Funds available under this subpart shall be used only after all other Federal funds available to deliver the services provided for under the State plan have been spent.

(c) Funds available under this subpart may not be used for so much of the services as would ordinarily be provided children who are not disabled.

(d) Funds available under this subpart shall be used to supplement the level of funds that would otherwise be made available for services provided under the plan and not in place of other public funds available for the same purposes. If the total amount of non-Federal public funds spent in subsequent years for services is less than the amount expended during the fiscal year ending June 30, 1976, then a sum equal to the amount of the reduction in the non-Federal funds will be subtracted from the payments to the State under this plan for the current fiscal year.

(e) Funds available under this subpart shall be allotted to the States in proportion to each State's part of the population in the 50 States and the District of Columbia which is under the age of 7 years.

(f) Whenever the Secretary determines that any item or class of items for which payment is claimed under this subpart shall be disallowed, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance. The reconsideration shall be conducted in accordance with the hearing procedures of 45 CFR Part 16.

§ 51a.313 Confidential information.

The State plan shall contain an assurance that all personal information about recipients of services obtained by State or local staff will be held confidential, and will not be disclosed without the individual's consent, except as may be necessary to notify SSA as to whether a child's disability is continuing under the SSI program or as may be necessary to provide service to the individual or to provide for medical or financial audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information will be disclosed only in summary, statistical, or other form which does not identify particular individuals. In addition, the records of alcohol and drug abuse patients are subject to the requirements of 42 CFR Part 2.

§ 51a.314 When must budgets be submitted by State agencies?

Prior to the beginning of each Federal fiscal year, the State agency shall submit, upon official forms and in accordance with procedures established by the Secretary, an annual budget, appropriately documented and supported, of all funds to be spent under the State plan during that fiscal year.

§ 51a.315 What rates will be used for payment for medical care, appliances, and convalescent and foster home care?

The State plan shall incorporate by reference the schedule of rates and the methods used by the State agency in establishing and proving that rates of payment for services provided under the State plan are reasonable and necessary to maintain the standards relating to personnel and facilities established under § 51a.317.

§ 51a.316 What rates will be used for payment for inpatient hospital services?

The State plan shall contain an assurance that payment for inpatient hospital services provided under the plan shall be the reasonable cost of the services which shall be developed by the State and included in the plan. The reasonable cost of the services shall not exceed the amount which would be determined under Section 1861(v) of the Act as the reasonable cost of the same services for purposes of title XVIII.

§ 51a.317 What standards will be required for personnel and facilities?

The State plan shall incorporate by reference the standards required for personnel and facilities to be used in the provision of services under the plan. These standards for personnel and facilities must be those which (a) are found, upon investigation by the State agency, to be best suited to carry out the specific purpose; (b) assure a high standard of care; (c) meet State and local licensing laws; and (d) are in accordance with national standards as accepted or required by the Secretary.

§ 51a.318 Must services provided under the State plan have prior authorization?

The State plan shall contain an assurance that all services purchased for individuals under the plan will be authorized by employees of the State agencies, or by employees of the local public agency administering a part of the plan locally under the supervision of the State agency, before the services are provided; and that records of these authorizations will be retained by the State or local public agency as part of the individual's case record.

§ 51a.319 What are the requirements for custody of and accounting for Federal funds?

(a) The State Treasurer or official carrying out similar functions for the State shall receive and provide for the holding of all funds paid to the State under this subpart, subject to their use by the State agency for State plan purposes.

(b) The State plan shall incorporate by reference written fiscal control and fund accounting procedures which are necessary to assure the proper use of and accounting for funds paid to the State under this subpart. These procedures shall provide for an accurate and timely recording of receipts of Federal funds paid to the State for costs of carrying out the approved plan, of the amounts and purposes of payments made in carrying out the State plan, and of any unearned balances of Federal funds paid to the State. In addition, the State plan must include information to show that funds available under this subpart have not been or will not be used to pay for costs covered by other Federal grants or contracts or which are required or used to match other Federal funds.

§ 51a.320 Which Department-wide regulations apply?

Attention is drawn to the following HEW Department-wide regulations which apply to grants under this subpart, except as otherwise provided by this subpart:

45 CFR Part 19—Limitation on Payments or Reimbursements for Drugs

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare's implementation of Title VI of the Civil Rights Act of 1964

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

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April 18, 1979

Part III

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment, and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rules.

SUMMARY: This document contains interim final rules relating to Inmate Discipline (including withholding and forfeiture of special good time credits) and Special Housing Units. This document is intended to give the public notice of the rules in this area, not just changes from prior policy.

DATES: Effective Date: April 15, 1979, and until final rules are issued. Comment Date: Written comments will be considered if received on or before July 15, 1979.

ADDRESS: Send written comments to the Office of General Counsel, Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone, 202/724-3062.

SUPPLEMENTAL INFORMATION: On August 2, 1978, the Bureau of Prisons republished proposed rules (at 43 FR 34062 et seq.) relating to Inmate Discipline and Special Housing Units. Interested persons were invited to submit comments on the proposed rules. On the basis of comments received and internal staff review, some changes have been made. The most significant of these is the categorization of prohibited acts committed by inmates and a disciplinary severity scale. Rules relating to this aspect are intended to provide inmates within Bureau of Prisons institutions with a fuller understanding of the prohibited acts, the severity they carry, and the range of permissible sanctions when an inmate is determined to have committed a prohibited act. A fuller discussion of sanctions is provided within the rule.

On December 21, 1977, the Bureau of Prisons published its proposed rules (at 42 FR 64083) relating to Close Supervision Cases. Interested persons were invited to submit comments on the proposed rules. On the basis of these comments and internal staff review, changes have been made. Of special note is the Bureau of Prisons' inclusion of Close Supervision Cases, now entitled Protection Cases, within the scope of the rules on Inmate Discipline and Special Housing Units. This change was made in recognition of the fact that inmates identified as protection cases are confined in a special housing unit (administrative detention).

Changes in the final rules on Inmate Discipline and Special Housing Units are either of a minor nature or their substance is generally less restrictive than the proposed rules. Thus no republication for comments prior to their adoption is necessary. Members of the public may, of course, submit further comments concerning these rules by writing to the Bureau of Prisons. The Bureau plans to conduct an assessment of these rules on Inmate Discipline and Special Housing Units during the Fall of this year. Comments of the public are invited and will be considered within the context of this assessment.

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Summary of Changes

1. Section 541.10—Proposed § 541.10(b)(2) is expanded to recognize that one reason staff takes disciplinary action is "to promote a safe and orderly institution environment".

Proposed § 541.10(b)(6) is expanded in the final rule, by new language requiring determination by a mental health professional as to whether the inmate is responsible for his conduct or whether the inmate is incompetent. The final rule specifies that disciplinary action may not occur where the inmate is determined to be either incompetent or not responsible for his conduct. An explanation of these terms comprises a new second paragraph. The phrase "mental health professional" is substituted for "medical staff" to more clearly recognize those persons with the expertise necessary to prepare the evaluation.

2. Section 541.11—Proposed § 541.11 required that staff advise each inmate of institution rules "at the time of arrival at an institution". The final rule amends this language and requires the inmate receive this notice "promptly after arrival". The new language emphasizes the priority attached to this aspect.

Proposed § 541.11(b) is expanded to require that the inmate receive notice of both the disciplinary system within the institution "and the time limits thereof". Proposed Table 1 (Summary of Disciplinary System) becomes final Table 2. Proposed Table 2 (Time Limits in Disciplinary Process) becomes final Table 3 and is referenced in final § 541.11(b).

Proposed § 541.11(c) is expanded to list specifically the inmate's rights and responsibilities. The rights encompass various aspects of institution life, including right to visit and correspond, the right to freedom of religious affiliation, the right to health care, etc. For each right, a corresponding responsibility is provided.

Section 541.11(d) is substantially revised. The Bureau has established four categories of prohibited acts: Greatest, High, Moderate and Low Moderate. Each category lists sanctions appropriate for an inmate found to have committed a prohibited act in that category.

The Bureau's intent in § 541.11(d) is to ensure a greater consistency of use of discipline throughout the Federal Prison System. Heretofore, there has been some concern that the disciplinary system allowed for a variety of interpretation on the degree of severity of the prohibited act and on sanctions that could be imposed. Factors which may have contributed to this disparity include type of institution and composition of the discipline committee.

In development of the present system, the Bureau had both administrative and line staff (including persons who sit on the discipline committees) rank the prohibited acts by degree of severity. These responses were categorized. Information collected from inmates also played a role in arriving at a final decision. A similar procedure existed in the determination of sanction levels, since all possible sanctions were listed and ranked. The submitted information was compiled and evaluated by Bureau staff. Categories of prohibited acts and appropriate sanctions were prepared and submitted for review of the Bureau's executive staff. This rule is a result of that process.

The prohibited acts in § 541.11(d) have been renumbered. Except as noted below they are similar in language to those in the proposed rule. Proposed prohibited act 801 is deleted as a specific act and is inserted in the general discussion of final § 541.11(d)

Prohibited Acts—Summary of Changes

New #	Proposed #	Changes
101	002	New act includes sexual assault.
102, 200	101,102	New acts of escape categorized and charged by type of escape.
103	151	New act specifies conditions necessary for the use of this charge.
104	201, 202	New act adds "dangerous chemicals", excludes unauthorized tool (becomes new prohibited act 202).
107		New.
199/299/399	306	New acts, of disruptive conduct, categorized and charged in terms of severity.
202		See comment for New 104 above.
205	051	New act excludes language "with others."
210	203	Excludes intoxicants (becomes new prohibited acts 215—introduction—and 322—possessing or using).
214	259	New act excludes breathalyzer or alcohol abuse test (becomes new prohibited act 323).
215	203	See comment for New 210 above.
218	152, 211	Sets monetary value to qualify for High Category; incorporates mutilation or altering clothing issued by government.
307	256	New act categorized and charged in terms of severity.
309	258	New act substitutes the broader term "community program" for work or study release.
314	351	New act categorized and charged in terms of severity.
322	203, 551, 552	See comment for New 210 above—new act encompasses making intoxicants; incorporates being intoxicated.
323	259	See comment for New 214 above.
328	752	New act amends language to say "or any other person without staff authorization."
329	152, 211	Sets monetary value to qualify for Moderate Category; incorporates mutilating or altering clothing issued by government.
406	701	New act discusses when restriction of these privileges may be appropriate.
407	703	New act omits reference to correspondence; discusses when restriction of these privileges may be appropriate.

Table 1 is new and consists of a discussion of the various sanctions. Sanctions A–F may be imposed only by the Institution Discipline Committee (IDC). Sanctions G–P are of lesser severity and may be imposed by either the IDC or Unit Discipline Committee (UDC). Special notice is drawn to sanctions B and F which specify that authority for restoration of forfeited and withheld statutory good time is delegated only to the IDC of each institution. This action cancels those provisions in the proposed rule providing the initial hearing officer with authority to restore forfeited or withheld good time (proposed § 541.16 (d) and (e)). Sanction C of Table 1 cancels proposed § 541.12(c) with a disciplinary transfer again considered a sanction which may only be imposed following an IDC hearing. The final rule requires the Regional Director's approval for the transfer of an inmate for disciplinary reasons prior to the inmate's appearance before the IDC. Sanction D relates to disciplinary segregation. There is a discussion here of those limited occasions when consecutive disciplinary segregation sanctions may be imposed and executed.

Section 541.11(e) is new and presents a summary of sanctions by severity of prohibited act, along with time eligibility for restoration of forfeited and withheld statutory good time. Also included are limits on the amount of statutory good time subject to being withheld or forfeited, and on the maximum stay permissible in disciplinary segregation.

Proposed Table 1, new final Table 2, is amended in several ways. The term "Unit Discipline Committee" replaces "initial hearing officer" and the word "sanctions" replaces "dispositions" in discussion of actions available to the UDC and IDC. The authority of the UDC is amended to reflect provisions in the narrative which authorize the UDC to informally resolve any High, Moderate or Low Moderate charge. The authority of the IDC is amended to delete the reference to "informal resolution", since this action is not considered appropriate when both the investigation and initial hearing process previously have rejected its use.

Proposed Table 2, now final Table 3, is also amended to reflect changes in the rule narrative. Point 1 is amended by insertion of the phrase "inmate's involvement in" to reflect when the time limits begin. The provision that an inmate receive a minimum of 24 hours notice prior to the IDC hearing is amended to allow the inmate, if he or she desires, to waive this requirement. A second paragraph is added to the "Note" section of this Table. This paragraph provides for the suspension of disciplinary proceedings for a period not to exceed 2 weeks while informal resolution is attempted. It further specifies that, if informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended, with time requirements resuming at the point at which they were suspended.

3. Sections 541.12–541.12(a) is amended to specify that informal resolution requires the consent of both parties. A second amendment authorizes preparation of an Incident Report when staff considers efforts at informal resolution unsuccessful.

Section 541.12(b) is amended to recognize that agencies other than the FBI may conduct a criminal investigation in a federal institution. This section now provides for the inmate to receive a copy of the Incident Report prior to being interviewed by the investigating agency.

A commentator to this section expressed concern that the advisement of the inmate's right to remain silent may lead the inmate to believe that silence alone may be sufficient to support a finding that the inmate committed the prohibited act. This was not the intent, and the final rule requires the Bureau of Prisons' investigator to inform the inmate that silence alone may not be used to support a finding that the inmate has committed a prohibited act. A final amendment to § 541.12(b) provides that, if a case is forwarded to the IDC, the staff representative shall receive a copy of both the investigation and "other relevant materials". This provision expands the proposed rule and provides the staff representative with additional information for use in representation of the inmate.

Several commenters to § 541.12(c) objected to the proposal that transfer for disciplinary reasons is a minor disposition available to the initial hearing officer(s). We have reconsidered this provision and we agree this is a sanction best left to the IDC. In a related aspect, we have indicated in our discussion of the disciplinary transfer sanctions (Table 1) that, where the Warden believes a present or impending emergency requires immediate action, the Warden may recommend for approval of the appropriate Regional Director the transfer of an inmate prior to the IDC hearing. The IDC at the receiving institution shall then provide the inmate with a hearing. As a consequence of these amendments, § 541.12(c) is deleted from the final rule and § 541.12 is retitled Incident Report and Investigation.

4. Section 541.13—This section is amended in several ways. Throughout the proposed rules, the authority to conduct initial hearings was delegated to the initial hearing officer(s) with a recognition that this encompassed the unit discipline committee. At the present time, most Bureau institutions employ the Unit Management concept, including the use in those institutions of Unit Discipline Committees. Accordingly, we have decided to replace through the rule the term "initial hearing officer(s)" with "Unit Discipline Committee (UDC)", as this term reflects persons conducting the majority of initial hearings. For a similar reason, the first sentence of § 541.13, omits the word "term" from "unit or term discipline committee".

As a result of the identification of sanctions available to the IDC and UDC, the final rule inserts language to authorize the UDC to impose sanctions G through P and deletes that portion of proposed § 541.13 which discussed minor and major sanctions. A final amendment to the first paragraph of § 541.13 is accomplished by substituting (in the fourth sentence of this paragraph) the phrase "further hearing" for "rehearing" as this more clearly indicates what occurs.

Section 541.13(a) is amended by insertion of the phrase "inmate's involvement in" to indicate the beginning of the 24-hour time frame for delivery of a written copy of the charges to the inmate. The same phrase is added in § 541.13(b) to indicate the beginning of the 48-hour time constraint. Reference to the reporting or investigating officer is deleted as this information is stated in the first paragraph of § 541.13.

Section 541.13(c) is amended to recognize the inmate's right to waive appearance at the hearing. The new language requires that the waiver be documented by staff and reviewed by the UDC. The proposed language "refuses to appear" is replaced in the final rule with "waives the right to appear".

As a result of the categorizing of prohibited acts, § 541.13(e) is amended to reflect that the UDC may informally resolve any High, Moderate or Low Moderate charge.

The term "decision" replaces "final judgment" in § 541.13(f), since this more accurately reflects the nature of the action. Two additions are made in this section. The phrase "supported by substantial evidence" is added to the first sentence of this section. The phrase "if reflected in the Incident Report" is added to both (f)(1) and (f)(2). These changes are made to emphasize that the decision of the UDC is based on substantial information.

Section 541.13(g) is amended by insertion of the applicable minor sanctions (G through P).

Section 541.13(h) requires the inmate to indicate what testimony the witnesses are expected to provide. This information is relevant in assisting the IDC to determine whether the requested witnesses will be repetitive or have information relevant to the charge.

Section 541.13(i) is amended to specify that the UDC may expunge a High, Moderate or Low Moderate Incident Report and related documents when the inmate is found not to have committed the prohibited act. This section requires referral to the IDC of all acts of Greatest severity.

5. Section 541.14—Throughout the proposed rule, the Institution Discipline Committee was identified by its full name or by the term "Committee". In addition to these terms, the final rule refers to the Institution Discipline Committee by the abbreviation IDC.

Section 541.14(c) is amended by deletion of the cross reference to proposed § 541.16(d), as the latter section is deleted from the final rule. Based on the delineation of sanctions as provided in § 541.11(d), final § 541.14(c) specifies that the IDC has the authority to impose or suspend sanctions A through F. Deleted from the proposed rule are those provisions which discuss sanctions heretofore available to the IDC. Proposed § 541.14(d) is now included as part of final § 541.14(c).

6. Sections 541.15–541.15(c) is amended by deletion of the phrase "are necessary for an appreciation of the circumstances surrounding the charge". In an effort to clarify the intent of this section, the new language authorizes the calling of witnesses "who have information directly relevant to the charge(s) and who are reasonably available". This includes outside witnesses, who may appear under conditions specified in the rules.

Final § 541.15(c) authorizes the staff representative to ask questions of a witness; where the inmate waives staff representation, the inmate may submit questions for requested witnesses in writing to the IDC. To avoid the possibility of disruptive or confrontational behavior, the final rule states that an inmate may not question any witnesses at the hearing and specifies that the IDC need not call the reporting officer and other adverse witnesses if their knowledge of the incident is adequately summarized in the material submitted to the Committee.

Section 541.15(d) is amended to recognize the inmate's right to waive appearance at the IDC hearing. The new language requires the waiver be documented by staff and reviewed by the IDC. The proposed language of "refuses to appear" is amended in the final rule to "waives the right to appear". This section is further amended to provide that when an inmate escapes or is otherwise absent from custody, the Warden shall have the charge reheard before the IDC at the institution to which the inmate is "designated" as opposed to "returned". This clarification eliminates the possibility that an inmate in holdover status (en route during transfer, etc.) will be required to receive an IDC hearing prior to arriving at the designated facility. Final § 541.15(d) provides for the inmate to receive a UDC hearing at the designated institution and requires the UDC to ensure that the inmate has all rights required for appearance at the IDC. Later in this section, the term "in-person" is substituted for "live" witnesses.

Sections 541.15 (e) and (f) are amended by substitution of the term "decision" for "final judgment", the change reflecting the fact-finding nature of the IDC. In response to a comment pointing out the disparity in terms as evident in proposed §§ 541.15(f) and 541.17(b), final § 541.15(f) is amended by stating that the IDC's decision must be supported by "substantial evidence manifested in the record of the proceedings". The phrase "if reflected in the Incident Report" is added to both (f)(1) and (f)(2). These changes emphasize that the decision of the IDC is based on substantive information.

Section 541.15(g) places into the rule the existing practice of providing the inmate with a written copy of the IDC decision and disposition.

7. Section 541.16—Proposed §§ 541.16 (b)–(g) are deleted as a result of the disciplinary severity scale presented in § 541.11(d). Final §§ 541.16 (b) and (c) are new. These respectively concern the imposition of sanctions A through P, and the IDC's authority to suspend the execution of a sanction it imposes. A cross reference to § 541.11(d) is inserted in both § 541.16(b) and § 541.16(c).

8. Section 541.17—Proposed § 541.17 is amended to encompass appeals from both UDC and IDC hearings. The means of appeal is unchanged. § 541.17(c) is

amended to read "whether an appropriate sanction was imposed according to the severity of the prohibited act". This change of language occurs as a result of the Bureau's establishment of a disciplinary severity scale.

9. Section 541.18—Based on the disciplinary severity scale, § 541.18(a) is amended by insertion of the phrase "prohibited act in the Greatest, High or Moderate category" for "a serious act of misconduct which warrants this sanction". The last sentence of § 541.18(a) is amended by substitution of the more relevant phrase "necessary for the control and management of behavior" for "when his presence in the general population poses a serious threat to life, property, himself, staff or other inmates or to the security or orderly running of the institution".

Section 541.18(b) is expanded to include additional situations which may warrant placement in a more secure cell prior to a hearing before the IDC. This section acknowledges that this type of housing may occur in an area ordinarily set aside for disciplinary segregation and which requires the withdrawal of privileges ordinarily afforded in administrative detention status. The maximum stay in this status is increased from 3 to 5 days. The primary reason for this is to cover those cases, such as 3-day holiday weekends, when the IDC does not meet within 3 days.

Section 541.18(c) is amended to recognize the inmate's right to waive appearance at the formal review. The new language requires the waiver be documented by staff. The final rule provides for the inmate to receive a psychiatric or psychological "assessment" as opposed to "interview" when disciplinary segregation continues beyond 30 days. The assessment is submitted to the IDC in a written report and is to include a personal interview. To better monitor the inmate's mental health while the inmate is confined in disciplinary segregation, final § 541.18(c) requires subsequent assessments and reports at one-month intervals, as opposed to the two-month intervals stipulated in the proposed rules, if segregation continues for this extended period.

Section 541.18(d) authorizes the IDC to release an inmate from disciplinary segregation earlier then the sanction initially imposed when the IDC finds continuation in this status "is no longer necessary * * * for the control and management of behavior". This language replaces "poses a threat to himself or others or to institution security". The final rule states that the IDC may not increase any previously imposed sanction.

10. Section 541.19—This section has been renumbered final § 541.22. Specific reference to §§ 541.10–541.19 is deleted as all provisions of this rule are applicable to Federal Community Treatment Centers (CTCs) unless otherwise specified. For example, proposed § 541.20 is not necessarily relevant to Federal CTCs, since these facilities ordinarily do not have Special Housing Units.

Other amendments include a provision in final § 541.22(a) that no member of the IDC may be the reporting or investigating officer or have played any significant part in having the charge(s) referred to the IDC. The reference to "team" discipline committee is deleted; the rule recognizes the "UDC" as the title of the committee.

Final § 541.22(b) expands proposed § 541.19(b) by specifying that the IDC need not call witnesses whose testimony would be repetitious or irrelevant to the charge(s) or disposition(s). This language reflects the procedure applicable for IDC hearings. IDC documentation of the reasons for refusal to call a witness is required.

Final § 541.22(c) amends proposed § 541.19(c) by substitution of the term "immediate notification" for "promptly forward this report" in the discussion of staff requirements, in the event the inmate's misconduct is serious and arrangements for removal from the Center are necessary for the protection of life or property.

Final § 541.22(d) amends proposed § 541.19(d) by insertion of the word "Federal" into the title of this section. The change is for clarification of the fact that the section concerns only Federal Community Treatment Centers.

Due to the reassignment of this section from § 541.19 to § 541.22, proposed § 541.20 and § 541.21 are renumbered final §§ 541.19 and 541.20 respectively.

11. Section 541.20—This section is renumbered final § 541.19. Section 541.19(a) amends the proposed rule by deletion of the word "individual" in describing the type of cell in which the inmate may be housed. This specificity was considered unnecessary as the remainder of § 541.19(a) and § 541.19(c)(2) describe provisions of cell occupancy.

Section 541.20(b) contains a substantial amendment to proposed § 541.19(b). The proposed rule authorized the Warden to add privileges, for purposes of reinforcing acceptable behavior, to the living conditions of inmates in segregation status. The final rule deletes this section and states that living conditions may not be modified for the purpose of reinforcing acceptable behavior and that different levels of living arrangements may not occur. The rule requires documentation signed by the Warden in any instance where it is determined necessary to deprive an inmate of a specifically authorized item. As limits are now placed on the length of time an inmate may stay in disciplinary segregation, and the purpose of such segregation as a sanction for misbehavior is clarified, there is no basis for the establishment of different levels of living arrangements.

Final § 541.20(c)(4) deletes the phrase (from proposed § 541.19(c)(4)) "selected food items from the standard ration" and inserts "nutritionally adequate meals". The amendment is intended to eliminate any possibility that the inmate will receive selected or reduced items, with no consideration of nutritional value. The latter is the essential consideration.

Section 541.20(c)(5) expands proposed § 541.19(c)(5) by increasing to at least 3 times a week the inmate's opportunity to shower and shave. Deleted from the final rule is the statement that the inmate has the "right and responsibility", and inserted in its place is "shall have the opportunity". This revision recognizes staff's responsibility to provide the inmate with opportunity to shower and shave, while recognizing the inmate's right to decide whether or not to accept. The final rule requires that any restriction by staff of this provision for reason of undue security hazard must be documented and signed by the Warden.

Final § 541.20(c)(6) expands proposed § 541.19(c)(6) by requiring that the exercise in the Unit be provided on 4 different days. A second paragraph, added to the final rule, authorizes the withholding of exercise periods, not to exceed one week, when the action of the segregated inmate is determined to pose a threat to the safety or health conditions of the unit. Only the Warden may authorize this withholding and then only following a recommendation by the IDC, after a hearing in accordance with the provisions of § 541.15.

Section 541.20(c)(8) expands the proposed rule (§ 541.19(c)(8)) by recognizing two types of reading material, legal and non-legal. A cross reference to Part 543, Subpart B (as opposed to the specific reference § 543.12(i) in the proposed rules) is inserted to ascertain limits on legal material. The authorized amount of non-legal reading material is set in the final rule so as not to exceed five volumes. This is considered to be a maximum, for housekeeping and safety purposes, in all institutions.

Section 541.20(c)(9) deletes (from proposed § 541.19(c)(9)) the phrase "but subject to staff availability", since inmates in segregation status are deprived of the opportunity for interaction available to inmates in the general population; daily visits to special housing units by the medical staff and other persons designated by the Warden are considered necessary.

Section 541.20(c)(10) has amended proposed § 541.19(c)(10) by deleting references to § 540.14(c) and § 540.48(d) and inserting cross references to Part 540, Subpart B and Part 540, Subpart D. This change is made, recognizing that the correspondence and visiting rules are in proposal stage and their numbering sequence may be changed prior to final publication.

12. Section 541.21—This section is renumbered final § 541.20. The word "individual" is deleted from the first paragraph of proposed § 541.21, because it is misleading to imply that an inmate is placed in an individual cell with other inmates. Final § 541.19(c)(2) is the prevailing reference on cell occupancy.

Final § 541.20(a) adds the word "staff" to "members of an inmate's unit or team" to delineate the delegated authority for placement of an inmate in administrative detention. Final § 541.20(a)(5) contains a cross reference to new § 541.21, discussed in item 13 of this preamble.

Final § 541.20(a)(6) is new. It authorizes the Warden to place in administrative detention an inmate who has completed the specified stay in disciplinary segregation and for whom the Warden determines that placement in the general population is not prudent. Frequent use of this section is not anticipated. Its applicability is limited to the inmate unable to immediately return to the general population (for example, an inmate placed in segregation for assaulting another person and threats are now being received promising revenge), and for whom arrangements for transfer have not been completed. Section 541.20(a)(6) sets time limitations on an inmate's stay in this status. The final rule designates either the Assistant Director, Correctional Programs Division or the appropriate Regional Director together with this Assistant Director in the case of Security Level 6 inmates, as officials authorized to make a disposition when the inmate is not transferred from post-disciplinary detention within the time frame specified.

Final § 541.20(b) amends proposed § 541.21(b) by providing that the inmate receive, within 24 hours of placement in administrative detention, unless delivery is precluded by exceptional circumstances, a copy of the memorandum detailing the reasons for this placement.

Final § 541.20(c) makes several amendments to proposed § 541.21(c). First, it recognizes the inmate's right to waive appearance before the reviewing authority. The new language requires the waiver be documented by staff. The proposed language of "refuses to appear" is amended in the final rule to read "waives the right to appear". The final rule contains a new provision requiring psychiatric or psychological assessment when administrative detention continues beyond 30 days, and at subsequent one-month intervals if detention continues for this extended period. This requirement is added to help ensure the mental health of each inmate.

Proposed § 541.21(c) specifies that administrative detention is to be used only for short periods of time, except where an inmate needs long term protection. As new § 541.21 concerns protection cases, a cross reference to this part is inserted in final § 541.20(c). The final rule provides for the inmate to receive, provided institutional security is not compromised, a written copy of staff's decision at each formal review and the basis for this finding.

There are two amendments to proposed § 541.21(d), now final § 541.20(d). The first changes from § 541.20 to § 541.19 the cross-reference to disciplinary segregation conditions. The second specifies that exercise periods shall meet at a minimum the level established for disciplinary segregation and exceed that level where resources are available.

13. The language of final § 541.21 is new to the discipline policy. It was first published as a proposed rule on Close Supervision Cases December 21, 1977 (at 42 FR 64083). At that time, it was carried as Part 524, Subpart H.

Final § 541.21(a) contains the six categories of protection cases discussed in proposed § 524.81, with one modification: § 541.21(a)(3) substitutes "sexual" for the more restrictive term "homosexual" used in the proposed rule. Two new categories are included in the final rule: "Inmates who have previously served as gun guards, dog caretakers, or in similar positions in state or local correctional facilities;" and "Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm". The remainder of proposed § 541.81 is deleted.

Final § 541.21(b) provides for a hearing for an inmate in administrative detention for protection, but whose confinement in this status is not at the inmate's own request or is beyond the time when the inmate feels the need to be detained for reasons of protection. This section specifies the hearing is to be conduced in accordance with the applicable procedural requirements of § 541.15.

Final § 541.21(c) sets the length of stay permissible in administrative detention for an inmate requiring protection status. Inmates in this status are provided the same review given other inmates in administrative detention (§ 541.20(c)). Final § 541.21(d) establishes methods for release of an inmate from protective status and requires that staff first attempt to place the inmate in the general population of their particular facility. This section establishes the Regional Director as the authorizing official in those instances where transfer of a protection case is warranted. On the basis of these provisions, proposed §§ 524.80 and 524.82 are deleted.

Part 541—Inmate Discipline and Special Housing Units

Other Comments

1. Section 541.12—One comment on § 541.12(b) requested a time limit for completion of the investigation. As stated in our August 2, 1978 preamble, the specific time constraints for completion of an investigation are eliminated, because this is insignificant in regard to the due process rights of the inmate and its presence has served to confuse more than to clarify. We will retain these time frames as suggested guidelines, rather than strict requirements. The Bureau still expects investigations to be concluded without undue delay, but recognizes that the time frame is dependent on the nature of the incident under investigation, and sometimes other, uncontrollable circumstances. The time limits contained in Table 3 do require that an inmate receive an initial hearing within a maximum of 48 hours after staff becomes aware of the inmate's involvement in the incident. The investigation is completed prior to this hearing.

We believe we adhere to another comment that calls for no unreasonable delay in ascertaining the validity of information received from an anonymous source, and that investigative and fact-finding instructions insure this.

A suggestion that the inmate receive either a copy of the investigation report or (where security considerations dictate) a summary thereof has been taken under consideration. Release of investigative materials will be further reviewed.

2. Section 541.13—One commenter expressed concern that the unit or team discipline committee was not required to meet the Wolff v. McDonnell standards for written statement of findings of fact, evidence relied upon, and reasons for the disciplinary action taken. Also of concern was the fact that there were no provisions for witnesses to appear at the initial hearing. The commenter added that these protections would not be so important if the Bureau was not proposing to make disciplinary transfers a minor sanction.

The UDC is empowered only to impose minor sanctions. Authority to impose major sanctions is left to the IDC, and the procedures at this Committee exceed the requirements of Wolff v. McDonnell. As noted in our earlier comments, disciplinary transfer is retained as a major sanction; the thrust of this comment is therefore accommodated.

A comment to § 541.13(f) stated that, without standards or rules regarding what constitutes evidence, both UDC and IDC decisions will be arbitrary and unfair. We do not consider it appropriate to define evidence. This would unnecessarily limit what the IDC and UDC, which are administrative as opposed to judicial bodies, may consider.

Another comment on § 541.13 expressed concern that confidential information is not provided the accused for review, comment, or challenge. Prior to the Bureau's use of any confidential information, the Bureau's own staff has evaluated its validity. To provide the inmate with confidential information may endanger both the safety of the informant and the security and orderly operation of the institution.

3. Section 541.15—A comment called for the inmate to have at least a conditional right to question witnesses, stating that § 541.15(c) fails to authorize the inmate to question witnesses when there is no reasonable potential for disruption or breach of security.

The final rule allows an inmate who has waived staff representation to submit questions for requested witnesses in writing to the IDC. We do not consider it feasible to allow direct questioning. As recognized by the U.S. Supreme Court in Wolff v. McDonnell, it is desirable to avoid situations which trigger deep emotions and animosity. Our present rule respects such considerations without depriving the inmate of any recognized rights.

4. Section 541.16—A comment called for identical forfeiture penalties for inmates found to have committed the same prohibited act. Although the new disciplinary severity scale sets limits on the amount of forfeiture which may occur, we do not concur with the commenter that the sanction on days forfeited should be identical for commission of the same offense. General consistency rather than rigid identity is desirable. For example, we do not necessarily agree that a first time violator of a prohibited act needs to receive a sanction identical to an inmate who has had multiple violations. Rather, the imposition of any given sanction is dependent on the prohibited act and the facts surrounding it. Misconduct may be mitigated or aggravated by a wide range of circumstances which may surround it. Once it is determined that the inmate did commit an act of misconduct, imposition of sanction is based on the severity of the incident and the individual's background.

5. Section 541.20—One comment on proposed § 541.20 suggested that an inmate sign a record each time the inmate is authorized a shower and exercise. We do not see the need for this, since staff presently records this information. Opportunity for additional confrontation and proliferation of documentation are not desirable.

In a related comments, a suggestion was made that the inmate receive daily time out of the cell for shower and exercise, or both, with an appropriate entry made once a week. While we agree daily exercise and showers are desirable, staff and physical resources often do not allow for this. Final § 541.19 provides that an inmate shall receive a minimum of 4 hours exercise per week, and this to occur over a space of 4 different days. As for access to showers, we require that an inmate receive the opportunity for a minimum of three showers per week.

6. Section 541.21—A comment was received on proposed § 541.21 stating that, when an inmate is placed in administrative detention, there should be no delay in his receiving his personal property. We agree with the comment. Following placement in administrative detention, an inmate's personal property is picked up and inventoried. A reasonable amount of this property is then provided the inmate, with the remainder stored until release from detention. Under normal circumstances, an inmate receives the personal property shortly after placement in detention status. Precise regulation of the time period is not practical.

7. Sections 524.80–82—Proposed §§ 524.80–82 (Close Supervision Cases) are substantially revised and incorporated into final § 541.21 (Protection Cases). Its inclusion into Part 541 is not to imply that these cases are disciplinary cases. Rather, Part 541, Subpart B relates to both Inmates Discipline and Special Housing Units (administrative detention and disciplinary segregation). Since protection cases are housed in the administrative detention unit, it is considered appropriate to include them within the context of this rule.

Public comments on the proposed rules suggested 30-day review of inmates placed in administrative detention, for reviews to be conducted in accordance with published guidelines, and for inmates to receive written notice of the specific reasons for which they are retained in administrative detention. These provisions are addressed in the final rules. One commenter believed that the refusal of Wardens to accept protection cases on transfer is one reason inmates spend so much time in administrative detention. The final rule addresses this concern in two ways. First, the rule provides time limitations on an inmate's stay in administrative detention; second, where staff is unable to return the inmate to the general population, the final rule authorizes the Regional Director to review the material and order the transfer of a protection case.

A comment suggested that the final rule expressly state that close supervision (protection) cases are not confined in administrative detention for punishment and that inmates in this housing may not be punished for failure to participate in a program. We believe final § 541.20, with its discussion of reasons for placement, adequately addresses the first issue. As to the second, the Bureau of Prisons adheres to the optional programming concept and leaves determination of program participation to the individual inmate. Other comments called for the inmate in protective status to receive equal access to activities such as library, recreation, and education, as if they were in general population. One commenter believed that inmates who do not wish to participate generally in activities and benefits granted to the general inmate population should receive the opportunity to participate separately. Final § 541.20(d) recognizes the thrust of these suggestions with its language, "If consistent with available resources and the security needs of the institution, the Warden shall give * * * the same general privileges given to inmates in the general population". Any further determination as to exactly what may be offered is best left to the Warden of each institution.

A comment suggested that, where inmates in administrative detention are subjected to reduced benefits (on matters including food, exercise, medical facilities, work, and educational opportunities), the Warden must provide a written explanation of the reasons. The commenter proposed that an inmate dissatisfied with the Warden's response receive an informal hearing before a Regional Office staff member.

The nature of administrative detention anticipates some restriction on inmate movement within the general population. To require that the inmate receive prior written explantion of any reduced benefits is impractical. We do not believe that all matters can, or should, be resolved by hearings. The final rule provides basic living standards for inmates in special housing status and stipulates that deprivation of any item usually authorized in the special housing unit requires written documentation signed by the Warden, indicating his review and approval. We do not see the need for the informal hearing; an inmate who is dissatisfied may file an appeal under the Administrative Remedy Procedure.

We agree with a comment that calls for close supervision cases to initially be considered for return to the general inmate population. Final § 541.21(d) reflects this intent. If a transfer is considered warranted, the final rule authorizes the Regional Director to effect the transfer, following a review of all relevant material. We do not agree that the inmate's consent on the transfer is required, or failing the obtainment of consent that the inmate must receive a hearing. In effecting an administrative transfer, the Bureau of Prisons is exercising responsibility delegated to it by the Attorney General for placement of the inmate in the most appropriate institution. An inmate who is dissatisfied with his transfer may file an appeal under the Administrative Remedy Procedure.

Other comments expressed the view that an inmate may be placed in protection status only at the inmate's own request or after a hearing at the Regional level with appeal to the Director. While we recognize that voluntary placement in protective status occurs in the majority of instances, it is necessary for the Bureau to retain the authority to house an inmate in administrative detention for protection reasons when staff has good reason to believe the inmate is in serious danger of bodily harm. The final rule specifies that an inmate placed in administrative detention for protection, but not at the inmate's request or beyond the time when the inmate feels the need to be detained for protection, is entitled to a hearing conducted in accordance with the procedural requirement of § 541.15. This comment is substantially accommodated.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 USC 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), a new 28 CFR, Chapter V, is added as set forth below. The effective date of these rules is April 15, 1979.

Dated: April 13, 1979.

Norman A. Carlson,
Director.

CHAPTER V—BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A [Reserved]

Subpart B—Inmate discipline

Authority.—5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Inmate Discipline

§ 541.10 Purpose and Scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with institution rules.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within institution rules and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct. A person is not responsible for his conduct if, at the time of the conduct, he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the rules of the institution, because of a mental disease or defect. A person is incompetent if he lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings.

§ 541.11 Notice to Inmate of Institution Rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 2 and 3);

(c) The inmate's rights and responsibilities:

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with the facility rules.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or institution rules through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment.	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.

(d) Prohibited acts and disciplinary severity scale:

There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate. Specific sanctions are authorized for each category (see Table 1 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act. *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, and *making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself*. In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A. Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Institution Discipline Committee (IDC) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Institution Discipline Committee or Unit Discipline Committee (UDC) may execute, suspend or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (IDC or UDC) which originally imposed the sanction.

(1) Greatest category offenses: The Institution Discipline Committee shall impose and execute one or more of sanctions A through E. The Committee may also suspend one or more additional sanctions A through F. The Committee may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) High category offenses: The appropriate committee shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) Moderate category offenses: The appropriate committee shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) Low moderate category offenses: The appropriate committee shall impose at least one sanction E through P, but may suspend any sanction or sanctions imposed.

If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Institution Discipline Committee, the referral shall include an advisement to the IDC of any intent to revoke that suspension if the IDC finds that the prohibited act was committed. If the Institution Discipline Committee then finds that the prohibited act was committed, they shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

The Unit Discipline Committee shall refer all Greatest Severity Prohibited Acts to the Institution Discipline Committee with findings and recommendations as appropriate.

GREATEST CATEGORY

Code	Prohibited Acts	Sanctions
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault)	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time.
102	Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution *with* violence	C. Disciplinary Transfer (recommend).
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329)	D. Disciplinary segregation (up to 60 days).
104	Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition	E. Make monetary restitution.
105	Rioting	F. Withhold statutory good time.[1]
106	Encouraging others to riot	
107	Taking hostage(s)	
199	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Greatest Severity nature*)	

HIGH CATEGORY

Code	Prohibited Acts	Sanctions
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time.
202	Possession or introduction of an unauthorized tool	C. Disciplinary transfer (recommend).
203	Threatening another with bodily harm or any other offense	D. Disciplinary segregation (up to 30 days).
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	E. Make monetary restitution.
205	Engaging in sexual acts	F. Withhold statutory good time.
206	Making sexual proposals or threats to another	G. Loss of privileges: commissary, movies, recreation, etc.
207	Wearing a disguise or a mask	H. Change housing (quarters).
208	Tampering with or blocking any lock device	I. Remove from program and/or group activity.
209	Adulteration of any food or drink	J. Loss of job.
210	Possession, introduction, or use of any narcotics, narcotic paraphernalia, or drugs not prescribed for the individual by the medical staff	K. Impound inmate's personal property.
211	Possessing any officer's or staff clothing	L. Confiscate contraband.
212	Engaging in, or encouraging, a group demonstration	M. Restrict to quarters.
213	Encouraging others to refuse to work, or to participate in a work stoppage	
214	Refusing to provide a urine sample or to take part in other drug-abuse testing	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00	
299	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the High Severity nature*)	

[1] Can be in addition to A through E—cannot be the only sanction executed.

MODERATE CATEGORY

Code	Prohibited Acts	Sanctions
300	Indecent exposure	A. Recommended parole date rescission or retardation.
301	Stealing (theft)	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time.
302	Misuse of authorized medication	C. Disciplinary transfer (recommend).
303	Possession of money or currency, unless specifically authorized	D. Disciplinary segregation (up to 15 days).
304	Loaning of property or anything of value for profit or increased return	E. Make monetary restitution.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels	F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 214)	H. Change housing (quarters).
308	Violating a condition of a furlough	I. Remove from program and/or group activity.
309	Violating a condition of a community program	J. Loss of job.
310	Unexcused absence from work or any assignment	K. Impound inmate's personal property.
311	Failing to perform work as instructed by the supervisor	L. Confiscate contraband.
312	Insolence towards a staff member	M. Restrict to quarters.
313	Lying or providing false statement to a staff member	N. Extra duty.
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand count	
321	Interfering with the taking of count	
322	Making, possessing, or using intoxicants	
323	Refusing to breathe into a breathalyzer or take part in other alcohol abuse testing	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
399	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Moderate Severity nature*)	

LOW MODERATE CATEGORY

Code	Prohibited Acts	Sanctions
400	Possession of property belonging to another person	E. Make monetary restitution.
401	Possessing unauthorized clothing	F. Withhold statutory good time.
402	Malingering, feigning illness	G. Loss of privileges: commissary, movies, recreation, etc.
403	Smoking where prohibited	H. Change housing (quarters).
404	Using abusive or obscene language	I. Remove from program and/or group activity.
405	Tattooing or self-mutilation	J. Loss of job.
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	K. Impound inmate's personal property.
407	Conduct with a visitor in violation of institution regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	L. Confiscate contraband.
408	Conducting a business	M. Restrict to quarters.
		N. Extra duty.
		O. Reprimand.
		P. Warning.

Sanctions

Table 1

1. *Sanctions of the Institution Discipline Committee:* (upon finding the inmate committed the prohibited act)

A. *Recommend parole date rescission or retardation.* The IDC may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

B. *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., Section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. Authority to restore forfeited statutory good time is delegated to *only* the Institution Discipline Committee of each institution. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See § 541.11e)

C. *Recommend disciplinary transfer.* The IDC may recommend that an inmate be transferred to another institution for disciplinary reasons.

Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to an IDC hearing. Transfers for disciplinary reasons prior to a hearing before the IDC may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Institution Discipline Committee. The inmate shall receive a hearing before the IDC at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to IDC hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

D. *Disciplinary segregation.* The IDC may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different "episodes" only. For example, if an inmate was in an unauthorized area and set a fire, the inmate could be charged with both offenses, but if found to have committed the prohibited act, the individual would only be able to receive up to 60 days in disciplinary segregation, which is the maximum segregation sanction for setting a fire. However, if the inmate was in an unauthorized area and set a fire and later, on the way to administrative detention, struck an officer, the inmate could be charged with assaulting any person, and combined with the first two charges, could receive a maximum of 120 days in disciplinary segregation. Similarly, an inmate may be serving a 60-day sanction in disciplinary segregation and commit a High Severity Prohibited Act, whereupon the person can be given an additional, consecutive 30 days by the IDC. Specific limits on time in disciplinary segregation are based on the severity scale. (See § 541.11e)

E. *Make monetary restitution.* The IDC may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

F. *Withholding statutory good time.* The IDC may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the good time creditable for the single month during which the violation occurs.

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the Institution Discipline Committee, consecutive withholding actions. For this to occur, the Committee shall review, near the beginning of the month or at the 30-day review, the offense with the inmate. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing. The Committee shall provide the inmate an opportunity to appear in person and to present a statement orally or (if he prefers) in writing. The Institution Discipline Committee shall document its action on, or by an attachment to, the initial IDC report. If further withholding is ordered, the Committee shall advise the inmate of his right to appeal through the Administrative Remedy Procedure (Part 542).

Only the Institution Discipline Committee may restore withheld statutory good time. Restoration eligibility is based on the severity scale. (See § 541.11e).

2. *Sanctions of the Institution Discipline Committee/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

G. *Loss of privileges: commissary, movies, recreation, etc.* The IDC or UDC may direct that an inmate forego specific privileges for a specific period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege: e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privileges. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions for misconduct which is not related to the privilege.

H. *Change housing (quarters).* The IDC or UDC may direct that an inmate be removed from current housing and placed in other housing.

I. *Remove from program and/or group activity.* The IDC or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

J. *Loss of job.* The IDC or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

K. *Impound inmate's personal property.* The IDC or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

L. *Confiscate contraband.* The IDC or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

M. *Restrict quarters.* The IDC or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

N. *Extra duty.* The IDC or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

O. *Reprimand.* The IDC or UDC may reprimand an inmate either verbally or in writing.

P. *Warning.* The IDC or UDC may verbally warn an inmate regarding committing prohibited act(s).

BILLING CODE 4410-05-M

and (e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time.

Severity of Act	Sanctions	Max. Amt. Forf. SGT	Max. Amt. W/hd SGT	Elig. Restoration Forf. SGT	Elig. Restoration W/hd SGT	Max. Dis Seg
Greatest	A-F	100%	Good time creditable for single month during which violation occurs. Applies to all categories	24 mos	18 mos	60 dys
High	A-M	50% or 60 days, whichever is less		18 mos	12 mos	30 dys
Moderate	A-N	25% or 30 days, whichever is less		12 mos	6 mos	15 dys
Low Moderate	E-P	N/A		N/A	3 mos	N/A

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 2

Procedures	Dispositions
1. Incident involving possible commission of prohibited act.	Observing officer may resolve informally or drop the charges.
2. Officer prepares Incident Report and forwards it to supervisor.	Supervisor may resolve informally or drop charges.
3. Appointment of investigator who conducts investigation and forwards material to Unit Discipline Committee.	
4. Initial hearing before Unit Discipline Committee.	Unit Discipline Committee may drop or resolve informally any High, Moderate or Low Moderate charge, impose minor sanctions or refer to Institution Discipline Committee.
5. Hearing before Institution Discipline Committee.	Institution Discipline Committee may impose major or minor sanctions, or drop the charges.
6. Appeals through Administrative Remedy Procedures.	The Warden, Regional Director, or General Counsel may approve, modify or reverse, but may not increase any disciplinary action taken.

TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 3

1. Staff becomes aware of inmate's involvement in incident.

maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

maximum of 48 hours (excluding weekends and holidays.)

3. Initial hearing.

minimum of 24 hours (unless waived)

4. Institution Discipline Committee hearing.

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

BILLING CODE 4410-05-C

§ 541.12 Incident Report and Investigation.

(a) *Incident Report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of institution regulations. However, when staff witnesses or has a reasonable belief that a violation of institution regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate correctional supervisor. The supervisor may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The correctional supervisor shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene. The investigating officer should be an employee of supervisory level and may not be the employee reporting the incident in question. When it appears likely that the incident may be the subject of a criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur. The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution, a medical condition militating against delivery, or the pendency of certain criminal proceedings. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for his statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate that he has the right to remain silent at all stages of the disciplinary process but that his silence may be used to draw and adverse inference against him at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that his silence alone may not be used to support a finding that he has committed a prohibited act. The investigator shall then thoroughly investigate the incident. He shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Institution Discipline Committee, the Committee shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.13 Initial Hearing.

The Warden shall delegate to one or more institution staff members (usually a unit discipline committee) the authority and duty to hold an initial hearing upon completion of the investigation. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s). In order to insure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Disciplinary Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions or refer the charge(s) to the Institution Discipline Committee for further hearing. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating an institution rule a written copy of the charge(s) against the inmate within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, held within 48 hours (excluding weekends and holidays) of the time staff became aware of the inmate's involvement in the incident to consider the charge(s) brought against the inmate.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by his presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in his own behalf.

(e) The Unit Discipline Committee may informally resolve any High, Moderate, or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and supported by substantial evidence. The UDC shall find that the inmate either:

(1) Committed the prohibited act charged or a similar prohibited act if reflected in the Incident Report, or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

The UDC shall give the inmate a written copy of the decision and disposition. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (Part 542 of this chapter).

(g) When an alleged violation of institution rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) to the Institution Discipline Committee (IDC) for hearing and disposition. The UDC shall forward copies of all relevant documents to the chairman of the IDC with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the IDC finds the inmate has committed the act charged or a similar prohibited act. The inmate whose charge is being referred to the Institution Discipline Committee may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the IDC.

(h) When charges are to be referred to the Institution Discipline Committee, the UDC shall advise the inmate of the rights afforded at a hearing before the IDC. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide.

(i) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Institution Discipline Committee all incidents involving prohibited acts of Greatest Severity.

(j) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.14 Establishment and Functioning of Institution Discipline Committee.

(a) The Warden shall establish a single Institution Discipline Committee. In the event of a serious disturbance or other emergency, or if an inmate commits an offense in the presence of the IDC, the Warden may establish more than one Institution Discipline Committee with approval of the appropriate Regional Director.

(b) The Warden may appoint as many members to the Institution Discipline Committee as are appropriate. At least three members, including the chairman, shall be present at any hearing to constitute a quorum. The chairman and at least one member present at the hearing must be of the department head level or higher. The third member and additional members of the Committee need not be of department head level. For the purpose of this section, "department head" includes acting department head. In order to insure impartiality, no member of the IDC may be the reporting officer, investigating officer, or UDC member or a witness to the incident or play any significant part in having the charge(s) referred to the IDC. However, a staff member witnessing an incident may sit as a member of the IDC where virtually every staff member in the institution witnessed the incident in whole or in part.

(c) The Institution Discipline Committee shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to it for disposition following the hearing required by § 541.13 before the UDC. The IDC may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Institution Discipline Committee shall have the authority to impose or suspend sanctions A through F. This Committee shall conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.18.

§ 541.15 Procedures in Institution Discipline Committee Hearings.

The Institution Discipline Committee shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before his appearance before the Institution Discipline Committee unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Institution Discipline Committee should the inmate so desire. The Warden, the members of the IDC, and the reporting officer, investigating officer, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the IDC on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The chairman shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall appoint a staff representative to assist the inmate. The IDC shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the chairman of the Institution Discipline Committee.

(c) The inmate is entitled to make a statement and to present documentary evidence in his own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The chairman shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of the outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The chairman need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the IDC. The chairman shall request submission of written statements from unavailable witnesses when necessary for an appreciation of the circumstances surrounding the charge(s). The chairman shall document reasons for declining to call requested witnesses in the IDC report. The inmate's staff representative, or when the inmate waives staff representation members of the Committee, shall question witnesses requested by the inmate who are called before the IDC. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the Committee. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institution security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate who has had any sanctions imposed by the IDC while absent from custody returns to custody, the Warden shall have the escape charge reheard before the Institution Discipline Committee at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may dismiss the charge(s), or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The IDC, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed.

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and which is supported by substantial evidence manifested in the record of the proceedings. The Committee shall find that the inmate either:

(1) Committed the prohibited act charged or a similar prohibited act if reflected in the Incident Report, or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decision and disposition.

(h) The Institution Discipline Committee shall expunge an inmate's file of the Incident Report and related documents whenever the Committee finds the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the usage of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the IDC finds the inmate has not committed every prohibited act charged, then the Committee shall record its findings clearly and shall mark out on the Incident Report the incident and code references to charges which were not proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.16 Dispositions of the Institution Discipline Committee.

The Institution Discipline Committee has available a broad range of sanctions and dispositions when it has completed a hearing. The Institution Discipline Committee may do any of the following:

(a) Dismiss any charge(s) before it upon a finding that the inmate did not commit the prohibited act(s). The Committee shall order the record of charge(s) expunged upon such finding.

(b) Impose sanctions A through P as provided in § 541.11(d).

(c) Suspend the execution of a sanction it imposes as provided in § 541.11(d).

§ 541.17 Appeals from Unit Discipline Committee or Institution Discipline Committee Actions.

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate notice of its decision, they shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, or reverse any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase the sanctions imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Institution Discipline Committee substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based its decision on substantial evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the Prohibited Act.

§ 541.18 Justification for Placement in Disciplinary Segregation and Review of Inmates in Disciplinary Segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order or the Institution Discipline Committee following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category. The IDC may order placement in disciplinary segregation only when other available dispositions are inadequate to regulate an inmate's behavior within acceptable limits and when necessary for the control and management of behavior.

(b) The Warden may temporarily (not exceeding five days) move to a more secure cell, which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the Institution Discipline Committee can be held, an inmate who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Institution Discipline Committee shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the IDC at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the Committee in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Institution Discipline Committee may release an inmate from disciplinary segregation earlier than the sanction initially imposed when the Committee finds that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for the control and management of behavior. The Committee may not increase any previously imposed sanction.

§ 541.19 Conditions of Disciplinary Segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated. Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating his review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation Conditions.* The quarters used for segregation must be well ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell Occupancy.* Except in emergencies, the number of inmates confined to each cell or room may not exceed the number for which the space was designated. The Warden may approve temporary excess occupancy if he finds there is an emergency requiring this action.

(3) *Clothing and Bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons.

(4) *Food.* Staff shall ordinarily give a segregated inmate nutritionally adequate meals from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal Hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating his review and approval.

(6) *Exercise.* Staff shall permit each segregated inmate no less than four hours exercise each week. Exercise should be provided in four one-hour periods, on four different days, but if circumstances require, one-half hour periods are acceptable if the four-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Institution Discipline Committee. This recommendation may be made only following a hearing before the Committee, the hearing to be held in accordance with the provisions of § 541.15, following those provisions which are appropriate to these circumstances, and only upon a finding by the Committee that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal Property.* Institution staff shall ordinarily impound personal property.

(8) *Reading Material.* Staff may provide a reasonable amount of non-legal reading material, not to exceed five volumes at any one time, on a circulating basis. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden shall see each segregated inmate daily, including weekends and holidays.

(10) *Correspondence and Visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting privileges, see Part 540, Subpart D. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this chapter).

§ 541.20 Administrative Detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by himself or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in Administrative Detention.* The Warden may delegate authority to place an inmate in administrative detention to correctional supervisors, shift supervisors, or staff members of an inmate's unit or team. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when his continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of institution regulations;

(2) Is pending investigation of a violation of institution regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for his own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.21); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent.

(i) In Security Level 1 through 5 and Administrative type (exception pre-trial inmates) institutions, staff within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to the general inmate population or effect a transfer to a more suitable institution.

(ii) In Security Level 6 institutions, staff is expected to adhere to the 90 day limit for an inmate's placement in post-disciplinary detention; however, the appropriate Regional Correctional Administrator for good and documented cause may approve two 30-day extensions.

(iii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (a) of this section.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (b) of this section.

(b) *Memorandum Detailing Reasons for Placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of his placement in administrative detention, unless this delivery is precluded by exceptional circumstances.

(c) *Review of Inmates Housed in Administrative Detention.* The Warden shall designate appropriate staff to review the status of inmates housed in administrative detention. The reviewing authority shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the reviewing authority at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the reviewing authority in a written report, should address the inmate's adjustment to his surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.21). An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the reviewing authority. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of staff's decision and the basis for this finding. The reviewing authority shall release an inmate from administrative detention when reasons for placement cease to exist.

(d) *Conditions of Administrative Detention.* The basic level of conditions as described in § 541.19 for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting and correspondence privileges in accordance with Part 540 of this chapter.

§ 541.21 Protection Cases.

(a) Staff may consider the following categories of inmates as protection cases.

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population;

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.15, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this rule relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90 day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

§ 541.22 Disciplinary Procedures for Federal Community Treatment Centers.

The following exceptions to the general disciplinary procedures for Bureau of Prisons institutions apply solely to Federal Community Treatment Centers.

(a) *Institution Discipline Committee.* Each Federal Community Treatment Center must have a single Institution Discipline Committee composed of at least one staff member appointed by the director of the center. No member need be of department head level. No member of the Institution Discipline Committee may be the reporting or investigating officer or have played any significant part in having the charge(s) referred to the Institution Discipline Committee. Federal Community Treatment Centers need not hold initial hearings or establish unit discipline committees with initial hearing authority but may have only one discipline committee, the Institution Discipline Committee.

(b) *Witnesses.* The Institution Discipline Committee shall permit an inmate appearing before the Committee to request the Committee to call witnesses from outside the Center who are willing to appear before the Committee at their own expense and whose presence at the hearing would not pose a serious threat to the security of the Center. Witnesses whose testimony would be repetitious or irrelevant to the charge(s) or disposition(s) need not be called. When the Committee refuses a request for an outside witness, the Committee shall clearly document the reason(s) for refusing this requested witness. The Committee shall liberally accept written statements from requested witnesses who do not appear.

(c) *Offenders Programmed in the Center Pursuant to Pub. L. 91–492 (Probationers, Parolees, or Mandatory Releases).* Center staff shall forward reports of misconduct by an offender programmed in the center pursuant to Pub. L. 91–492 to the appropriate agency (Probation Officer or Parole Commission) for disposition which that agency considers appropriate. This offender may not be the subject of disciplinary action within the center until the appropriate agency has been contacted. Center staff shall make immediate notification when the misconduct is serious and arrangements for removal from the center may be necessary for the protection of life or property.

(d) *Escapes or Disappearances from Federal Community Treatment Centers.* When an inmate is not where he is scheduled to be, and when the center staff has made reasonable efforts to contact the inmate, center staff shall declare the inmate to be in escape status. Staff shall take further action following the guidelines under § 541.12. Staff shall effect total resolution of the incident, to the point of holding the hearing in the inmate's absence.

(e) *Use of Part Time Employees or Other Federal Employees in the Disciplinary Process.* With the exception of sitting as a member of the Institution Discipline Committee, part time employees or other federal employees (U.S. Probation Officer, U.S. Marshal, etc.) may be used in any stage of the disciplinary process where there is an insufficient number of full time staff available.

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